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FILE TITLE:	SERIES
Immigration	HOME AFFAIRS
	PART: 4

PART BEGINS:	PART ENDS:	CAB ONE:
15 July 98	21 October 1998	

PREM 49/380

Part closed 21 October 1998

LABOUR ADMINISTRATION

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T.S.O. Order No. N0064510 3/98 C5 59064

PART

CLOSED

Series : **HOME AFFAIRS**

Title : **Immigration**

Part : **4**

Date	From	To	Subject	Class	Secret
10/09/1998	PU	PM	Asylum seekers	R	0
10/09/1998	SS/DoH	HS	Czech and Slovak asylum seekers - visa regimes	U	0
10/09/1998	PUS/FCO	HS	Czech and Slovak asylum seekers - visa regimes	C	0
11/09/1998	SS/DSS	FCS	Czech and Slovak asylum seekers - Visa regimes	U	0
14/09/1998	DETR	DPM	Czech and Slovak asylum seekers - visa regimes	U	0
14/09/1998	HS	CST	Housing and council tax benefit and asylum seekers	U	0
15/09/1998	EA/PS	DETR	Housing and council tax benefit and asylum seekers	R	0
17/09/1998	CST	DPM	Housing and council tax benefit and asylum seekers	R	0
18/09/1998	HS	DPM	Rise in Asylum applications	C	0
19/09/1998	HS	PM	Reform of extradition law	C	0
22/09/1998	CST	DoH	Asylum and immigration	C	0
23/09/1998	FCO		Letter from Baroness Symons re recent developments of the fcos wo	U	0
24/09/1998	SS/DSS	CST	Housing and council tax benefit and asylum seekers	C	0
24/09/1998	HA/PS	HO	Reform of extradition law	C	0
24/09/1998	SS/DoH	CST	Housing and council tax benefit and asylum seekers	C	0
30/09/1998	SS/SO	CST	Asylum and immigration reserve claim	U	0
01/10/1998	FCO	HO	Reform of extradition law	C	0
03/10/1998	HS	PM	Slovak Asylum Seekers:Visa Regime	R	0
05/10/1998	MS/DETR	DPM	Czech and Slovak asylum seekers- visa regimes	R	0
05/10/1998	LPO	HO	Reform of extradition law	U	0
05/10/1998	SS/DTI	HS	Reform of extradition law	U	0
05/10/1998	FCO		Telegram no438: Dutch plans to deal with new asylum seekers	U	0
05/10/1998	HS	CST	Asylum seekers support project	U	0
06/10/1998	CDL	HS	reform of extradition law	C	0
06/10/1998	DPM	HS	Czech and Slovak Asylum Seekers-Visa Regime	U	0
07/10/1998	HA/PS	HO	Slovak asylum seekers : Visa regime	C	0
08/10/1998	LC	HA/PS	Reform of extradition law	C	0
09/10/1998	DPM	HS	Asylum London	C	0
12/10/1998	HS	CST	Asylum seekers support	U	0
12/10/1998	MS/DoH	CST	Asylum and Immigration	U	0
13/10/1998	Telegram/IN		Bratislava Tel No:230-Visa Regime:Political Reaction	R	0
13/10/1998	HS	LP	Preparation of Bills for the Second Session:Immigration and Asylum	R	0
14/10/1998	HO	DoH	Asylum seekers support: westminster case	U	0
14/10/1998	CST	HS	Asylum seekers	R	0
14/10/1998	DPM	CST	Asylum and Immigration	U	0
14/10/1998	HO	DoH	Asylum Seekers Support:Westminster Case	U	0
15/10/1998	SS/DSS	CST	Asylum and immigration	U	0
15/10/1998	SOL GEN	HS	Reform of extradition law	R	0
15/10/1998		HO	From Keith Vaz MP to Andrew Walmsley, IND: Hinduja	U	0
15/10/1998	DPM	HS	Reform of Extradition Law	U	0
19/10/1998	HS	CST	Asylum Seekers Support	R	0
19/10/1998	DPM	HS	Asylum seekers support	U	0
19/10/1998	LA	HS	Reform of extradition law	U	0
20/10/1998	LPS	DPM	Asylum Seekers Support	C	0
20/10/1998	DoH	CST	Asylum seekers	U	0
21/10/1998	DPM	HS	Asylum seekers support project	C	0
21/10/1998	MS/DoH	CST	Asylum seekers support project	C	0
21/10/1998	CDL	HS	Asylum seekers support project and asylum and immigration	U	0

Series : **HOME AFFAIRS**

Title : **Immigration**

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Date	From	To	Subject	Class	Secret
29/06/1998	HO	NIO	barbara Ann Magee US Citizen	U	0
30/06/1998	HS	LC	White Paper on Immigration and Asylum	U	0
01/07/1998	CST	HS	Asylum and Immigration Budget Arrangements	R	0
02/07/1998	HS	DPM	Asylum Safe Countries of Destination : the White List	U	0
03/07/1998	HS	FCS	Formation of an ad Hoc Group on the Common Travel Area	U	0
06/07/1998	CDL	DPM	White paper on Asylum and Immigration	U	0
06/07/1998	HS	DPM	Inaquately Documented passengers arriving at Waterloo	U	0
07/07/1998	DETR	HO	Immigration and Asylum white paper	U	0
08/07/1998	HS	FCS	Immigration and Nationality Issues	U	0
08/07/1998	SS/DoH	HS	White paper on Immigration and Asylum	U	0
08/07/1998	SS/DSS	DPM	Asylum Safe Countries of destination: the White List	U	0
08/07/1998	SS/SO	HS	White paper on immigration and Asylum	R	0
09/07/1998	FCO	HO	Unscrupulous Immigration Advisers	U	0
09/07/1998	MS/DETR	DPM	Asylum and Immigration White paper	R	0
10/07/1998	LC	DPM	White paper on Immigration and Asylum	R	0
10/07/1998	CST	HS	White paper on immigration and Asylum	R	0
13/07/1998	PU	PM	Citizenship Ceremony for new citizens	R	0
13/07/1998	SS/DoH	CST	Asylum and Immigration	U	0
14/07/1998	HO	FCO	Immigration Advisers	U	0
14/07/1998	HS	CST	Immigration and Asylum White paper	R	0
14/07/1998	FCS	HS	White paper on immigration and asylum	C	0
15/07/1998	HA/PS	HO	A positive Approach to Citizenship	U	0
17/07/1998	SS/DoT	HS	nadequately documented passengers arriving at Waterloo	U	0
17/07/1998	FCO	HO	Inadequately documented passengers arriving at Waterloo	U	0
20/07/1998	CST	HS	Immigration and Nationality issues	U	0
20/07/1998	HS	LP	Unscrupulous Immigration advisers	U	0
20/07/1998	HS	DPM	Regulation of Immigration advisers	U	0
22/07/1998	FCS	HS	Slovak Roma	U	0
23/07/1998	LC	HS	Asylum safe countries od destination : the White List	R	0
23/07/1998	LC	HS	Asylum and Immigration	U	0
23/07/1998	FCS	HS	UK/Irish Ad hoc group on the common travel area	C	0
25/07/1998	HS	FCS	Czech and Slovak Asylum Seekers	U	0
27/07/1998	HO		HS Statement on Immigration and Asylum White paper	U	0
27/07/1998	SS/DoH	CST	Asylum and Immigration	U	0
27/07/1998	CST	HS	Inadequately Documented Passengers arriving at waterloo	U	0
27/07/1998	HS	colleagues	Immigration and Asylum White Paper	U	0
29/07/1998	HS	DPM	Illegal Immigration by Eurostar	U	0
30/07/1998	SS/DSS	DPM	White paper on Immigration and Asylum	R	0
03/08/1998	HS	DPM	Marriages of convenience under EC Law	C	0
05/08/1998	MS/SO	CST	Asylum and immigration	C	0
06/08/1998	DPM	HS	Marriages of convenience under EC Law	C	0
06/08/1998	MS/DETR	SS/DSS	Housing and council tax benefit and asylum seekers	C	0
07/08/1998	CST	SS/DoH	Asylum and immigration	C	0
11/08/1998	SS/DoH	DPM	White Paper on Immigration and Asylum	R	0
17/08/1998	CST	DPM	Housing and council tax benefit and asylum seekers	R	0
18/08/1998	MS/DETR	HS	Illegal Immigration by Eurostar	U	0
31/08/1998	DPM	SS/SO	Asylum seekers	U	0
02/09/1998	HS	FCS	Czech and Slovak asylum seekers - Visa Regimes	C	0
07/09/1998	HA/PS	HO	Czech and Asylum seekers - Visa regimes	U	0
07/09/1998	FCO		Telegram 206 - Slovak/Roma	R	0
08/09/1998	DPM	CST	Housing and council tax benefit and asylum seekers	R	0

Top: ~~JSH~~
cc: AL
RL
PJ

DEPARTMENT OF HEALTH

Richmond House 79 Whitehall London SW1A 2NS Telephone 0171 210 3000

From the Parliamentary Under Secretary of State

Rt Hon Stephen Byers
Chief Secretary
Treasury Chambers
Parliament Street
London
SW1P 8AG

21/10/98

Dear Stephen,

I have seen the exchange of correspondence on Asylum Seekers over the past days, and I think it important that I restate this Department's view of the proposed deal. If Westminster, the LGA and ALG are able to accept the package proposed this year, and absorb any costs above the £30m earmarked, the immediate pressure will ease, but the question of the future arrangements for unaccompanied children remains to be resolved. I cannot accept that the additional cost of this grant must be found from within this Department's delegated expenditure limit.

I wonder if we can find a more innovative solution. I should like to explore the possibility of merging the unaccompanied children's grant with the other grants. The proposals from the Treasury indicate a sum of roughly £90m this year for the adults' grant, and some £70m for the families' grant. The unaccompanied children's grant, even when increased from its current £3m, is expected to cost only £21m. If there is scope to achieve savings in unit costs by placing asylum seekers away from London, there would be scope within a pool of some £180m to broker savings between the notional grant amounts. For example a saving of 10% on the adults and families grants would yield £16m, which would largely fund the extra costs of the unaccompanied children's grant. No such opportunity will exist for this Department, which will have to cut other programmes to fund the unaccompanied children's grant. This is not something that, given existing calls on our budget, not least in relation to childrens services and waiting lists, we could countenance.

If the grant is to remain with us, I reiterate that we could not fund it recurrently from the current DEL and would therefore be forced, very reluctantly, to revert

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to a less comprehensive grant formula which would appear to local authorities to be acting in bad faith.

I have written in similar terms to Stephen and I am copying this letter to the Prime Minister, John Prescott, Alistair Darling, other members of HS and Sir Richard Wilson.

PAUL BOATENG

Top: PA/PS
cc HA/PS
PU

FROM THE DEPUTY PRIME MINISTER

DEPARTMENT OF THE ENVIRONMENT,
TRANSPORT AND THE REGIONS

ELAND HOUSE
BRESSENDEN PLACE
LONDON SW1E 5DU

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OUR REF: PT/PSO/18780/98

The Rt Hon Jack Straw MP
Home Secretary
Home Office
50 Queen Anne's Gate
London SW1H 9AT

21 OCT 1998

ASYLUM SEEKERS SUPPORT PROJECT

Thank you for my copy of your letter of 5 October to Stephen Byers, covering a report on the new support arrangements for asylum seekers.

I am pleased to see that good progress is being made with the development of the new arrangements, although I note that much work remains to be done. The arrangements for providing housing seem pragmatic, and I fully support the proposal to spread the burden and use accommodation in areas where demand is relatively low. While it is right to expect local authorities to assist in the provision of accommodation, it is important that the new statutory obligations placed on them are commensurate with the policy intention that they will be but one group among a number of housing contributors. A general duty to co-operate, where this is compatible with their other responsibilities, as proposed in the paper, would seem appropriate. But the precise nature of the proposed reserve power for the Secretary of State will require careful consideration, if we are to retain local authorities' co-operation and goodwill. I strongly agree that, as you note in your report, proper remuneration for the cost of accommodation provided under this obligation must be safeguarded. Similarly, I strongly agree that local authorities will need to be assured of proper compensation for the non-housing burdens associated with looking after asylum seekers. But as you note in your report, other colleagues will be responsible for the provision of the other services involved (notably education and social services) for asylum seekers. My officials are already liaising with yours on developing the accommodation aspects of the proposals; can I suggest that you also involve my officials, and the LGA, in further consideration of the non-housing costs?

The report also touches on your proposals for transitional arrangements pending introduction of the new arrangements in April 2000. These have been the subject of separate correspondence, but I will take this opportunity to reiterate my concern about the present situation and express my support for your proposals under which local authorities would move towards a more rational system for dispersing and supporting asylum seekers, in anticipation of the new arrangements. However, I would be concerned about dispersing asylum seekers more widely under the current grant regimes. Given the thresholds on the children's and families' grants, this could actually result in local authorities collectively facing a bigger gap between funding and expenditure, albeit that this would be split between more authorities than currently.

SKP 23/10/98

In my reply to your letter of 12 October on asylum seekers support (which concerned the Westminster court case and the present difficulties faced by local authorities), I asked that DETR officials be involved in considering possible revisions to the detail of the grant regimes, and I am confident that we will be able to find an acceptable way forward.

I am copying this letter to the Prime Minister, Robin Cook, Frank Dobson, Alistair Darling, Mo Mowlam, Donald Dewar, David Blunkett, Ron Davies, Robin Corbett, Derry Irvine, other members of HS, and to Sir Richard Wilson.

JOHN PRESCOTT

Top - AL
JFM
CC

CABINET OFFICE
70 Whitehall, London, SW1A 2AS
***Telephone:* 0171-270 0400**

Minister for the Cabinet Office
Chancellor of the Duchy of Lancaster

The Rt Hon Jack Straw MP
Home Secretary
Home Office
Queen Anne's Gate
London SW1H 9AT

21 October 1998

Dear Jack,

ASYLUM SEEKERS SUPPORT PROJECT & ASYLUM AND IMMIGRATION

Thank you for copying me your letters of 5 and 12 October to Stephen Byers, and giving me the opportunity to see the report on the proposals for the asylum seekers support scheme.

I note that the proposals include the possible creation of a Next Steps Agency to co-ordinate provision of accommodation and living essentials to destitute asylum seekers and to operate the asylum seeker's budget. I should be grateful if your officials could liaise closely with mine when developing these proposals. The best way forward on this might be for the Cabinet Office to be represented on the Steering Group which you have set up to oversee progress on the project. Could I ask your officials to contact Dr John Fuller (0171 270 5959) of the Efficiency and Effectiveness Group here in the Cabinet Office in this respect.

I welcome the prominence which your report gives to efficiency and in particular the need for efficiency targets. With regard to the transitional arrangements, I support your aim to drive down the unit costs as quickly as possible and would be interested in hearing how you intend to take this forward.

I am copying this letter to the Prime Minister, John Prescott, Robin Cook, Frank Dobson, Alastair Darling, Mo Mowlam, Donald Dewar, David Blunkett, Ron Davis, Hilary Armstrong, Robin Corbett, Derry Irvine, other members of HS, and Sir Richard Wilson.

Ever,
Jack.

JACK CUNNINGHAM

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Top-AL
cc JOM
PJ

DEPARTMENT OF HEALTH

Richmond House 79 Whitehall London SW1A 2NS Telephone 0171 210 3000

From the Parliamentary Under Secretary of State

Rt Hon Stephen Byers
Chief Secretary
HM Treasury
Treasury Chambers
Parliament Street
London SW1P 8AG

FM

20th October 1998

Dear Stephen,

Asylum Seekers

Thank you for copying your letter of 14 October to Jack Straw to Frank.

I am encouraged to have such a positive and quick response, and the offer of additional access to the reserve is welcome. However, whilst recognising the conflicting demands on the reserve I have two serious concerns.

Firstly the offer is of a maximum amount. The influx of Kosovan Albanians this year has already shown how the number of asylum seekers can rise unexpectedly. The year-on-year increase in applications for asylum between August 1997, and August 1998 was 23%. The support grants for adults and families have been funded from the reserve because this was an unforeseen pressure on this Department's expenditure programme, it is demand-led, and the numbers may change through the year. To accept now that there are to be no further calls on the reserve for asylum-seekers could leave this Department having to absorb the cost of a winter surge in the number of asylum seekers at the end of the year, without the means to do so.

It is to be hoped that the action now being taken in Kosovo will help to reduce the current influx of refugees, and that the new arrangements will allow savings to be made by accommodating more refugees outside London. However it cannot be taken for granted that circumstances will not arise which increase the

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expenditure on the support grants. I feel that we need to retain some flexibility around the £30m, whilst placing a ceiling on the unit costs for families, unaccompanied children and minors which we are offering to local authorities as a move away from the unfair system of thresholds.

Secondly, I am concerned by the proposal that the recurrent increase in the unaccompanied children's grant must be met fully from within this Department's existing expenditure limit.

The offer you have made rightly implies a recurrent higher level of spending on the unaccompanied children's grant. The numbers of unaccompanied children and minors arriving in the country has increased very markedly, not because of the policy of this Department or of Social Services Departments, but because of external events. I do not believe we should be left to carry the can for this, any more than local authorities should. The deal which is being struck with the local authorities involves a complete change in the structure and purpose of this grant, from a supply-led and narrowly-defined cash-limited grant, to a fairer, but demand-led grant.

The implication of the offer is that we would have to find £19m - and possibly more if current trends continue - out of our existing spending commitments. This places a considerable degree of political and financial risk - risk which is substantially outside our control - on this Department, and I do not think it at all realistic. It also runs counter to the spirit of the agreement with the Home Office on the support arrangements for single adult asylum-seekers and asylum-seeking families where, I understand, the baseline funding may be revisited if the asylum intake is higher than anticipated at the time of the CSR settlement.

If there were to be no recurrent provision for the unaccompanied children's grant, we would face the choice of cutting our own programmed expenditure on children's services - as I said in my letter of 12 October, this would contradict our stated priority of modernising children's welfare - or reverting next year to an underfunded grant for unaccompanied asylum seekers. This is not something we could countenance.

I should of course be happy to discuss this. I am copying this letter to the Prime Minister, John Prescott, Alastair Darling, other members of HS and Sir Richard Wilson.

Yours Regards

PAUL BOATENG

Top: HA/PS
cc EA/PS
PA/PS
Qs
PU

FROM THE LEADER OF THE HOUSE
HOUSE OF LORDS

The Rt Hon John Prescott MP
Deputy Prime Minister and
Secretary of State for the Environment,
Transport and the Regions

20 October 1998

P

John,

ASYLUM SEEKERS SUPPORT

I am writing in response to Jack Straw's letter to Stephen Byers of 12 October concerning asylum seekers support.

I have one tiny comment. Jack puts down a marker that it would be helpful if the Immigration Bill could receive Royal Assent before the Summer recess next year. While it was possible to achieve Royal Assent before the Summer recess this year for Jack's Crime and Disorder Bill I cannot at this stage agree to any promises about when the Immigration Bill will receive Royal Assent next session but I have noted Jack's wishes in this area.

I am copying this letter to the Prime Minister, Robin Cook, Frank Dobson, Alistair Darling, Hilary Armstrong, David Blunkett, other members of HS and to Sir Richard Wilson.

Yours ever

Margaret.

THE RT HON THE BARONESS JAY OF PADDINGTON

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SKP 23/10/98

QUEEN ANNE'S GATE LONDON SW1H 9AT

19 OCT 1998

The Rt Hon Stephen Byers MP
Chief Secretary to the Treasury
Treasury Chambers
Parliament Street
LONDON
SW1P 3AG

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Dear Stephen,

ASYLUM SEEKERS SUPPORT

We spoke on the telephone about my letters to you of 5 and 12 October and I have since received your letter of 14 October. You indicated that you would be prepared to allow a claim on the Reserve by the Department of Health of up to a further £30 million for this current financial year, but that you could not accommodate the full £40 million which I had proposed.

I am very grateful to you for the way you have addressed this issue so quickly and I hope that with your very helpful offer we will be able to find a way forward.

The package I intend to put to local authorities is described below.

Our part

We would revise the funding arrangements as follows:

(a) Single adult asylum seekers; no change for this year - ie a maximum of £165 per week per single adult asylum seeker payable under the terms of the National Assistance Act 1948

(b) Families - a unit cost of an average of £230 per week per family. Assuming 7000 families this represents a total cost of £84 million (ie £10 million above what we are currently estimating Central Government would spend on the basis of the current formula and loophole money, see later).

(c) For unaccompanied children we would offer a unit cost of £400 per week for children aged 15 years and under and £200 per week for children aged 16-17. Since there are 1400 such children with broadly equivalent numbers in each group, this averages at £300 per week and represents a cost of £19 million more than is in the current DH baseline.

(d) We would offer an Inner London weighting factor for those inner-London Boroughs who are currently accommodating families within their own boroughs. The amount we would pay would be £240 per week for the 2000 families we estimate are currently being accommodated. However, the £240 per week would apply only to families who are already in the system and not to any who might subsequently arrive. We estimate that this would cost an additional £1 million.

In total, this package would represent an additional cost for the current financial year of £30 million on the basis of the assumptions set out above. This is based on the current estimate of singles, families and unaccompanied children being supported. But I must reserve the option to come back to you again if there were to be a significant change in the asylum seeker intake, (in the same way as you have already acknowledged that my baseline for future years may have to be revisited if asylum intake is higher than anticipated at the time of the CSR settlement). There can be no question of the Home Office finding any additional resources this year if we find that the total bill exceeds £30 million. As you know, I am facing pressures across my programme anyway which I cannot meet from existing provision. There is no possibility of my adding to this problem by committing to fund additional asylum support costs.

You asked me whether it was necessary to backdate these payments to the beginning of this financial year or whether the new unit costs could apply from now. I have considered this carefully. There is much in what you say. Councils who have already committed expenditure have done so on, presumably, on the assumption that grant arrangements this year would be the same as last year. In a sense, therefore, that money has been spent. Nevertheless, I believe we must make provision for these new unit costs to apply for the whole year as a gesture of good faith. First, it is the basis on which the negotiations have been carried out and it would be very difficult now to renege on this fundamental aspect. Secondly, if we were to raise the issue now, those councils who have suffered the greatest burden would see themselves as continuing losers for the first half of this financial year. That could well prejudice the agreement. Nevertheless, of course, councils will not be able to claim any more than they have actually spent. It is interesting to look at the spread of weekly unit costs for the family grant in 1997/98. There is a very wide divergence. Many councils are spending considerably less than the

£230 we are proposing. I intend to stress that councils who are achieving these lower unit costs should continue to achieve them and not spend-up to the new level. I also want to see if those councils spending at a higher rate can bring their unit costs down to the levels of some of the better councils. And I intend to stress that with a little less than six months of this year to go there is still plenty of scope for them to make savings and thus reduce significantly their overall average unit costs for the year.

The £230 per week for families will be inclusive of any "loophole" housing benefit. The loophole money would not be extra. You have suggested that we should take the opportunity to close this loophole. As I think you may be aware, officials from DSS and HO are currently considering the impact of closing the loophole and I suggest we await their conclusions before deciding how to proceed.

I think it would be helpful for us all to be clear about the "baseline" on which you are offering a further £30m. Given that the costs of the grants for singles and families (under the existing arrangements) are themselves met from a claim on the Reserve, I am assuming that the "baseline" is the money which DH would have needed to claim under the existing arrangements for 1998-99, whatever the level of asylum seeker intake or take-up rate, and that you are offering £30m on top of that. I have therefore asked my officials to make sure that systems are in place to calculate what that baseline figure would have been so that we are all agreed on the figures.

For future years, you mentioned to me on the telephone and have acknowledged in your letter that the settlement for the asylum support budget may have to be re-visited given the increase in numbers of arrivals of asylum seekers over that on which the baseline provision was calculated. Our officials are keeping touch about this. Of course, we (the Home Office) have already undertaken to set unit costs which would enable us to live within our baseline, on the assumption that the asylum arrival rates, take up rates etc on which the baseline was calculated do not vary significantly.

The unit cost targets I currently have in mind for next year are £150 for single adult asylum seekers and £220 for families. But we will need to handle this carefully in negotiation with the local authorities. I propose therefore to indicate that we would see the achievement of these lower unit costs as a partnership target between local government and central government. I have in mind that we would take powers in the Immigration and Asylum Bill, to come into force on Royal Assent (which I hope would be in July 1999) to enable the Home Office directly to commission and acquire accommodation which local authorities could use in discharging their responsibility. I have asked my officials to discuss with those in other departments whether it would be sensible during the transitional period from Royal Assent for the National Assistance Act obligations to remain

in place, or whether we should create specific transitional duties on local authorities (which might give us slightly greater flexibility) pending the introduction of the full asylum seekers support scheme. Meanwhile I would be looking for an undertaking from the local authority side that they would engage constructively with my officials in identifying scope for reducing unit costs next year.

There would, however, be an ongoing commitment in future years fully to fund the Department of Health for unaccompanied children. Your letter makes no reference to increasing DH funding for future years. We are proposing an average unit cost of £300 per week for this year, but I imagine that Frank would wish to give consideration to ways in which that figure could be reduced for future years. Nonetheless, he will clearly need a much larger baseline than his current £3m provision for the future.

The local government side

I shall make it very clear to the Local Government Association and Association of London Government when I see them that the proposition above is extremely generous. From their side I will expect:

(a) A clear commitment and indication that they are able to set up and deliver the clearing house arrangement which we envisage.

(b) Confirmation that they can operate the proposed dispersal scheme within existing statutory powers.

(c) Full co-operation from the local government side in development of transitional arrangements and a desire to work with central government in creating the new asylum seekers support arrangements.

(d) Agreement to engage constructively in discussions about scope for reducing unit costs.

(e) Agreement by Westminster to withdraw the case due to be heard in the House of Lords on 16 November.

Paul Boateng has agreed that the Department of Health would be willing to withdraw completely from the case (rather than simply defer it) provided I can assure him that we can clarify the terms of the National Assistance Act in the forthcoming Immigration and Asylum Bill. Since our legal advice is that we need to amend the National Assistance Act anyway in order to remove asylum seekers from its ambit and that the clarification which Paul seeks could be

accommodated in that process without significantly extending the scope of the Bill (though that of course is ultimately a matter for the House Authorities) I have indicated to Paul that I am happy to accommodate his request.

Conclusion

If we can achieve this arrangement, it will be a significant step forward in developing new asylum seekers support arrangements and should pave the way for a very effective transitional phase. Indeed, if we are able to bring in statutory transitional arrangements on Royal Assent, I would envisage setting up the new body to oversee the support arrangements much earlier than 1 April 2000. It would then be able to oversee and work with the local authorities in the non-statutory period, and to be responsible for the transitional arrangements which would take effect from Royal Assent. We would then be in an excellent position to move on to the full arrangements from 1 April 2000.

I am copying this letter to the Prime Minister, John Prescott, Robin Cook, Frank Dobson, Alastair Darling, Hilary Armstrong, David Blunkett, other members of HS and Sir Richard Wilson.

Yours ever,

Jack.

JACK STRAW

FROM THE DEPUTY PRIME MINISTER

DEPARTMENT OF THE ENVIRONMENT,
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OUR REF: PT/PSO/19366/98

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The Rt Hon Jack Straw MP
Home Secretary
Queen Anne's Gate
LONDON
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19 OCT 1998

ASYLUM SEEKERS SUPPORT

Thank you for copying to me your letter of 12 October to Stephen Byers. I am also grateful to Paul Boateng for copying to me his letter of 12 October to Stephen on the same subject.

I am happy to agree to what you propose for trying to come to a deal with Westminster and to obtain local authorities' co-operation.

As you know, I fully support your initiative to secure the active participation of the LGA and the ALG in developing transitional arrangements for the dispersal and support of asylum seekers pending the introduction of the new support arrangements proposed in the White Paper, "Fairer, Faster and Firmer - A Modern Approach to Immigration and Asylum". However, the resource issues are central to the LGA proceeding, and I support your view that it is necessary to have an agreement on the financial regime if we are to move forward sensibly.

You are right in your assessment that some local authorities, particularly in London are near breaking point. All destitute asylum seekers who turn to the local authority for help must be accommodated, one way or another, whether owed a duty under the homelessness legislation or under the National Assistance Act 1948. The supply of temporary accommodation in London is at crisis point, and authorities are already having to look beyond their own boundaries, and in some cases well beyond the local area, to find accommodation. This applies not only to asylum seekers but also to local residents who need housing assistance and are owed a duty. As you say this crisis is deepening, with the continuing influx of asylum seekers, particularly those from Kosovo and Albania.

Finally, I would be grateful if you and Paul could continue to involve my officials on questions of local authority costs and resources, including the details of support grants.

I am copying this letter to the Prime Minister, members of HS and to Sir Richard Wilson.

JOHN PRESCOTT

PA 19/10

LORD ADVOCATE'S CHAMBERS
25 CHAMBERS STREET
EDINBURGH EH1 1LA

Telephone: 0131-226 2626
Fax (GP3): 0131-226 6910

The Rt Hon Jack Straw MP
Home Secretary
The Home Office
Queen Anne's Gate
LONDON
SW1H 9AT

19 October 1998

faxed?

AL

~~C. PU~~

Dear Jack.

REFORM OF EXTRADITION LAW

Thank you for copying to me your minute of 19 September to the Prime Minister.

I welcome the recommendations in the Extradition Working Group's report and therefore support the publication of the report as a consultation document. The proposals to bring our main Commonwealth extradition partners in line with our ECE partners, by no longer insisting on the prima facie evidential requirement, is particularly welcome. It is difficult to justify the imposition of an evidential burden on Canada and Australia when there is no such burden on requests from Italy or Spain. In Scotland, the Crown Office is responsible for committal proceedings in relation to incoming requests. All outgoing requests are also handled by the Crown Office. There is no doubt that extradition proceedings would be simpler and less costly if all that was required for both incoming and outgoing requests was a statement of the law and of the facts, with no requirement to provde sworn depositions of witnesses.

I also welcome the proposals to clarify the respective roles of the Executive and the Courts. Undoubtedly, there is unnecessary duplication at present whereby the Courts and the Secretary of State consider the same issues.

I am sending a copy of this letter to the Prime Minister and to the recipients of your letter.

Yours sincerely,

Andrew.

THE LORD HARDIE

PA 21/10

Top: HAPS
cc PLU

DEPARTMENT OF SOCIAL SECURITY

Richmond House, 79 Whitehall, London SW1A 2NS
Telephone 0171 - 238 0800

From the Secretary of State for Social Security

SoS/106

16 OCT 1998

The Rt Hon Stephen Byers MP
Chief Secretary
HM Treasury
Parliament Street
London SW1

P

15 October 1998

Dear Stephen

ASYLUM AND IMMIGRATION

I have seen Jack Straw's letters to you dated 5 October and 12 October setting out the terms of a possible deal with Westminister and LAAs to agree to join the Department of Health in seeking to defer the House of Lords hearing on the National Assistance Act case which is scheduled to be heard on 16 November.

If the appeal goes ahead and DH/Westminister were to win the case it would put 14,000 adult asylum seekers who ceased to qualify for support under the National Assistance Act out on to the streets. This could necessitate emergency arrangements which could jeopardise development work on the new support arrangements.

I note Jack's request for fuller help on costs. My officials are already working with both Jack's and Frank Dobson's to determine the numbers being supported under the NAA and the Children Act to establish more precise figures on the overall costs to Government. They will be in touch with Jack's officials to discuss what further is required.

SOCIAL SECURITY 50 YEARS
CELEBRATING THE PAST
LOOKING TO THE FUTURE

Recycled Paper

SKP 16/10/98

E.R.

Jack's paper assesses the options in the event that the Government wins the appeal in the NAA case. They are all undesirable and will not be cheap. I estimate that I would require in excess of £300 million in 1999/2000 to restore benefits to all asylum seekers. As you well know, I have no spare funds available to contribute to any such extra costs.

The Government's options appear limited and of course time is running out. I agree with Jack that the sensible way forward seems to be to strike a deal with Westminster and the LAAs which keeps any additional expenditure to a minimum, but helps him move in the direction of the planned new system.

I am copying this letter to the Prime Minister, John Prescott, other members of HS and to Sir Richard Wilson.

Yours

ALISTAIR DARLING

SOLICITOR GENERAL

0171-271 2470

RESTRICTED - POLICY

9 BUCKINGHAM GATE
LONDON SW1E 6JP

The Rt Hon Jack Straw MP
Home Secretary
The Home Office
Queen Anne's Gate
London
SW1H 9AT

15th October 1998

Dear Jack

REFORM OF EXTRADITION LAW

Thank you for copying to me your minute of 19 September to the Prime Minister. Officials from the Crown Prosecution Service and the Legal Secretariat here, were members of the Extradition Working Group.

I welcome the report and the proposal to publish it as a consultation document. As you know, due to the requirements of Irish legislation, the Attorney General has a particular responsibility in respect of extradition from the Republic of Ireland under the backing of warrants system. Although, in theory this produces a "fast track" extradition, we have experienced considerable delays in securing the return of offenders caused by delays in the court system in the Republic of Ireland. This is something you will, no doubt, wish to consider with our European partners when taking forward your proposals for a "fast track" extradition procedure with them.

I am copying this letter to the Prime Minister, Robin Cook, HS colleagues and to Sir Richard Wilson.

Yours ever

ROSS CRANSTON QC MP

From: KEITH VAZ MP

15 October 1998
MY REF: SF/05

HOUSE OF COMMONS
LONDON SW1A 0AA

Mr Andrew Walmsley
Secretary to IND
Nationality Division
3rd Floor, India Building
Water Street
Liverpool LE2 0QN

Dear Andrew

It was good to talk to you on the telephone about the case of Mr S P Hinduja and his family which are you dealing with under reference H310363.

I understand that this matter is going to be resolved shortly and that Richard Hall will be arranging for the form to be re-endorsed.

Thank you for your help in this matter.

With best wishes

Yours sincerely

KEITH VAZ

Leicester Office: 144 Uppingham Road, Leicester LE5, 0QF
Telephone: (0116) 212 2020 Fax: (0116) 212 2121
Email: kvazmp@housecom.demon.co.uk
Web: www.housecom.demon.co.uk/keithvazmp

01712733965

URGENT FAX

PLEASE PASS TO CLARE SUMNER

Clare

A copy of Keith Vaz's letter to Andrew Walmsley is attached.

Officials have checked the file, but there is no record of the conversation referred to in the letter.

Regards

Jane

FROM THE DEPUTY PRIME MINISTER

Top AL
JC. RR
PU.
JEH

DETR
ENVIRONMENT
TRANSPORT
REGIONS

DEPARTMENT OF THE ENVIRONMENT,
TRANSPORT AND THE REGIONS

ELAND HOUSE
BRESSENDEN PLACE
LONDON SW1E 5DU

TEL: 0171 890 3011
FAX: 0171 890 4399

15 OCT 1998

The Rt Hon Jack Straw MP
Secretary of State for the Home Department
50 Queen Anne's Gate
LONDON
SW1H 9AT

1. JEH to note. Cautious green light
2. JH.
AZ.

REFORM OF EXTRADITION LAW

You wrote to the Prime Minister on 19 September seeking colleagues' agreement to publish the report of an interdepartmental working Group on extradition arrangements.

You explained that the UK had yet to ratify to EU conventions on extradition signed in 1995 and 1996, and to do so would require primary legislation. The interdepartmental working group set up to review UK extradition arrangements, proposed to bring the UK's main Commonwealth extradition partners in line with ECE partners by no longer insisting on the prima facie evidential requirement. The report also suggested that the incorporation of the ECHR might make it possible to revoke some of the existing legal safeguards in the 1989 Act and it considered the scope for moving to fast-track systems for all EU countries.

The Prime Minister, Robin Cook, Derry Irvine, Margaret Beckett, Jack Cunningham, Donald Dewar and Peter Mandelson commented. The Prime Minister said he was cautious about committing the Government to a full scale review of the law in that area. Having seen the report, he remained of the view that the scale of the problems did not make it a high priority for legislation given the other pressures on the legislative programme. Derry agreed that the scale of the problem did not suggest a need for early legislation, but he and Robin recognised that unless the legislation was changed it would be difficult to ratify the relevant conventions. Robin said that given the importance the UK had attached to EU co-operation on crime and drugs, it wanted to be in a position to ratify the conventions sooner rather than later. Margaret said that expectations about the timing of legislation needed to be clea ly managed. To that end, she asked that the phrase 'when Parliamentary time allows' be inserted into the text of the consultation document alongside references to the introduction of primary legislation. Derry thought the publication of the report as a consultation paper might serve to deflect any criticism that the Government was not committed to making any necessary changes to the law.

15/X

The Prime Minister said there were some issues that needed to be addressed and subject to the views of others - notably the Foreign Secretary and the Secretary of State for Northern Ireland; he would be content for you to publish the report. The timing of publication was a matter for you, but he said that press officers should liaise. Derry agreed to the publication of the report subject to the redrafting of the recommendations in paragraphs 122 and 123 about court targets. He shared concerns, expressed in the report, about the length of extradition proceedings. However, setting targets for judges to reach their decision might be seen as interfering with the principle of judicial independence. Judges and Magistrates were increasingly aware of the need to give their decisions promptly and he and the Lord Chief Justice had in place arrangements to deal with any High Court Judge who fell short of reasonable delivery. He said he would be happy to speak of the Lord Chief Justice about the small number of Stipendiary Magistrates who also dealt with such cases. However, the real problem remained process rather than any want of judicial expedition. He included a couple of drafting suggestions.

Robin said that there was a risk that in streamlining the procedures the Government would lay itself open to the charge that EU obligations were forcing the UK to do away with traditional safeguards afforded to persons facing extradition from this country. He hoped the maintenance of proper legal safeguards could be stressed when the reforms were presented.

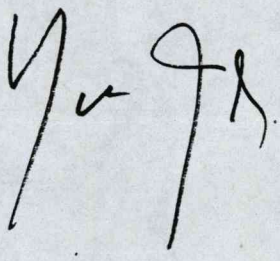
Peter welcomed the report, but pointed out that it did not consider the question of requests for extradition where the requesting state did not have jurisdiction over the alleged commission of the offence because it was committed neither on its territory nor by someone with its nationality. He did not wish the situation to arise in which a person might be extradited where the requesting state was, in the UK's view, improperly claiming extraterritorial jurisdiction. He suggested that your officials should consult with his about whether an improper claim for jurisdiction should be added to the grounds for non-extradition set out in paragraph 116 of the report.

Robin said that the complexity and scope of delay inherent in the present extradition arrangements was an irritant to our relations with other key partners. He and Jack welcomed the possibility of a fast track system with trusted EU partners. Jack said that with cheap air travel and confidence in the legal systems of our European partners, he hoped it would seem possible to move extradition much closer to the co-operative and automatic arrangements, such as those which exist between England and Scotland, for ensuring the attendance of the accused at court. This would not necessarily require the accused to be held in custody or even to reside in the country of trial between preliminary and final hearing. Given appropriate protection on issues such as political offences, a summons backed by a return air ticket and a hotel voucher might be a quicker and cheaper solution than present extradition arrangements.

Donald supported the publication of the report. Extradition would be a reserved matter under the devolution arrangements, but the processing of applications for the extradition of persons arrested or resident in Scotland would be a matter for the First Minister of the Scottish Executive. It would be desirable to update the legal framework under which he or she would operate when circumstances permitted.

No other colleague commented, and you may take it that you have policy agreement to your proposals, subject to the points made by colleagues.

I am copying this letter to the Prime Minister, Robin Cook, members of HS and to Sir Richard Wilson.



JOHN PRESCOTT

Top: HA/PS
Ms Rae
cc EA/PS
PU

RESTRICTED - POLICY

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Jack Straw
Secretary of State for the Home Office
50 Queen Anne's Gate
London SW1H 9AT

14 October 1998

Dear Jack,

ASYLUM SEEKERS

We spoke on the telephone earlier today about your proposals, set out in your letters of 5 October and 12 October to introduce new arrangements for supporting asylum seekers who are currently receiving support via the National Assistance Act and the Children's Act

As I said when we spoke, I am prepared to offer some help from the Reserve, up to a maximum amount of £30 million for this year only This is subject of course to Westminster agreeing to withdraw the House of Lords case, and to you being able to get agreement to a viable scheme to disperse asylum seekers to other parts of the country

As we discussed, I think you should consider whether the new arrangements need to be backdated to the start of this financial year and whether you can get agreement to lower unit costs Whatever you decide I will be unable to meet any further costs from the Reserve You and Frank will therefore need to meet from existing provision any additional costs above the £30 million I have offered

SKP 15/10/98

RESTRICTED - POLICY

I fully agree with your intention to drive down costs in the future Whilst it may be necessary to revisit the agreement on the size of the single asylum budget, if the assumptions on the number of asylum seekers need to be revised substantially, you will need to achieve lower unit costs consistent with the assumptions used when agreeing the single budget over the CSR period I would therefore expect you to contain these costs within your DEL from next year

I strongly believe that we should use this opportunity to close the Housing Benefit loophole, since you are proposing to meet the full cost of asylum seekers to local authorities This proposal should take place with effect from 1 April 1999

I am copying this letter to the Prime Minister, John Prescott, Frank Dobson, Alistair Darling and other members of HS and Sir Richard Wilson

Yours,

Stephen

STEPHEN BYERS

From: THE PRIVATE SECRETARY

Top: AL
cc: RR
DJ

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

14 OCT 1998

Neil Paterson Esq
Private Secretary
Department of Health
Richmond House
79 Whitehall
LONDON
SW1A 2NS

Dear Neil,

ASYLUM SEEKERS SUPPORT: WESTMINSTER CASE

The Home Secretary telephoned Mr Boateng on Tuesday, 13 October to discuss the situation set out in his letters of 5 and 12 October to the Chief Secretary. In particular, they discussed the options for the Government in relation to the forthcoming Appeal to the House of Lords concerning the applicability of section 21 of the National Assistance Act 1948 to asylum seekers who would otherwise be destitute. The Home Secretary explained that Westminster were joined with the Government in this case; that he was trying to identify ways of persuading Westminster to agree to withdraw from the case; but that he recognised the Department of Health interest in clarifying the purpose of section 21.

Mr Boateng confirmed that he would be content for the Government to withdraw altogether from the case (and not simply defer), provided the Home Secretary was able to assure him that the provision could be clarified in the forthcoming Immigration and Asylum Bill.

Officials in the Home Office (including legal advisors) have considered this point and are of the view that the clarification can be achieved without any significant extension of the Bill. The policy (for which HS approval has already been given) of taking asylum seekers out of the scope of the National Assistance Act will of course require a modification of that Act. That being the case, our lawyers (in consultation with yours) have concluded that the scope of the Bill is unlikely to be widened further by the additional element of clarifying the intention of section 21 at the same time. Ultimately, of course, decisions on scope are

RM 15/10

matters for the House Authorities alone, but given the urgency surrounding the need to withdraw the Westminster case, the Home Secretary is happy to agree to the use of the Immigration and Asylum Bill to clarify the purpose of section 21 of the National Assistance Act.

Bob Eagle, who is the project director, for the asylum seekers support project will continue to keep Nick Boyd in your department up-to-date with developments.

I am copying this letter to the offices of the Prime Minister, President of the Council, Chief Whip and Sir Richard Wilson.

Yours sincerely,

MARA GOLDSTEIN

9356MG

FROM THE DEPUTY PRIME MINISTER

DETR
ENVIRONMENT
TRANSPORT
REGIONS

DEPARTMENT OF THE ENVIRONMENT,
TRANSPORT AND THE REGIONS

ELAND HOUSE
BRESSENDEN PLACE
LONDON SW1E 5DU

TEL: 0171 890 3011
FAX: 0171 890 4399

OUR REF: PT/PSO/18879/98

The Rt Hon Stephen Byers MP
Chief Secretary
HM Treasury
Parliament Street
LONDON
SW1P 3AG

14 OCT 1998

TOP AL
C!!!.

ASYLUM AND IMMIGRATION

I have seen Jack Straw's letter to you of 5 October. As you would expect, given my responsibilities for housing and local government, I strongly support Jack's proposals to defer the House of Lords hearing on the National Assistance Act, and hope that you will be able to look sympathetically at the case he makes. Thousands of destitute asylum seekers on the streets of (mainly) London would be unmanageable, and none of the other options identified in Jack's letter appear desirable.

The current system of refunding local authorities up to 80% of costs incurred actually means that there is a substantial amount of unfunded expenditure by local authorities on asylum seekers, diverting money from our overall priorities of education and social services. I agree that whatever future regime is put in place will need to avoid encouraging inefficiency but, as Jack notes, this could be achieved by setting maximum unit costs.

Finally, as I noted in my letter of 8 September on closing the Housing Benefit and Council Tax Benefit loophole, the important thing from my point of view is that local authorities are, at the very least, left in no worse a position than they are already. I would be grateful if Jack could ensure that, if we are forced into emergency legislation, this is achieved.

JOHN PRESCOTT

I am sending a copy of this letter to the Prime Minister, Jack Straw, other members of HS and to Sir Richard Wilson.

NM
15/12

From: THE PRIVATE SECRETARY

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

14 OCT 1998

Neil Paterson Esq
Private Secretary
Department of Health
Richmond House
79 Whitehall
LONDON
SW1A 2NS

Top AL
cc/PJ

(P)

Dear Neil,

ASYLUM SEEKERS SUPPORT: WESTMINSTER CASE

The Home Secretary telephoned Mr Boateng on Tuesday, 13 October to discuss the situation set out in his letters of 5 and 12 October to the Chief Secretary. In particular, they discussed the options for the Government in relation to the forthcoming Appeal to the House of Lords concerning the applicability of section 21 of the National Assistance Act 1948 to asylum seekers who would otherwise be destitute. The Home Secretary explained that Westminster were joined with the Government in this case; that he was trying to identify ways of persuading Westminster to agree to withdraw from the case; but that he recognised the Department of Health interest in clarifying the purpose of section 21.

Mr Boateng confirmed that he would be content for the Government to withdraw altogether from the case (and not simply defer), provided the Home Secretary was able to assure him that the provision could be clarified in the forthcoming Immigration and Asylum Bill.

Officials in the Home Office (including legal advisors) have considered this point and are of the view that the clarification can be achieved without any significant extension of the Bill. The policy (for which HS approval has already been given) of taking asylum seekers out of the scope of the National Assistance Act will of course require a modification of that Act. That being the case, our lawyers (in consultation with yours) have concluded that the scope of the Bill is unlikely to be widened further by the additional element of clarifying the intention of section 21 at the same time. Ultimately, of course, decisions on scope are

WA.
14/10

matters for the House Authorities alone, but given the urgency surrounding the need to withdraw the Westminster case, the Home Secretary is happy to agree to the use of the Immigration and Asylum Bill to clarify the purpose of section 21 of the National Assistance Act.

Bob Eagle, who is the project director, for the asylum seekers support project will continue to keep Nick Boyd in your department up-to-date with developments.

I am copying this letter to the offices of the Prime Minister, President of the Council, Chief Whip and Sir Richard Wilson.

Yours sincerely,

MARA GOLDSTEIN

QUEEN ANNE'S GATE LONDON SW1H 9AT

13 OCT 1998

TOP - AL
C: RK
YPU.

The Rt Hon Margaret Beckett MP
President of the Council
Privy Council Office
68 Whitehall
London
SW1A 2AT

(P)

Dear Margaret.

PREPARATION OF BILLS FOR THE SECOND SESSION : IMMIGRATION AND ASYLUM BILL

Thank you for your letter of 25 September about the preparation of Bills for the next Session. I am sorry to have missed your deadline for replies. I am writing separately about the Bill on the age of consent.

... I enclose a summary of the likely provisions of the Bill, indicating our current timetable for sending instructions to Parliamentary Counsel. The first batch was delivered on 2 October and our aim is to have all instructions delivered by the end of the month. This is a tight timetable, but it is essential that we introduce the Bill as early as possible. We have already agreed that it should be subject to the Special Standing Committee procedure which will add to the timetable. But more importantly, I believe that we need to be aiming to secure Royal Assent for this Bill before the Summer Recess 1999.

The current asylum support arrangements are an expensive shambles. We are working on devising transitional arrangements for the period up to April 2000 when the new scheme should come into operation. In that context, we may need as early as possible some new transitional powers. If these could be included in the Bill to take effect on Royal Assent, it would be of substantial help in driving down costs and securing an orderly transition to the new scheme. Implementation of that new scheme will in any event be a major project for which we will need as much time as possible to prepare. Royal Assent before the Summer would greatly assist that process.

NM
13/10.

The way ahead on most issues is clear. The main points requiring some further work are :

(i) Appeals

We issued a consultation document on which the deadline for comments is 12 October. Taking account of the responses so far received, it is pretty clear what is needed. We are preparing instructions on that basis. There will be some points of detail to resolve with Derry Irvine.

(ii) Asylum support

We expect that much of the detail of the new arrangements will be contained in secondary legislation. Even so, the Bill will need to include some complex provisions to remove asylum seekers from current welfare benefits and create a robust statutory framework for the new scheme. My recent report to the Chief Secretary set out the proposed scheme in more detail and the arrangements for managing the project, including early finalisation of the instructions.

(iii) Carriers' Liability and Charging

The White Paper said that we would consider the scope for extending and clarifying existing powers. It is essential that we amend existing provisions in both these areas in order to provide a sound legislative framework for the future. I will be pursuing these matters urgently with John Prescott whose Department has the main interest.

(iv) Bogus marriages - powers of marriage registrars

In Opposition, we were extremely critical of the previous Government's failure to tackle the problem of bogus marriages by strengthening the powers of marriage registrars. There is a proposal outstanding from a 1990 White Paper to give registrars powers to require the parties to produce documentary evidence of age, identity and marital status. Registrars would be able to refuse to proceed on the grounds that satisfactory documentary evidence of an individual's legal capacity to marry had not been produced, but the parties would be able to appeal to the Registrar General. Such a provision would amend the law in relation to all civil marriages and so might open the Bill up to amendments on other marriage issues. I am considering urgently whether there is any basis on which we could confine an amendment to the immigration field.

Whatever the outcome, I am convinced that we must legislate on this next Session. Providing powers to require documentary evidence would not be controversial, and the policy is already agreed. We can either include the necessary provisions in the Immigration and Asylum Bill or in a Private Member's Handout Bill. In order to keep that second option open, and subject to further consultation with Treasury Ministers who have lead responsibility for the registration service in England and Wales, I should be grateful if you would accept this letter as a formal request to add a Bill on powers of marriage registrars to the Handout list for the 1998/99 Session. If it were not picked up, I would want to include this issue in the Immigration and Asylum Bill.

You will see from the summary that we currently expect the Bill to comprise about 65 clauses and about 10 Schedules. We will have a clearer indication once Parliamentary Counsel has had a first cut at translating the instructions into draft provisions.

My officials will keep in close touch with yours as the work progresses. I am copying this letter to the Prime Minister, the Business Managers and to Sir Richard Wilson and First Parliamentary Counsel.

Yours ever

Jack .

JACK STRAW

SUMMARY OF PROVISIONS OF THE IMMIGRATION AND ASYLUM BILL

	Provision	Estimated Number of clauses (schedules)
A.	**Instructions provided on 2/10/98**	
1.	Bond Scheme	1
2.	Flexibility in operating immigration control	4
3.	Employers checks on illegal working	1
4.	Deception Offences	1
5.	Powers of Immigration Officers	4
6.	Statutory rules for management of immigration detention centres/powers of detention custody officers	8(2)
7.	Diplomats - giving leave after exemption	1
B.	**Instructions planned by 16/10/98**	
8.	Immigration and Asylum Appeals, including visitor appeals and "White List"	10(2)
9.	Regulating Immigration Advisers	5(2)
10.	Charging for applications	1
11.	Passenger manifests and exchange of information	3
12.	Judicial element in detention decisions	2(1)
13.	Facilitation offences	1
C.	**Instructions planned by 30/10/98**	
14.	Asylum support arrangements	10(3)
15.	Strengthening Carriers' Liability legislation	3
16.	Charging powers at ports	1
17.	Carriers to provide escorts for removals	1
18.	Dublin Convention	1
19.	Powers of marriage registrars	1
20.	IND prosecution powers	1
21.	Fingerprinting	1

	Provisions	Estimated Number of clauses (schedules)
22.	Power to detain suspected illegal entrants	1
23.	Application forms and certificates	2
24.	Miscellaneous and supplemental	3
	TOTAL	**67(10)**

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RESTRICTED
FM BRATISLAVA
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SUBJECT: VISA REGIME: POLITICAL REACTION

SUMMARY

1. Only strongly negative reaction from the Nationalists. But Government yet to respond and reciprocity may be discussed at today's Government session.

2. Opposition disappointment but acceptance. Surprisingly rational Roma reaction and a renewed commitment to tackling the underlying issues.

DETAIL

3. There has so far been no official and only limited public response from the Government. Only Prokes (Nationalist member of the FAC) has spoken out - referring to imposition as a further application of double standards being used against Slovakia, and a reflection of deep distrust in the new Government.

4. The opposition (now incoming Government) were primed on the likelihood of imposition during Hd CED's visit at the beginning of September. I took Figel (SDK) through our reasons and reassurances on 8 October and will be doing the same with Weiss (SDL) on 15 October. The opposition are disappointed but have generally accepted that this was a practical rather than a political decision. There has been some criticism of our timing (former Foreign Minister, now SOP deputy, Hamzik has described the decision as 'rash and surprising') but overall reluctant acceptance and public pronouncements that this is a legacy of the policies of the old Government. Kukan (SDK, and front-runner for Minister of Foreign Affairs) has stated that imposition emphasises that the Roma question must be an 'urgent priority' for the new Government.

5. We will be attending a press conference to be given by one of the main Roma political parties (Roma Intelligensia) on 15 October.

Meanwhile in a strangely naive reaction the Roma themselves have virtually welcomed imposition, claiming that it should serve as collective guilt to the old Government and a challenge to the new. They have also stated that the Czech Government should take note and redouble its efforts.

COMMENT

6. The MFA have put together a paper which may/may not go before today's Government session. I have provided guidance on our policy on gratis issues for diplomatic/service passport holders and reiterated our justification for non-imposition on the Czech Republic and Poland - without quoting figures, fewer asylum seekers as a proportion of travellers and population size and the specific pressures caused by arrivals of large groups of Slovaks in August/September. It is clear that at MFA official level the feeling is against reciprocal action. Their paper allegedly advocates a 'reasoned and balanced approach'. Even outgoing State Secretary Sestak told me he had advised Meciar to 'leave well alone'. Meciar and the Government in general have made very few political statements since the election. If they are to brandish the visa regime as our condemnation of the new Government then they should rightly leave a decision on reciprocation to this new Government. But such logic may be secondary to a knee-jerk reaction.

7. The opposition and Roma responses are to be welcomed, but no one should be under any illusions that there is any quick fix. Initiating the dialogue will not be difficult, progressing it (particularly with no economic backing) will be.

COOPER

YYYY

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DEPARTMENT OF HEALTH

Richmond House 79 Whitehall London SW1A 2NS Telephone 0171 210 3000

From the Parliamentary Under Secretary of State

TOP - AL
CLPU.

The Rt Hon Stephen Byers MP
Chief Secretary
HM Treasury
Parliament Street
London SW1P 3AG

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12 October 1998

Dear Stephen,

ASYLUM AND IMMIGRATION

I have seen Jack Straw's letter of 5 October to you about the problems with the current support arrangements for asylum seekers. As the support grants to local authorities are currently this Department's responsibility, and the unaccompanied children's grant will continue to be ours, I am writing to add my thoughts. You will recall I expressed concern about the current support grants in my letter to you of 20 August.

The main concern about the court decisions on the National Assistance Act is that their effect is to make any adult who is destitute eligible for residential community care. It is very important that this is clarified. We have chosen the litigation route to do this because the prospect of legislating in what is potentially a controversial area has not been attractive. Our handling of the appeal has been made more complicated by the fact that there have not been in place suitable alternative arrangements for the 14,000 or so adult asylum seekers currently being accommodated by local authorities. In view of that, we are very much in favour of adjourning the House of Lords appeal until such time as alternative arrangements are available.

Agreement to postpone in February was reached on the understanding (with Westminster) that the grant for adult asylum seekers would be increased, that the grants for families and unaccompanied children would be reviewed in an attempt to reimburse local authorities more fairly, and that we would be supportive of attempts to distribute asylum seekers more fairly between authorities, In reality we have only delivered on the first of these points.

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Any action now to secure a postponement, and to secure the co-operation of local authorities in handling the transition between the current and the new arrangements will need to improve the current arrangements for dealing with asylum seekers. Key to this are the issues of the families and unaccompanied children's grants, and the fairer distribution of asylum seekers between authorities.

I agree strongly with Jack that we need seriously to take an initiative which seeks an accommodation with Westminster and the wider local government community. This is important not only in the context of trying to postpone the appeal but, perhaps even more importantly, we need an accommodation with local government in order to secure the co-operation of local authorities in managing the transition from the current to the new arrangements for asylum-seekers. The elements of any deal with Westminster are likely to be pretty much the same as those needed to gain wider local authority co-operation.

It is desirable that more asylum-seekers should be accommodated outside London; not only would this reduce the cost of support, but it also would relieve the sheer burden of numbers on London's local authorities. The present arrangements give non-London authorities absolutely no incentive to co-operate in any such initiative aimed at families and children. For families they receive no reimbursement up to the threshold, and have to bear 20% of all costs above it. For unaccompanied children again they receive no reimbursement up to the threshold, and can only claim reimbursement for accommodation in foster families or children's homes above the threshold. Ironically this precludes the option of supported housing, which may not only be more suitable for older children, but will also, typically, be cheaper. Any expenditure which qualifies for the grant will then receive a share of the cash-limited budget of £3m. In fact the rules are such that last year, although local authorities spent approximately £10m last year, they were only able to claim £1.6m of the allocated £3m.

This situation is made worse by the influx of unaccompanied children and minors, especially the large numbers who are coming from Kosovo. The latest figures show that there are 1,400 such children in London, as opposed to about 350 a year before: you should note that this is more than the 1,000 Jack cites in his letter. Leaving aside the inherent problems with the grant, the sum of £3m begins to look very inadequate in the face of this influx. Taken pro-rata, according to the current numbers, it equates to a little over £42 per child per week. You will appreciate that this comes nowhere near the true cost of accommodating and supporting children and teenagers in London.

One consequence of this is that local authorities in London, and to some extent elsewhere, are having to raid their children's services budgets, and curtail planned programmes, to meet the extra cost of caring for asylum-seeking children. As you know, we have put modernising children's welfare at the heart of our national priorities for social services.

The current support grant for unaccompanied children tends to confuse that message. My judgement is that the pressures on local authorities are such that we will be in serious trouble if we are not able to increase the funds available for the unaccompanied children's grant in this year, and recurrently. The influx of Kosovan refugees in particular is placing London local authorities under enormous pressure, and costing significant sums of money.

I therefore believe that we need to change the terms of the grant and increase the amount available. I agree with Jack that the best course is to establish a unit cost for each unaccompanied child, and to meet that cost. That will be fairer for local authorities, and it will allow the amount of grant to reduce if and when the Kosovan influx subsides.

On the question of how much the grant should be, Jack is right in saying that accommodation in children's homes in London can cost as much as £800 per child per week. But the cost of accommodation in foster care or in supported housing is considerably less than this. More work needs to be done on modelling the costs of changing the grants, but think it sensible to give some indication of the sort of costs that are likely to arise from putting the support grants on a fairer footing.

At an average cost of £400, the cost of supporting 1,400 children would be £29.1m. If the unit cost were £300, it would be £21.8m. The unit cost could be lower if more children were accommodated outside London, and as much use as possible were made of supported housing and foster care. A unit cost of £200 would produce a total cost of £14.6m, and a unit cost of £250 would cost £18.2m. There was no provision in this Department's budget for this sort of increase. The recent, and steep rise in the numbers of refugees from Kosovo was too late to be taken into consideration in the Comprehensive Spending Review.

As to the other two grants, the Home Office wil become the budget-holder for these from next April, and so these will become Jack's responsibility, but we must decide what we can do in the current year.

I share Jack's view that the adult grant is adequate, and I agree that a unit cost formula for the families' grant would be an improvement on the current formula, and would be more likely to facilitate the placing of asylum-seekers outside London. I support Jack's proposal that this should be pitched in such a way as to remain within the planned expenditure from the reserve, but this would depend on being able to direct large numbers of people outside London. If this were not possible, there would, again, be pressure to increase the grant. My letter of 20 August illustrated the way in which this would work, and the costs which would be involved.

My officials are working with Jack's to work up a detailed scheme for the support grants, and we are consulting with local authority representatives and Westminster. Work will also need to be done with the local authorities to overcome the difficulties involved in devising a scheme for better distribution of asylum seekers between authorities.

If it is not possible to agree an acceptable deal with Westminster, we will obviously need to look urgently at further options. A unilateral request to adjourn the appeal, or unilateral withdrawal (on the guarantee that the Asylum Bill can be used to clarify the National Assistance Act) would need to be looked at, but this would not guarantee that the case did not still go ahead - and even if Westminster were to withdraw, we would still need to persuade the House of Lords, of course.

I am copying this letter to the Prime Minister, John Prescott, Jack Straw, other members of HS and Sir Richard Wilson.

Yours ever

PAUL BOATENG

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HOME SECRETARY

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12 OCT 1998

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Chief Secretary to the Treasury
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Dear Stephen,

ASYLUM SEEKERS SUPPORT

I wrote to you on 5 October, setting out the range of issues currently associated with asylum seekers support and indicating that I would put a more detailed proposal to you. In my letter I drew attention to the current issues of:

a) the impending House of Lords case (scheduled for 16 November) which if the government were to win could result in 14000 asylum seekers destitute on the streets (probably) of London.

b) the serious difficulties which a small number of local authorities (mainly in London) are facing with the current arrival of asylum applicants. My assessment, on which I should be grateful for Hilary Armstrong's views, is that some councils are near breaking point and could not cope with any further increase in arrivals; and

c) the need to get local authorities to work with us in the development of the new asylum support scheme and in particular, during the transitional period

This letter now contains:

a) a proposition based on the proposal from the Local Government Association (LGA) on how we might develop transitional arrangements for the dispersal and support of asylum seekers pending the introduction, probably in April 2000, of the new support arrangements envisaged in the White Paper;

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b) an assessment of other possible options which we have considered;

c) an explanation of the reasons for the current level of asylum applications; and

d) other action which the Home Office proposes to take to try to stem the flow

LGA proposal for non-statutory agency

The essence of the LGA proposal is:

a) the LGA will invite local authorities outside London to form regional consortia, each of whom would be expected to take on their "fair share" of asylum seekers

b) the ALG would set up a London consortia to do the same

c) the current grant arrangements for single asylum seekers, families and unaccompanied children would need to be based on unit costs (see below)

d) central and local government would need to build up a public perception that it would not be helpful for the Westminster case to go ahead.

The LGA proposal does not include a clearing house arrangement as such. Instead, the LGA would second a few staff to IND in Croydon. There would then be a network arrangement whereby asylum seekers who turned up at Croydon would be referred to the appropriate regional consortia who would arrange accommodation and support. Alternatively, if asylum seekers reported at inner London councils or at ports there would be a network arrangement which would enable those councils to disperse the asylum seekers after assessment to the appropriate regional consortia.

The arrangements would apply only to single adults and families. The LGA consider that it would not be appropriate for councils to disperse unaccompanied child asylum seekers. It is, therefore, likely that unaccompanied children will continue to cluster in a few London boroughs. That is why ensuring that these children are fully funded (subject to challenging unit cost targets) is very important. I would, however, be interested in Frank's views on whether there is any real bar to the dispersal of unaccompanied children. After all, since they have travelled from overseas, are claiming need for protection and by definition have no contacts in this country, it does not seem unreasonable to suggest that they could be allocated to regional consortia on the same basis as for adults and families. And if they are not subject to dispersal we might be creating an incentive for young adults to claim that they were under 18 in order to be accommodated in London.

The LGA are looking for an arrangement which would cover both this and the next financial year, taking us up to the point (April 2000) at which the statutory agency is expected to take effect. There are a number of other issues, associated with the LGA proposal which my officials would need to discuss with the LGA to establish the precise means by which the arrangement would operate. But the LGA need to be persuaded that the resource issues can be resolved before the will engage in these discussions.

Resources

a) Single asylum seekers: £165/week (ie no change from the present arrangements)

b) Families: £300/week

c) Unaccompanied children £400/week

Assuming 1400 unaccompanied children asylum seekers at any one time, the total cost would be £29.12m (ie £26.12m higher than provision in the DOH baseline).

d) Scope to offset overspends in one group with any underspends in another.

e) Additional payment to cover the admin costs of the LAs in setting up a clearing house for the allocation of asylum seekers around the country?

f) Grant conditions also to cover the position of a child who has been acknowledged as a refugee such that the LA could get assistance when that child reaches the age of 18 to assist them to integrate into the community.

g) a capital grant of £2000 per unit of accommodation, where necessary, to bring the accommodation back into use.

I understand that the unit cost figures of £300 per family and £400 per unaccompanied child were late changes to earlier proposals of £250 and £300 respectively and are designed to cope specifically with the difficulties of inner London councils, particularly Westminster. It is estimated that on the basis of the current arrangements, the irrecoverable cost to Westminster for accommodating asylum seekers is £3m It is thought that at costs of £250 per family and £300 per unaccompanied child would enable Westminster to recover £1m but that their councillors would not regard that as enough. (I understand that on average Westminster spends more than £165-250-300 per week on the three sets of asylum seekers because of the high cost of accommodation in Westminster). We understand that for Westminster, the family unit cost would need to be £300 and or unaccompanied children £400.

I think, however, there may be an acceptable compromise. I would propose a maximum unit cost of £250 per family per week and £300 per unaccompanied child per week, but that for inner London Boroughs (including Westminster) the unit cost of families might (on the basis of their higher accommodation costs) be a maximum of £300 for those families already in the system on the day the deal is struck, but that for families arriving thereafter, (and who could be accommodated outside London under the terms of the new arrangements proposed by the LGA) the unit costs would be £250. I estimate that the cost of this concession would be an additional £5m.

For unaccompanied children we might suggest a unit cost, for all councils, of £400 for children aged 15 and under and £200 for 16 and 17 year olds. Since there are approximately equal numbers of children in each group this would average out to £300/child.

Additional resources needed

My officials will let yours have a more detailed table which summarises the information given above and indicates the marginal additional costs for every £10 variation in unit costs, or every variation of 1000 people. My officials will also be able to let yours have the results of modelling for future years based on the proposed unit costs above.

Given that we propose no change to the unit cost provision for single adults, there should be no additional cost implications.

The proposal that the grant arrangements for families should be changed such that local authorities could claim £250 per week per family and that inner London boroughs could claim £300 per week per family for those families who are already accommodated on the day these new arrangements come into being is estimated to cost approximately £96 million (including the Housing Benefit loophole money) in a full year. This compares with a current DH estimate of £54 million for grant and approximately £20 million for Housing Benefit loophole.

For unaccompanied children, at a unit cost of £300 per child per week, the total cost would be £21.84 million, ie "£18.84 million above the £3 million in the Department of Health grant is fully funded, since there is no intention to transfer responsibility for unaccompanied child seekers or the associated budget to the asylum support agency.

The calculations are based on the information I have readily to hand. But it would be helpful if Frank and Alastair could ask their officials to provide better estimates of the numbers of single adult asylum seekers for whom local authorities are providing support under the terms of the National Assistance Act and the number of family asylum seekers for whom local authorities are providing support under the terms of the Children Act. It would also be helpful to have more accurate assessments of the costs which are likely to be

incurred by central government this year under the current arrangements and how these would compare with what is proposed above.

I realise that the additional resources which would be required under the LGA proposals would represent a significant extra burden but I believe that it is essential that these resources are found. If we do not do so we face the prospect of:

a) Westminster case going ahead – potential for 14000 single adults destitute on streets of London.

b) London Councils and Dover coming under increasing pressure to accommodate asylum seekers and the possibility that they might be overwhelmed with no ability to cope;

c) Bad relations with local government at a time when we need co-operation for the future;

Driving down unit costs

I believe we need to agree to this approach if we are to achieve the prize of a smooth transition to the new arrangements. But I would propose that we should aim to drive down unit costs as quickly as possible. I would want to undertake that central government, in partnership with local government, would play a full role in identifying how these unit costs could be reduced. The unit costs to which the Home Office would need to work, in order to live within our baseline provision for 1999/2000, are £150 per week per single adult and £200 per week per family. I would be grateful to know if Frank would be willing to consider what a reasonable target for a reduction in unit cost for unaccompanied children should be, though it may be that it would be sensible to continue to split the unit costs between those who are 15 and under (and who genuinely need to be placed either in a children's home or in foster care), and those who are aged 16-17 and who could reasonably be expected to be placed in a hostel.

Transitional Arrangements in Legislation

It may assist us to drive down unit costs and indeed to enhance the transitional arrangements if we include specific transitional measures in the Immigration and Asylum Bill which would come into effect immediately on Royal Assent and take us forward to April 2000 when the main agency provisions are intended to begin. Measures I have in mind are:

a) Specific powers for local authorities acting under the National Assistance Act to direct asylum seekers to live in a particular place;

b) Power to permit local authorities to provide other support for asylum seekers under the terms of the National Assistance Act for those who have accommodation (eg staying with a friend or relative) but no other means of support;

c) Specific powers (if they do not already exist) for the Immigration Service to direct an asylum seeker to live at a particular address;

d) Powers for the Home Office to enter into contracts directly with providers for the provision of accommodation packages or other support services;

e) Powers for Home Office to take over existing contracts which local authorities have entered into, provided it makes sense in vfm terms to do so;

f) Powers for Home Office to make this accommodation available to local authorities for use in accommodating asylum seekers, at no charge to the local authorities, but on the basis that the local authorities would then only charge an administration fee for its work rather than the full unit cost.

All this will need to be worked up and I have asked my officials to take this forward. It would be desirable for these transitional arrangements to come into effect as soon as possible. For this reason I put down a marker that it would be helpful if the Immigration Bill could receive Royal Assent before the summer.

Westminster

The LGA are confident that if we are able to deliver the financial regime they are seeking, then Westminster would be willing to agree to defer the House of Lords case. I am in no doubt that it would be altogether better if the case were withdrawn entirely. I know that Frank is concerned to establish the principle that the provision in the National Assistance Act which is being used to pay asylum seekers was never intended for that purpose. I have asked my officials, consulting his, to establish whether this could be achieved by way of the Immigration and Asylum Bill. That being the case, I should be grateful to know if Frank would be content for the case to be withdrawn rather than simply deferred. We would not want to be in this position with Westminster again. If the government were to withdraw then we would place Westminster in the position of having to decide whether to press on alone, with the implication that if they were to do so and win, they would be responsible for 14,000 asylum seekers becoming destitute; many of them on the streets of Westminster!

Handling

I hope to have a word with Frank early next week and then perhaps we might discuss how we take this forward. I would be happy to have a meeting with

you if that would help. Ideally I should like to be in a position to have meetings as follows:

(a) Wednesday 14 October – see LGA/ALG to ensure they are committed to the proposals.

(b) Thursday 15 October – invite Mr Caplan (Leader of Westminster Council) for a private meeting to invite him to agree to defer the Westminster case.

(c) Friday 16 October – notify DH lawyers to seek a deferral of the Westminster case.

In the event that we cannot reach agreement, there is an HS meeting scheduled for Tuesday 20 October and my private office have added this to the agenda on a contingent basis.

The increase in the number of asylum applications

I thought it might be helpful if I set the above proposals in the context of the wider picture. In July and August this year, the latest months for which figures are available, there were 4,215 and 4,420 asylum applications to the United Kingdom respectively, a rate which would annualise at over 50,000. The corresponding figures for 1997 were 3,070 (an increase of 37%) and 2,930 (an increase of 51%) respectively. The increase in asylum applications in July and August compared with the same months in the previous year was, therefore, particularly severe, but it will be necessary to see the figures for September before any conclusions can be reached as to whether these figures are the manifestation of a new trend. However, what is certain is that there has been a steady increase in the underlying trend in asylum applications since the early 1990s. During the twelve months to August 1997 the number of asylum applications to the United Kingdom was 32,325, whereas the total number of applications in the twelve months to August 1998 was 38,470, an increase of 23%.

It is still too early to say whether we are seeing a "closing down sale" beginning. The White Paper, *Fairer, Faster and Firmer – A Modern Approach to Immigration And Asylum*, was not published until the end of July and there are plausible other reasons for the increases in most of the top ten countries. It is also understood that statistics are up significantly in other European countries and are at the highest level since December 1994. There is also the real possibility of a further big surge of Kosovans/Albanian applicants if the situation in that region continues to deteriorate.

Measures aimed at stemming the flow

These focus on two separate issues; the increase in clandestine illegal entrants and the increase in the number of asylum claims made on arrival at United Kingdom ports.

Clandestine illegal entrants

Detections of clandestine illegal entrants have reached record proportions this year, in 1996 and 1997 around 4,000 were detected, whereas in the first eight months of 1998 there have been more than 4,470 detections. Clandestine illegal entrants now represent about 50% of total illegal detections compared with around 30% in previous years.

A number of proposals are being considered for dealing with the problem. These include:

- establishment of a clear mechanism for the Immigration Service (IS) and the police in dealing with clandestine entrants;
- targeting those potential illegal entrants who concealed themselves in lorries before they reached the United Kingdom;
- stationing body detection dogs in France;
- attracting private involvement to assist in such schemes;
- identifying overseas authorities who were not being helpful; and
- the use of language experts to try and distinguish between ethnic Albanians from Kosovo and Albanians.

Port asylum applicants

The number of asylum seekers applying at port has reached record levels – there were 2,395 such applications in August and early indications are that September will be about the same. Steps being taken to stem the flow include:

- the introduction of a visa regime for Slovakia and possibly some other Eastern European countries;
- the acceleration of the planned expansion of the network of Airline Liaison Officers to help reduce the number of undocumented passengers arriving at United Kingdom ports;
- working with other agencies to identify, arrest or disrupt the trafficking networks, which are responsible for organising an increasing proportion of traffic;
- the targeting of obvious economic migrants so as to enable quick decisions to be taken on their asylum claims and benefits cut off as a consequence; and
- the selective use of detention, particularly potential future large groups, so as to send out a deterrent message to economic migrants.

Other Options in the event that the Government wins the appeal to the House of Lords in the National Assistance Act case

We have considered what action we might take if we fail to persuade Westminster to withdraw from the case. No option is particularly attractive. They are discussed in detail in Appendix 1, but they include:

- allowing all asylum seekers to work;
- provision of housing only;
- restoration of housing benefit only;
- short term restoration of benefits;
- central government funding for reception centres/hostels;
- central government funding to voluntary organisations to provide short term support to asylum seekers; and
- emergency legislation.

I am copying this letter to the Prime Minister, John Prescott, Robin Cook, Frank Dobson, Alastair Darling, Hilary Armstrong, David Blunkett, other members of HS and Sir Richard Wilson.

Yours ever,

Jack

JACK STRAW

APPENDIX 1

CONSIDERATION OF OPTIONS FOR RESPONDING TO A SUCCESSFUL GOVERNMENT APPEAL IN THE NATIONAL ASSISTANCE ACT CASE

1. GRANTING ALL ASYLUM SEEKERS THE RIGHT TO WORK

Although last July the Court of Appeal overturned the High Court judgement in ex parte Jammeh and others in the Secretary of State's favour, it has been decided that an asylum seeker should continue, under the employment concession, to be granted permission to work if their claim has been outstanding for more than 6 months or, having been refused asylum, they have lodged an appeal which has not been finally determined, rather than revert to the original policy whereby only asylum seekers whose claims had been outstanding for more than 6 months were allowed to work. This is because in granting leave to appeal to the House of the Lords, the Court of Appeal agreed to a submission by Counsel for the applicants that the employment concession case should be linked with the National Assistance Act (NAA) case because the availability of support under the NAA was central to the Secretary of State's argument that the policy of not allowing asylum appellants to work did not impinge upon their statutory right to pursue an appeal against the refusal of asylum.

2. The proposal under this option is that all asylum seekers should be allowed to work. However, this would not be a satisfactory solution to the problem. Despite the employers' restrictions under section 8 of the Asylum and Immigration Act 1996, there can be little doubt that some of those likely to be evicted if the appeal is successful are already working illegally, albeit in low paid employment. And even if their situation was to be regularised, many would still be working in jobs in which the pay was so low as to be below subsistence level. It also cannot be assumed that all those granted permission to work would find a job. There would need, therefore, to be some mechanism in place to support asylum seekers who were still without any other means of support, although there is no way of knowing what the numbers would be and, therefore, the costs. Other than that, this proposal would incur no costs and, indeed might result in increases tax revenues..

3. It is difficult to gauge the extent to which permission to work would prove to be an incentive to claim asylum. However, the French attribute the fall in asylum applications from 46,500 in 1991 to 28,900 in 1992 largely to the withdrawal of the right to work from all asylum seekers. This proposal would, however, be cost neutral.

2. PROVISION OF HOUSING ONLY

Under this proposal, the homelessness legislation would be revised (by secondary legislation) such that those asylum seekers who had previously been owed a duty under the 1948 Act would be eligible for homelessness assistance.

2. The main point here is that the provision of housing would provide only half a solution; there are no powers under the homelessness legislation to provide residential accommodation or living expenses. DETR, and local housing authorities would resist such a use of the homelessness legislation on similar grounds to the DoH objection to the use of the 1948 Act: ie it is inappropriate, unintended, and would divert local authority resources from the normal client groups. This group of asylum seekers are predominantly single adults who are physically and mentally fit, and it is not the normal purpose or function of the homelessness legislation to assist this group. (Rather it's purpose is to provide a safety net for families with children and vulnerable individuals.) If the provisions on eligibility were changed to give this group access to the homelessness legislation, actual entitlement to assistance would rely on a contentious judgement delivered by the Court of Appeal, in a series of test cases brought following the 1996 benefit changes.

3. Local authorities would not be able to take over the existing contracts being operated by social services departments under the 1948 Act (since the powers under the homelessness legislation do not extend to such provision) and they would need to find alternative accommodation. This is not available in London, where the supply of temporary accommodation is already at crisis point.

4. This would be new burden and authorities would expect full compensation of the cost; this is unlikely to be less, and could be more, that the £165 per week currently funded by DoH grant for the 1948 Act cases.

3. RESTORATION OF HOUSING BENEFIT ONLY

This proposal has the same problem as the provision of housing only in that the asylum seeker would not be provided with the means to subsist. It is also a fact that because of the loophole whereby some asylum seekers whom the previous Government had intended should be excluded from entitlement to housing benefit have retained that entitlement. No funding has been agreed for current DSS programme cost or in Home Office CSR for the "loophole". The cost of restoring Housing Benefit only in 1999/00 is in the range of £130m - £175m depending upon the extent of any pull factor (figures include loophole cases).

4. SHORT TERM RESTORATION OF BENEFITS

This proposal consists of two options:

(i) to restore income support only (emergency payments rate); or

(ii) to restore income support (emergency payments rate), housing benefit and council tax benefit.

2. Option (i) is, in effect, the reverse of the provision of housing or restoration of housing benefit in that the asylum seeker would be provided with the cash to purchase food and other essentials, but the level of payment would be so low as to prevent the asylum seeker being able to pay for accommodation. Again, there seems to be little merit in a halfway house position such as this. However, this is not to say that the prospect of cash in hand, even a limited amount, would not prove an incentive for claiming asylum. An illegal entrant who found himself without any means of support might find the prospect of some cash an attractive proposition.

3. Option (ii) effectively restores the position on benefits to that which existed prior to the changes in 1996. In purely practical terms, it is probably the easiest and, in some respects, therefore, the most attractive of all the options. But, to restore benefits would be entirely contrary to the Government's policy that asylum seekers should eventually be excluded from the statutory benefits system. Furthermore, without first having in place the deterrent effect of a much quicker asylum and appeals process, and early prospect of removal, to restore benefits in this way would, on past evidence, be bound to produce a surge in asylum applications. Because of this, DSS estimate that the cost of restoring the full range of benefits to single asylum seekers would be in the range £195m - £245m in 1999/00, or possibly more depending upon the extent of the pull factor. To restore benefits to all asylum seekers would cost in the range £285m - £390m 1999/00 depending upon the size of the pull factor.

5. CENTRAL GOVERNMENT FUNDING FOR RECEPTION CENTRES/HOSTELS

The most recent experience in this area is the four reception centres which were set up for Bosnian refugees by the voluntary sector, grant-aided by the Home Office. However, these provided only 180 places, not, on the worst scenario, upwards of 14,000 places that would be necessary if the appeal was successful. They were also funded on the basis that the Bosnians would be in receipt of income support and housing benefit and would effectively self-cater. There is, therefore, no real precedent for what would be necessary in these circumstances, which would be extremely expensive. The CSR team estimated a cost of up to £152m per annum, not including the capital costs that would be incurred

2. It would not, of course, be possible for the voluntary sector to set up the necessary accommodation in the time available. An alternative might be for the Government either to requisition buildings for the purpose or to find vacant accommodation in the Government estate. However, it is difficult to see how whatever planning permission might be necessary could be obtained in the time available: it is not unreasonable to presume that reception centres for asylum seekers would not be universally welcomed by prospective neighbours.

3. There are also the public order risks attached to requiring an easily identifiable group such as asylum seekers to live in vulnerable accommodation such as a reception centre or a hostel. Experience in Germany and elsewhere shows how easily it is for asylum seekers living in hostels to be targeted for violent action by those who are inclined to.

6. CENTRAL GOVERNMENT FUNDING TO VOLUNTARY ORGANISATIONS TO PROVIDE SHORT TERM SUPPORT TO ASYLUM SEEKERS PENDING NEW ARRANGEMENTS

Under this proposal, the voluntary sector eg the Refugee Council or the Red Cross, would be allocated funds for accommodating people evicted in the event of a successful appeal. Section 180(1) of the Housing Act 1996 provides that the Secretary of State.... may give assistance by way of grant or loan to voluntary organisations concerned with homelessness or matters relating to homelessness, so there appears to be the necessary statutory power. However, the relevant Department would need a Supplementary Estimate and probably an emergency claim on the Contingencies Fund, pending parliamentary approval of the Supplementary Estimate. This is also unlikely to be any less expensive than local authority support and it is unlikely that the voluntary sector would have the facility to respond in the time available.

7. EMERGENCY LEGISLATION TO GIVE LOCAL AUTHORITIES POWERS TO LOOK AFTER ASYLUM SEEKERS PENDING THE SETTING UP OF THE NEW SUPPORT ARRANGEMENTS

The options here are to pass through emergency legislation which would give Social Services Authorities powers under the National Assistance Act 1948 to provide accommodation solely for asylum seekers who would otherwise be destitute (but not other groups of people to whom this community care legislation applies). This would not only be an embarrassment to the Government, having argued that the NAA should not apply this way to the House of Lords, but it would retain a legislative framework which is in fact a very cumbersome one for achieving effective and cheap provision for asylum seekers. For example, it would still not be possible to provide someone with low level support if they were not being "accommodated" by the LA.

2. An alternative route would be to cast emergency legislation so that a power was introduced for local authorities corporately to make specified provision for asylum seekers (ie either accommodation and subsistence, or just subsistence, travel costs etc) who would otherwise be destitute. This would not have the disadvantages of the NAA route for the Government, and could be presented as looking forward to the ultimate model being introduced following the White Paper proposals, where LAs corporately, rather than the more limited and cumbersome social services functions, will be used.

3. The attractions are that it would certainly be the least disruptive option for the asylum seekers concerned, who in most cases would not be required to move - most of the local authorities most heavily involved in supporting asylum seekers under the 1948 Act are unitary authorities and using B&B and hostel accommodation. It would of itself be unlikely to add significantly to the numbers claiming asylum; and it would appear to be at least cost neutral.

FROM THE DEPUTY PRIME MINISTER

DETR
ENVIRONMENT
TRANSPORT
REGIONS

AR
file

DEPARTMENT OF THE ENVIRONMENT,
TRANSPORT AND THE REGIONS

ELAND HOUSE
BRESSENDEN PLACE
LONDON SW1E 5DU

TEL 0171 890 3011
FAX 0171 890 4399

OUR REF: PT/PSO/17788/98

The Rt Hon Jack Straw MP
Home Secretary
Home Office
Queen Anne's Gate
London
SW1H 9AT

- 9 OCT 1998

Top RR
cc PJ

P

Thank you for your letter of 18 September, setting out the latest position on applications for asylum.

I agree with you that the problem of the rise in numbers seeking asylum is particularly acute in London and I am grateful that you have been able to involve Hilary Armstrong in your recent discussions with the LGA and ALG about the particular problems facing the London boroughs in housing the increasing numbers of asylum seekers.

I am grateful too that you are continuing to involve my officials in contingency planning and agree that a future meeting of HS to discuss the problems would be helpful.

I have asked my office to copy this for information to Angus Lapsley (No.10), John Grant (Foreign Office), and to Sebastian Wood (Cabinet Office).

JOHN PRESCOTT

FROM THE RIGHT HONOURABLE THE LORD IRVINE OF LAIRG

HOUSE OF LORDS,
LONDON SW1A 0PW

8 October 1998

The Right Honourable Jack Straw MP
Secretary of State for the Home Department
50 Queen Anne's Gate
London
SW1H 9AT

Dear Jack,

REFORM OF EXTRADITION LAW

I have seen your letter to the Prime Minister seeking approval for the report of an inter-departmental working group on extradition to be published as a consultation document.

I very much welcome the detailed work that has gone into producing this report. Although a need to clarify the law in this area has been clearly identified, the scale of the problem does not seem to point to early legislation. I recognise, however, that if the legislation is not changed, we may not be allowed to ratify the relevant Conventions. However, the publication of this report as a consultation paper might serve to deflect any criticism that we are not committed to making any necessary changes to our law.

I therefore agree to the publication of this report as a consultation paper subject to re-drafting the recommendations in paragraphs 122 and 123 about court targets. I have no objection in principle to considering targets for the court process. I very much share the concerns expressed in the report about the time extradition proceedings take. However, it would not be acceptable to set targets for judges to reach their decision. This would be seen as interfering with the principle of judicial independence. Judges and Magistrates are, however, increasingly aware of the need to give their decisions promptly and the Lord Chief Justice and I have in place agreed arrangements should any High Court Judge fall short of reasonable delivery. I would be happy to speak to the Lord Chief Justice and invite him to urge expedition on the small number of Stipendiary Magistrates who deal with these cases. I have no doubt he would co-operate; but the real problem, unfortunately, consists in process not any want of judicial expedition.

I would be happy for the report to refer to time limits for the listing of cases and I understand my officials have provided yours with a form of words which would be acceptable. I suggest that paragraph 122 of the report should instead read, "we do not, however, see why the court, or a specialised tribunal, should not *have* fixed targets *for the listing of extradition hearings. At present, parties may have to wait several months between the lodging of an application or appeal and the court hearing.* We were recently presented with a vivid example *of delay* from an

extradition partner...". Paragraph 123 would read, "We recommend that... consideration should be given to providing targets for the court or new specialised tribunal *which ensure that extradition cases are heard promptly.*"

I endorse that wording and would be glad if you could ensure that the change is made before the report is published.

I am copying this letter to the Prime Minister, John Prescott, Robin Cook and HS colleagues, and to Sir Richard Wilson.

Yours ever,

Derry

File

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

7 October 1998

Dear Clare,

SLOVAK ASYLUM SEEKERS: VISA REGIME

The Prime Minister was grateful for the Home Secretary's minute of 3 October and is content for him to impose a visa regime on Slovak nationals in order to help stem the current influx of asylum seekers.

However, the Prime Minister does feel that it will be important to work closely with the new Government in Slovakia with the aim of returning to a situation where a visa regime is unnecessary. They should feel that if they take effective measures to tackle the underlying reasons for the influx, we will be prepared to reconsider our position at a later date.

I am copying this letter to Peter Unwin (DETR), the private secretaries to members of HS, Tim Barrow (FCO), Sebastian Wood (Cabinet Office) and Sir Stephen Wall.

Yours,

Angus

ANGUS LAPSLEY

Ms Clare Sumner,
The Home Office.

FROM THE DEPUTY PRIME MINISTER

DETR
ENVIRONMENT
TRANSPORT
REGIONS

DEPARTMENT OF THE ENVIRONMENT,
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OUR REF: IDC/193

6 OCTOBER 1998

faxed? No
AL
PU

The Rt Hon Jack Straw MP
Home Secretary
Home Office
50 Queen Anne's Gate
London SW1H 9AT

CZECH AND SLOVAK ASYLUM SEEKERS - VISA REGIME

Thank you for your letter of 2 September to Robin Cook seeking colleagues' agreement to the imposition of a visa regime on the Slovaks nationals. I am replying as Chairman of HS. I have also seen your minute of 3 October to the Prime Minister.

You explained that since 1 June, we had received 1,120 asylum applications from Slovak nationals and 342 from Czech nationals. A number of measures had been introduced to try to discourage these individuals from coming to the UK, including talks with the two Governments and intensive media lobbying. However, in spite of the new measures, the influx of Slovak nationals continued to rise.

The Prime Minister, Alistair Darling, Hilary Armstrong, Frank Dobson and Baroness Symons commented. The Prime Minister said that he had been reluctant to go down the route you proposed because he was keen to foster closer relations with both the Czech Republic and Slovakia. However, he was concerned about the growth in the number of Slovak asylum applications and agreed that the previous approach of working with the Slovakian Government was not working.

The Prime Minister agreed with Baroness Symons that although preparatory work on a visa regime should begin now, a final decision would not be taken until after the Slovak elections, but accepted that, unless the situation improved quickly, the imposition of a visa regime would be necessary. Baroness Symons recommended that the Slovak Government should not be told of any decision to suspend the Visa Abolition Agreement until they were close to implementation in case it provoked a rush of last-minute applications. Moreover, it would not be possible to introduce visas overnight and it would probably take at least two months to put the necessary practical arrangements in place.

Pa 7/10

In your note of 3 October, you explained that the elections had taken place and the outcome had been broadly favourable. A visa regime should now be imposed as there was no sign that the highly organised influx of asylum seekers would cease without such a measure. You had therefore agreed with the Foreign Secretary that a Direct Airside Transit Visa (DATV) regime would be introduced for Slovak nationals with effect from 8 October. The necessary Order and Statement of Change to the Immigration Rules would be laid on 7 October.

Baroness Symons said that in order to minimise the damage such an action might do to any new democratic Government and to our bilateral relations, it would be important to make clear to the Slovaks that the Government would review the requirement regularly and lift it when it was able to do so. Officials should review the situation and report to Ministers every six months. There should also be a period of grace during which those who had made travel arrangements in advance of the announcement were not inconvenienced solely from the lack of a visa. Press officers would need to liaise about the presentation of this sensitive issue.

Alistair said the growth in the number of Slovak nationals seeking asylum in the UK was a cause for concern because of the pressure they placed on the benefit system and the asylum application system. There were also significant pressures on the budget as a result. The Government needed to be seen to be tackling the asylum issue as a whole and where abuse was identified, to be taking appropriate action to remedy it. Frank was also aware that the current influxes were having a major effect on local authority social services and any measures that would reduce the burden would be welcomed.

Hilary said her Department had two main interests in the matter resulting from its responsibilities for local government and housing on the one hand, and for the transport industry on the other. In view of the number of asylum seekers arriving from Slovakia, their impact on local authorities, and the fact that Slovakia is not a major transport partner, she agreed to the introduction of a visa regime on Slovak nationals. In her letter of 5 October, she said she was content on this occasion for such a transit visa (DATV) requirement to be introduced. However, she remained concerned that the imposition of transit visas should not be automatic and each case should be considered on its merits. In the future, if the imposition of a visa scheme on Czech nationals was contemplated, it should be discussed with her Department at an early stage as it could have more serious financial consequences for UK airlines.

No other colleague commented, and you may take it that you have policy agreement to your proposals.

I am copying this letter to the Prime Minister, members of HS and EA committees and to Sir Richard Wilson.

JOHN PRESCOTT

Top - AL
cc JPO
PU

CABINET OFFICE
70 Whitehall, London, SW1A 2AS
Telephone: 0171-270 0400

Minister for the Cabinet Office
Chancellor of the Duchy of Lancaster

KbO 11882

(P)

The Rt Hon Jack Straw MP
Secretary of State for the Home Department
Home Office
50 Queen Anne's Gate
London, SW1H 9AT

6 October 1998

Dear Jack,

REFORM OF EXTRADITION LAW

I have seen your minute of 19 September to the Prime Minister seeking agreement to publication, as a consultation paper, of the report of the interdepartmental working group on this topic. This is a useful piece of work, and I am happy to agree to publication.

I particularly welcome exposing the possibility of a fast track with trusted EU partners, and I hope that imaginative thinking can continue in this area. With cheap air travel and confidence in the legal systems of our European partners, it would seem possible to move extradition much nearer to the co-operative and automatic arrangements, eg between England and Scotland, for ensuring the attendance of an accused at court as and when the stages of the process require it. This would not necessarily require an accused to be held in custody or even reside in the country of trial between preliminary and final hearing. Given appropriate protection on issues such as political offences, a summons backed by a return air ticket and a hotel voucher might be a quicker and cheaper solution, compared with the present extradition arrangements at £30,000 a case.

I am copying this letter to the Prime Minister, Robin Cook , HS colleagues and to Sir Richard Wilson.

As ever,

Jack.

JACK CUNNINGHAM

7/10

FROM HILARY ARMSTRONG MP
MINISTER FOR LOCAL GOVERNMENT AND HOUSING
RESTRICTED

DETR
ENVIRONMENT
TRANSPORT
REGIONS

DEPARTMENT OF THE ENVIRONMENT,
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TEL 0171 890 3000
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OUR REF: IDC (98) 193

-5 OCT 1998

Dear John

CZECH AND SLOVAK ASYLUM SEEKERS - VISA REGIMES

Following Jack Straw's letter of 2 September about the continuing problem of asylum claims from Slovak Roma, and my advice to you that the Department should agree to the introduction of a visa regime on Slovak nationals, Baroness Symons has written to Jack Straw seeking colleagues' agreement to impose a transit visa (DATV) requirement.

I am content that, in this particular situation, a transit visa (DATV) requirement can also be introduced. However we remain concerned that the imposition of transit visas should not be automatic, and that each case should be considered on its merits.

I am copying this letter to the Prime Minister, members of HS Committee and to Sir Richard Wilson.

Yours
Hilary

HILARY ARMSTRONG

The Rt Hon John Prescott MP
Deputy Prime Minister

Top AL
cc. PU
RR

The Rt Hon Margaret Beckett MP

PRIVY COUNCIL OFFICE
68 WHITEHALL LONDON SW1A 2AT

-5 OCT 1998

(P)

Dear Ken

Reform of Extradition Law

The President of the Council was grateful for her copy of your Secretary of State's minute to the Prime Minister about reforming extradition law.

Mrs Beckett has asked, however, that, as with all other legislative proposals for which no slot has yet been agreed by QFL Committee, expectations about the timing of such legislation be clearly managed. To this end, she would like the phrase 'when Parliamentary allows' to be inserted into the text of the consultation document alongside references to the introduction of primary legislation.

I am copying this note to Private Secretaries to the Prime Minister, Deputy Prime Minister, Foreign Secretary and other members of HS, and to Sebastian Wood.

Yours

Vanessa

Vanessa Scarborough
Principal Private Secretary

Ken Sutton
PPS/Home Secretary
Home Office
50 Queen Anne's Gate
London SW1H 9AT

The Rt Hon Peter Mandelson MP
Secretary of State for Trade and Industry

Top- AL
cc RR
PJ

The Rt Hon Jack Straw MP
Secretary of State for Home Affairs
Home Office
50 Queen Anne's Gate
London
SW1H 9AT

Secretary of State
Department of Trade and Industry

1 Victoria Street
London SW1H 0ET

Direct line
0171 215 5430

DTI Enquiries
0171 215 5000

e-mail
TLO.Mandelson@tlo.dti.gov.uk

5 October 1998

(P)

Dear Jack,

REFORM OF EXTRADITION LAW

Thank you for letting me see the report of the Extradition Working Group.

The Working Group has done an excellent job and I welcome the proposals to simplify and speed up the consideration of requests for extradition. I am therefore content that the report be issued for consultation with one possible addition.

The report is silent on the question of requests for extradition where, in our view, the requesting state does not have jurisdiction over the alleged commission of the offence because it was committed neither on its territory nor by someone with its nationality. I would not wish the situation to arise in which a person may be extradited where the requesting state was, in our view, improperly claiming extraterritorial jurisdiction. Perhaps your officials could consult with mine as to whether an improper claim for jurisdiction should be added to the grounds for non-extradition as set out in paragraph 116 of the report.

The official to contact within my Department is:

Mr John Foggo
Head TPE1c
Department of Trade and Industry
Room 365, Kingsgate House
66-74 Victoria Street
London SW1E 6SW
Telephone 0171-215 4485

I am copying this letter to the Prime Minister, John Prescott, Robin Cook, Sir Richard Wilson and HS colleagues.

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UNCLASSIFIED
FM THE HAGUE
TO PRIORITY FCO
TELNO 438
OF 051405Z OCTOBER 98

SUBJECT: DUTCH PLANS TO DEAL WITH NEW ASYLUM SEEKERS

Summary

1. Dutch Cabinet agrees to consider instituting a waiting list for new asylum applicants.

Detail

2. At its regular meeting last Friday, the Dutch Cabinet agreed in principle to the introduction of waiting lists for asylum seekers. This measure was proposed last week by State Secretary for Justice Cohen to address the problem of overcrowding in reception centres. Under Cohen's proposal new applicants for asylum will not be processed, but put on a waiting list until they can be dealt with. In the interim they would have to find their own accommodation. Cohen will provide further details of his plans this week.

3. Concern within the Government has been growing for some time about the increasing number of asylum seekers. Earlier estimates that some 33,000 asylum seekers would enter the Netherlands in 1998 have been revised to 48,000. The Immigration and Naturalisation Service (IND) have warned that next year the figure could rise to 60,000. Reception centres are full and the Government has been considering setting up tents for refugees whose applications are being processed.

4. Prime Minister Kok pointed out that the IND can no longer handle the volume of work. The number of rejected asylum seekers has dropped from 15 percent to two percent because of the pressure of work. Kok said that new measures were not intended to deter asylum seekers from coming to the Netherlands, but admitted it could have a deterrent effect. Kok urged opponents of the introduction of waiting lists to come forward with alternatives. Only the VVD (Conservative Liberals) have so far supported the plans.

5. Cohen also wants to return Bosnians who have exhausted all legal

channels. MPs have already supported this proposal. However Cohen also recognised that there were areas to which Bosnians really could not be sent back and that this should continue to be looked at.

6. FCO please advance to Liz Lloyd, No 10 Policy Unit.

SPENCER

YYYY

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QUEEN ANNE'S GATE LONDON SW1H 9AT

15 OCT 1999

The Rt Hon Stephen Byers MP
Chief Secretary
HM Treasury
Parliament Street
London SW1

cc SW
RH
Let us speak.

Helen from Rds 5/10
You may be interested

KL

Dear Stephen,

ASYLUM SEEKERS SUPPORT PROJECT

This letter, and the attached report, fulfil my undertaking to let you have a report on the proposals for the asylum seekers support scheme.

Proposals for changing the arrangements for the provision of support for asylum seekers were set out in the White Paper, chiefly in chapter 8. As you are aware, the primary change is to make the Home Office responsible for housing and other support for asylum seekers who would otherwise be destitute.

These arrangements cannot, of course, come into effect without legislative provisions, which will be included in the forthcoming Immigration and Asylum Bill. On the assumption that the Bill receives Royal Assent in October 1999, we are working on a planning assumption of the new arrangements coming into force on 1 April 2000.

The report sets out at a fairly high level of detail the way in which we envisage the new support arrangements will operate. Much of the detail is necessarily still to be decided. The project is subject to PRINCE project control. Your officials are kept in touch with developments, and HM Treasury is represented on the project's Steering Group.

Work is proceeding on transitional arrangements pending full implementation of the new arrangements in April 2000. The details are yet to be decided, in part because they necessarily depend upon detailed knowledge - which of course we do not yet have - of the operation of the new arrangements. I am writing to you separately about the discussions which are currently taking place with local authorities in relation to the current situation in London and the deferral of the Westminster case are designed to encourage the local authorities to move towards a style of operation which anticipates the new arrangements.

If it would be helpful I would be pleased to submit a further report on the new support arrangements to you in the New Year. By that time a detailed assessment of the

arrangements will have been completed. This will enable us to address those questions of particular interest to you which it is not at present possible fully to answer.

I am sending a copy of this letter and the attached report to the Prime Minister, John Prescott, Robin Cook, Frank Dobson, Alastair Darling, Mo Mowlam, Donald Dewar, David Blunkett, Ron Davis, Robin Corbett, Derry Irvine, other members of HS, and Sir Richard Wilson.

Yours ever

Jack.

JACK STRAW

DRAFT

NEW SUPPORT ARRANGEMENTS FOR ASYLUM SEEKERS: REPORT FOR CHIEF SECRETARY

PART I: INTRODUCTION AND SUMMARY OF KEY ISSUES

1. Structure of report

2. New support scheme for asylum seekers: key objectives and assumptions

3. Timescales and legislative requirements

4. Territorial extent

5. Project management
   - Asylum Seekers Support Project Team
   - Steering Group
   - Consultation Group
   - Stakeholder Group
   - Project Plan

6. Managing the wider strategy

7. Transitional arrangements
   - (i) Period to 1 April 2000
   - (ii) From 1 April 2000

8. Summary of key issues

PART II: COSTINGS

9. Financial allocations and outputs from statistical model

10. Asylum support budget

PART III: NEW SUPPORT ARRANGEMENTS: OVERVIEW AND KEY ISSUES

11. Overview of current asylum support arrangements

12. Overview of proposed asylum support arrangements

13. Eligibility for support
   - Definition of "asylum seeker" under the new arrangements
   - Unaccompanied children and adults with minor dependants

- Cut-off point for support
- Transfer from support scheme to benefits

14. Removal of existing obligations

15. Assessment for support

16. Nature of the support
- Support: housing
- Support: basic living needs

17. Role of existing support agencies

18. Delivery of the support

19. Development of new national machinery to co-ordinate provision of support

20. Review of decision not to provide assistance
- Scope of review
- Review mechanism

21. Other issues
-Linkages with enforcement
- Monitoring
- Fraud prevention
- Information/data sharing

Annexes

Annex A	Summary of legislative changes required
Annex B	Project plan
Annex C	Cost of the new arrangements
Annex D	Summary of existing support arrangements for asylum seekers
Annex E	Summary of ongoing education, employment and training provision
Annex F	National agency: extent of purchaser/provider split

PART I: INTRODUCTION AND SUMMARY OF KEY ISSUES

1. Structure of the report

1.1 This report outlines the issues that will need to be considered in taking forward the Government's proposals in the Home Office White Paper "Fairer, faster and firmer - a modern approach to immigration and asylum" for the reform of the support arrangements for asylum seekers across the UK. Part I sets out key objectives and assumptions, timescales, and project management details, and identifies the key issues, including the transitional arrangements, which will need to be addressed in developing the new arrangements. Part II provides details on costings and the operation of the asylum support budget. Part III discusses in more detail various aspects of the new arrangements.

1.2 The report is necessarily high level in content. There is still much work to be done on the detail of the proposals.

2. New support scheme for asylum seekers: key objectives and assumptions

2.1 Chapter 8 of the White Paper sets out the Government's plans for the reform of the support arrangements for asylum seekers. The intention is to create a "safety net" scheme of support for those asylum seekers who would otherwise be destitute, while their application or appeal is being considered. The new arrangements should satisfy the following objectives:

- to ensure that genuine asylum seekers cannot be left destitute while containing costs through incentives to asylum seekers to look first to their own means or those of their communities for support;

- to provide for asylum seekers separately from the main benefits system; and

- to minimise the incentive to economic migration, particularly by minimising cash payments to asylum seekers.

2.2 The current support arrangements for asylum seekers are placing a major burden on a number of local authorities. They are cumbersome and in some cases use structures and methods of support which were never intended for such purposes. The aim is to develop a scheme which will streamline the support system; integrate it with the consideration of the asylum application; and operate a more efficient, focused and purpose designed support structure.

2.3 The success of the scheme rests on some key assumptions:

- that the asylum application and appeal process can be reduced to an average of six months;

- that the number of asylum applicants does not significantly exceed the current forecasts; and

- that the project work can be completed and a new operation agency established within 18 months.

3. Timescales and legislative requirements

3.1 A number of the new support arrangements will require primary legislation. A summary of the likely scope of that legislation is at **Annex A**. The current assumption is that an Immigration Bill will be introduced in the 1998/99 session and is expected to receive Royal Assent by the end of October 1999. Work on planning the new arrangements will begin immediately with a view to producing a fully operational service by 1 April 2000. However,

consideration will be given in the course of the work as to the extent to which the new scheme could usefully and properly be implemented without the need for legislation, possibly on a pilot basis, as part of the transitional arrangements.

4. Territorial extent

4.1 The new arrangements will apply throughout the UK. The implications of the arrangements for Scotland, Wales and Northern Ireland will need to be clarified. In terms of the legislation that will be required, separate but parallel provisions for Scotland will be needed where English legislation is being amended. While housing legislation in Northern Ireland is normally based on that which applies to England and Wales, there are a number of differences which will need to be taken into account.

5. Project management

Asylum Seekers Support Project Team

5.1 A project team is being established to consider and resolve outstanding policy issues, to develop the new support arrangements for asylum seekers and, assuming Parliamentary approval is forthcoming, to create mechanisms for their delivery. This will include:

- developing new national machinery to plan and co-ordinate overall provision;
- planning and co-ordination of the provision of housing for asylum seekers;
- developing means of ensuring that other basic needs are met for those in genuine risk of hardship;

- developing structures for planning and resourcing the operation and for enabling the exercise of proper financial control of the budget; and

- integrating the arrangements with the arrangements for consideration of the asylum application and regular reporting.

5.2 The project team will include secondees from local authorities, the Refugee Council and DETR. It will work closely with the team which has been formed to take the proposed Immigration and Asylum Bill through Parliament.

Steering Group

5.3 A Home Office-led Steering Group has been established. It includes a representative from HM Treasury. The Steering Group will meet at regular intervals to review the progress of the project.

Consultation Group

5.4 In order to ensure that relevant other government departments are kept informed of developments, a Consultation Group consisting of officials with a principal interest in the policy developments has been established. All major papers and progress reports will be copied to the Consultation Group, thus ensuring that wider government al interests are properly covered.

Stakeholder Group

5.5 A Stakeholder Group has also been established to include those outside government who it would not necessarily be appropriate to have either on the Steering Group or as regular recipients of all papers and progress reports, but who have clear stakeholder interests and who could beneficially input into the development of the project. These wider stakeholder interests

include representatives of local government associations or authorities; ACPO; and representatives of relevant voluntary or non-governmental organisation (NGO) groups.

5.6 The members of the Group will receive updates of developments on the project to keep them informed of progress and to enable them to contribute views.

Project plan

5.7 A high level project plan is at **Annex B**. The plan necessarily makes some assumptions about the timetable for the proposed Bill, and the nature and organisation of the system to be set up to provide the support for asylum seekers.

5.8 The project is subject to PRINCE project control. It falls into two broad phases. Phase 1 (policy resolution) will address the major high-level policy issues requiring Steering Group and Ministerial approval which will need to be resolved before the detailed arrangements can be developed. A key output of this stage of the work will be the production of a detailed assessment (in the form of a manual, with process mapping) of the new arrangements by the end of 1998. Phase 2 (system development) will involve the detailed work associated with the creation of the support arrangements and the new agency (or other body).

6. Managing the wider strategy

6.1 The new asylum support arrangements are a key feature of the comprehensive, integrated strategy on immigration and asylum set out in the White Paper. Delivering the White Paper commitments to speed up the asylum decision and appeal process will be particularly important for the successful operation of the new support arrangements. Continuing long delays would make the new arrangements more expensive to operate. They would also undermine the viability of the new scheme because it would become increasingly difficult to justify providing all support in kind, particularly for families, over an extended period.

6.2 For these reasons, the implementation of the White Paper measures to reduce asylum decision times and appeal waiting times will need to be closely co-ordinated with the introduction of the new support arrangements. The aim must be to ensure that the average target processing time (decision and appeal) of 6 months can be achieved for the majority of applicants to whom the new support arrangements apply. This will have implications for the transitional arrangements for the new scheme as well as the timetable for implementation of the new appeals system and other measures (including regulation of unscrupulous advisers and tighter control of legal aid) to speed up the appeal process.

6.3 Other elements of the strategy bear directly on the operation of the support arrangements. The single budget will be in place from April 1999, but it will be necessary to have developed suitable monitoring arrangements in order to use resources effectively and flexibly having regard to the costs of the system as a whole. Establishing the new integrated planning process is a high priority, in order both to make best use of any transitional support arrangements prior to full implementation and to ensure that long-term planning is robust.

6.4 The practical operation of the new support arrangements should, as far as possible, help to secure other elements of the strategy. For example, the location of accommodation must not be so remote that it positively hinders or slows down the asylum application and appeal process. The mechanics of obtaining support should facilitate regular reporting and help to reduce absconding, particularly towards the end of the process when removal might be imminent. In these and other ways, the design of the new arrangements must help to deliver the strategy as a whole.

7. Transitional arrangements

7.1 It is not possible, at this early stage, to give anything more than a broad overview of transitional arrangements, the nature of which will necessarily depend in large part upon detailed information - which is not yet available - about the operation of the new arrangements.

(i) Period to 1 April 2000

7.2 Discussions are taking place with local authority representatives and other government departments to explore the scope for more flexible and cost-effective ways of using resources within the current legislative framework to cope with the difficulties caused by the recent influx of asylum seekers to London and elsewhere. The options which are being considered are also designed to encourage local authorities to begin to move to a style of operation which anticipates the new arrangements. I am writing to you separately on this matter.

7.3 The project team is currently working to identify appropriate arrangements for the transfer of funds to the DSS and DoH following the assumption by the Home Office from 1 April 1999 of responsibility for the costs of supporting asylum seekers. There remain issues to be decided about whether the HO or the DoH will manage the local authority grant arrangements (as distinct from being the funder of such grants). Discussion with DoH is currently taking place on these issues, and it is hoped to circulate proposals shortly.

(ii) From 1 April 2000

7.4 The new arrangements will come into force on 1 April 2000. The main issue still to be decided concerns the way in which they will be introduced. There are two main options:

(i) The new arrangements would apply to *all* asylum seekers from 1 April 2000, with those on the old systems, as well as those arriving in the UK on or after 1 April, being moved on to the new arrangements from that date.

(ii) To provide for a phased transfer of existing asylum seekers, who would move across to the new support arrangements within (say) six months from 1 April 2000. (The transfer of existing asylum seekers need not entail wholesale moving of asylum seekers: it could just involve the central agency taking over responsibility for the contracts for support.)

7.5 It is likely that option (i) would overburden the new system. With regard to option (ii), concerns have been expressed that too long a period of "parallel running" may cause difficulties for the local authorities, who would bear the brunt of double-running administrative systems and possibly different support regimes applying to different occupants of the same accommodation. If DoH were still responsible for administration of the existing grants it would also mean that DoH would be committed for an indeterminate period of time, with annual negotiations over budget transfers. This work is being taken forward in association with the current negotiations with other government departments and local authority representatives.

7.6 If, as seems likely, some element of parallel running is found to be necessary for purely practical reasons, it will be essential in presentational terms strongly to emphasise that the intention is that all existing applicants, particularly those who would otherwise receive cash benefits, will go onto the new support arrangements as soon as possible. We should do everything possible to discourage a potential flood of applications immediately before commencement of the new system.

8. Summary of key issues

8.1 The key features of the new arrangements, as set out in the White Paper, are:

- "in kind" provision of accommodation and living essentials to destitute asylum seekers; and

- new national agency to co-ordinate provision and operate the asylum seekers' budget.

8.2 Work is currently being taken forward on a number of policy issues which will require resolution in time for the legislative process, including:

- cut-off point for support;
- non-compliance with the support arrangements;
- role of national agency in providing support (purchaser/provider spilt);
- back payments for refugees;
- review mechanism;
- employment concession; and
- framing of the Home Secretary's power to direct local authorities.

PART II: COSTINGS

9. Financial allocations and outputs from statistical model

9.1 The latest available costings on the most likely scenarios are at Annex C.

9.2 The published financial allocations for the asylum support budget are £350/300/250 million over the next 3 years. These figures, however, are provisional, and are subject to further negotiation with the Treasury. In addition, neither these figures, nor the costings set out below, make any provision for the administration costs of the body which will manage the delivery of the statutory support functions.

9.3 The latest available costings on the most likely scenarios suggest that costs will be in the range of £321/243/219/204 million to £384/336/264/247 million over the next 4 years. further details are in Annex C. These costs are derived from a statistical model which has been developed in close co-operation with the Department of Health, the Department of Social Security and the Treasury. Crucial factors such as take up rates and unit costs have been agreed with the relevant departments. The costings are, nevertheless, estimates and have all the inherent uncertainties of any estimates.

9.4 The output from the statistical model is influenced by a number of key factors, especially asylum intake, processing times and take up rates and the model is updated periodically in consultation with the appropriate departments to take account of such factors. Policy options would also have some effect. The impact of a period of grace for unsuccessful applicants will be costed, but this work has not yet been done.

9.5 Asylum intake has recently sharply increased and the impact of this on longer term forecasts is being studied. The costings in Annex C do not take account of this.

9.6 There are also other uncertainties. At present the Home Office has no experience about the real costs of securing accommodation on the short term basis proposed including the extent to which funding will be required to render vacant housing fit for purpose.

9.7 In due course, a formal budget will need to be agreed between the Home Office and the Treasury and understandings will need to be reached as to the circumstances in which it would be reasonable to seek additional resources from the Treasury. Upheavals elsewhere in the world which lead to increases in the number of asylum seekers beyond forecasts is an obvious example.

10. Asylum support budget

10.1 The way the asylum support budget is structured and operated will depend on decisions yet to be taken, including the status of the new national body which will bear responsibility for its operation. The main part of the budget will be non-running costs, with some running costs reflecting the level of work undertaken by the Home Office.

10.2 The body will be required to forecast the number of asylum seekers who might need support, make the most efficient and economical arrangements for delivering that support and providing regular forecasts of the resources required. Subject to demand levels, the overall aim is to reduce the current level of support costs of asylum seekers. The new support arrangements are to be implemented from April 2000 and a baseline of costs in 1999/2000 will be the benchmark against which future costs will be measured. A unit cost measure will also be devised in tandem with a cash limit in order to ensure the continuing efficiency of the operation. The nature of any efficiency targets will need to be discussed with the Head of the body.

10.3 The resources required by the body will be influenced by the number of asylum seekers and the speed with which applications are processed. The body will need to be kept in regular touch with asylum application processing plans and performance in order, among other things, to have early warning of any potential cost increase in the support budget. Responsibility for the 'integrated planning zone', however, will rest with IND, not the new body.

10.4 One of the key concerns must be to minimise the vulnerability of funding due to surges in applications or out-turns well above the forecast. The effect would be to increase the agency's costs at the same time as there is an increased demand on the IND casework operation. The best response would be to increase resources for caseworking in order to avoid (expensive) increases in processing times and therefore in support costs. However, it is not obvious how that would be funded.

10.5 The forecasting methods cannot be expected to produce "accurate" forecasts, by the very nature of forecasting. This is particularly true of the asylum application forecasts, partly because of the effect of unforeseen upheavals in other parts of the world and partly because the

methods are based on trend extrapolation and do not incorporate a model of the behaviour being forecast.

PART III: NEW SUPPORT ARRANGEMENTS: OVERVIEW AND KEY ISSUES

This section of the report provides a broad overview of the current and proposed arrangements for asylum seekers and outlines some of the key issues which will need to be considered in developing the new arrangements, including eligibility for support; provision of accommodation and basic living needs; delivery of support; development of new national co-ordinating machinery; and proposals for a review procedure. It is by no means exhaustive. Much work remains to be done on the detail of the arrangements.

11. Overview of current asylum support arrangements

11.1 The current support arrangements for asylum seekers have evolved through the changes to asylum seekers' entitlements to welfare benefits in 1996 and, for adults, the intervention of the courts following these changes. Under the changes to welfare benefits, help for asylum seekers was generally limited to those who apply for asylum on arrival at a UK port and only then until the first negative decision on their asylum application.

11.2 Adult asylum seekers without minor dependants not entitled to welfare benefits under the 1996 changes were effectively put at risk of destitution until in October 1996 the High Court ruled that local authorities had a duty under section 21 of the National Assistance Act 1948 to provide care and accommodation to asylum seekers and appellants who were without any other means of support and who could, therefore, be considered to be a category at risk for the purposes of the 1948 Act. This was upheld by the Court of Appeal in February 1997. In Scotland, a similar system of support has been provided by local authorities under section 12 of the Social Work (Scotland) Act 1968. Unaccompanied children, and families with children, have been supported under the Children Act 1989 and the Children (Scotland) Act 1995.

11.3 Because of a loophole in the Social Security Regulations relating to the eligibility of asylum seekers for Housing and Council Tax Benefits, some asylum seekers who should not have done so retained entitlement to these benefits despite the changes introduced in February 1996.

11.4 These arrangements place an inappropriate and increasingly unsustainable burden on local authorities. The Government aims to reduce this burden under the new arrangements.

11.5 A more detailed summary of the existing support arrangements for asylum seekers is at **Annex D**.

12. Overview of proposed asylum support arrangements

12.1 The new support arrangements are intended to provide a safety net for those asylum seekers who would otherwise be destitute. The various aspects of the arrangements will be discussed in more detail below, but in broad terms, it is envisaged that the new system will operate as follows:

- An applicant seeking support will approach the Home Office national asylum support agency either at its headquarters or at another outlet, for example at one of the main ports of entry. The agency, directly or through another organisation working on its behalf, will make suitable enquiries about the applicant's circumstances. The applicant may need to be accommodated locally on a short term basis while this is done.

- If the decision is to offer accommodation, this may be in any part of the country. Where possible, however, placements will take account of the value of linking to existing communities and the support of voluntary and community groups. The applicant must take the offer of accommodation or leave it. If they decide not to take the offer of accommodation, they must fund their own arrangements. Rent and related payments

will go direct from the agency to the landlord, with no cash being given for this purpose to the applicant. Non-housing provision may be provided, even if the offer of accommodation is not made. If support is refused, there will be an opportunity for a rapid independent review of the decision.

- Asylum seekers who have initially been refused support, or who have not sought it initially, for example because they have made arrangements with family and friends, will be able to come back to the agency if their situation changes, for example if family or friends are unable to continue support.

- An applicant taking up support will be given an identity document (possibly developed from the existing Standard Acknowledgment Letter) which in effect will be their passport to support - both accommodation and living needs - during the currency of their application and any appeal. There will be the opportunity to link this document to any reporting requirements imposed by the Immigration Service, so that an applicant who absconded, for example, would have their access to publicly funded support removed.

- A final decision on the asylum claim would also cut off support, following a reasonable period to allow the applicant to make arrangements to leave. Support would not be available for asylum seekers after the end of that period, although consideration will need to be given to the needs of those who genuinely cannot leave. (There may well be a role for the voluntary sector here.)

A summary of the Government's policies on education for children of asylum seekers and on access to New Deal employment and training programmes for asylum seekers granted refugee status or leave to remain is at **Annex E**.

13. Eligibility for support

Definition of "asylum seeker" under the new arrangements

13.1 The new arrangements will apply to asylum seekers and their dependants whose applications or appeals against refusal are awaiting determination, and who would otherwise experience genuine hardship. "Dependants" means those dependants who have accompanied an asylum seeker to the UK and who are present during the application process. It does not include those dependants who may follow on at a later stage once the asylum seeker has either been accepted on some basis or had their claim refused.

13.2 The general policy is that provision will be available only until the end of the appeal process. An applicant whose appeal is refused will be given a period of grace (still to be decided, but 14 days is generally thought to be reasonable) in which to clear effects and leave the country, during which time they will continue to receive support under the scheme. The grace period might reasonably begin from the time the applicant is notified of a decision.

13.3 The case where an asylum seeker has exhausted all appeal rights but is unable to leave the UK for valid reasons (eg. illness) will need to be considered. One option would be to continue support under the scheme until such time as the asylum seeker is eventually returned, but a more attractive alternative might be for support to end after the period of grace, and for the voluntary sector to be responsible for any support thereafter.

Unaccompanied children and adults with minor dependants

13.4 It will be crucial to ensure that the new support arrangements operate with sufficient flexibility to allow for the special needs and welfare of children, and to meet the UK's obligations in international law.

13.5 Unaccompanied children will not be covered by the new arrangements at any stage. Provision will continue to be made under the Children Act 1989 and the Children (Scotland) Act 1995 for unaccompanied children claiming asylum. However, social services departments

will no longer be expected to provide for asylum seeking families except in cases where the special health or welfare needs of the child requires a social services response. Appropriate access to education will continue to be afforded to the children of asylum seekers. It will be important to clarify the relationship between the new arrangements and the provisions of the Children Act 1989 and in particular to avoid the risk of families with children being able to invoke the Children Act provisions as well as, or instead of, the new support arrangements.

13.6 Support (whether under the new arrangements or via the Children Act is yet to be decided) will continue to be given to families who have lost their appeal and are waiting to leave the UK.

Cut-off point for support

13.7 It will be necessary to define clearly where the asylum application process ends in terms of the provision of support. In cases where the applicant has appealed against a refusal of asylum, it is the *dismissal* or *withdrawal* of an appeal, or the grant of refugee status or exceptional leave to remain or to enter, which should determine the cut-off point for support (leaving aside, for the moment, the question of a grace period and the implications of the requirement to allow time in which further appeals can be made (section 33(4) of the Immigration Act 1971)).

13.8 Clearly, cases which have been referred back by an adjudicator or the IAT to the tier below for reconsideration will continue to qualify for support. It is less clear that support should continue to be provided pending determination of a judicial review of a decision of the Immigration Appeal Tribunal (IAT). It could be argued that a judicial review challenge to a final determination is an exceptional thing and that the final determination should be considered as such, and support denied accordingly, unless and until it is disturbed by the courts. However, this runs the risk of being found to be contrary to the UK's international obligations. Further advice will need to be taken on this point. The opportunity for involving the voluntary sector in any provision of support that might be necessary will also be explored.

Fresh applications

13.9 It will also be necessary to consider the case of those who make representations to the Secretary of State following a final refusal or who purport to make a renewed claim while still in the UK. The Secretary of State may or may not accept the claim as a fresh application, and recent case law has confirmed that this decision may not be challenged before the Immigration Appellate Authority. Given that a full appeal process would have been properly completed, it would seem reasonable in this instance to deny re-entry to the support arrangements unless and until it was established that there was a fresh application. More generally, the policy is that support is not intended to be provided to applicants who have previously made an asylum claim in the UK. It may be desirable to reflect this in the primary legislation, for example by inclusion of a statutory presumption against providing support in such cases.

Transfer from support scheme to benefits

13.10 It will be essential to define clearly and unambiguously the point at which those asylum seekers who are awarded refugee status/granted ELR may qualify for benefits (receipt of written notification is an obvious point), and to set in place fast and efficient notification arrangements. It will also be essential to ensure that the asylum seeker is notified as soon as possible after the date of the decision which would give them access to the benefits system. Issues connected with the transfer between the asylum support scheme and benefits support schemes will require careful consideration.

14. Removal of existing obligations

14.1 The intention is that in general, asylum seekers should not qualify for benefits while their asylum application or appeal is being considered, although there are likely to be a number of exceptions to this rule (see below). Existing benefits support obligations to asylum seekers (as defined in DSS legislation) will need to be removed. It will also be necessary to disapply

the provisions in the National Assistance Act 1948 and the parallel Scottish and Northern Irish provisions, and to remove the entitlement of port application asylum seekers to homelessness assistance under the Housing Act 1996. Further advice on the ECHR implications will be required.

14.2 It is not proposed to amend the Children Act for the transitional phase before implementation of new Home Office powers to directly support asylum seekers. But once those powers have been implemented, and following a short transitional period to hand over responsibility, it is envisaged that the Children Act should be amended and implemented so that the power (through section 17(6)) to provide assistance in kind or in exceptional circumstances in cash should be restricted, for asylum seekers, so that such assistance may not be provided on a regular weekly basis if its purpose is to prevent the destitution of the family (covering normal subsistence and housing expenses). In such circumstances the power should be limited to short-term crisis or for the direct support of the welfare of the child only.

14.3 There will need to be provision in the legislation for exceptions, for example:

- those already granted exceptional leave to remain (which gives access to benefits) but who are seeking refugee status; and (possibly)

- others who may be able to qualify for benefit under some status other than asylum seeker, eg. ECSMA signatory nationals; EU Association Agreement cases; and signatory nationals of the Council of Europe Social Charter.

There may also be circumstances in which existing benefits should continue to be paid depending on the stage at which the asylum application is made (eg. to someone who has a work permit but who has subsequently applied for asylum). Further advice is being sought about the UK's obligations in these matters.

14.4 NHS medical care, state education for children, and access to social services for children with relevant health and welfare needs and adults in need of care will continue to be available to asylum seekers and their dependants. Costs incurred in these areas will fall to the relevant departments and will not form part of the asylum support budget.

15. Assessment for support

15.1 There will need to be a framework for deciding who gets support and who does not. The objectives are:

- to ensure that no asylum seeker need suffer destitution; and

- to ensure that assistance is given only to those who have no alternative.

15.2 In framing the legislation it will be important to ensure that the very absence of alternative *statutory* means of support does not have the consequence that all asylum seekers are automatically eligible for both housing and basic living needs under the new system.

15.3 There are likely to be two stages to the assessment. The first, the decision about whether to provide support, could be completed very quickly. The second stage would involve assessment of the type and location of accommodation to be provided, including the identification of special needs. This would probably take more time, but the aim would be to complete the whole process as quickly and efficiently as possible.

15.4 The following issues will need to be considered:

- criteria for assessment that an asylum applicant would be without accommodation and/or would lack the ability to meet essential living needs unless assistance was provided (this should include allowing people who have initially been refused support to

come back to the agency if their situation changes, for example if initial support by family and friends is discontinued during the eligibility period);

- the development of effective mechanisms for making such an assessment;

- provision of short-term, temporary support (possibly on the basis of "reason to believe") pending a decision on eligibility (the issue of who should provide such support is discussed below); and

- withdrawal/suspension of support following non-compliance with requirements. (eg. absconding from accommodation, or failure to notify support agency of changes in circumstances which would disqualify from eligibility for support.) The case of non-complying asylum seekers with families will require special consideration. A second issue is whether non-compliance with support arrangements should be a factor in determining the asylum application.

16. Nature of the support

Support: housing

16.1 The new arrangements envisage that the agency will acquire (either directly or through other agents) an estate of property for accommodating asylum seekers. So far as possible this accommodation will be in areas where there is a low demand for accommodation (and rents are correspondingly lower).

16.2 The accommodation will have to be "appropriate" to the asylum seeker's needs, and the requirements of different classes of applicant (eg. those with and without dependant children) will differ. However, it is expected that one offer will satisfy any obligation owed by the Secretary of State. Applicants will have no choice as to accommodation, and it may be

necessary to move them between different units of accommodation during the course of their stay.

16.3 Where possible, placements will take account of the value of linking to existing communities and the support of voluntary and community groups, but this will need to be balanced against the need to manage stock prudently, to minimise voids, and to cope with unpredictable flows of new arrivals from unexpected quarters.

16.4 Accommodation will be sought from a variety of landlords in different parts of the country (including Wales, Scotland and Northern Ireland). This will include spare accommodation owned by local authorities and registered social landlords (RSLs), and accommodation in the private sector. It will need to be fully furnished and equipped for use by asylum seekers. For some single asylum seekers well-managed hostels and bed and breakfast accommodation may be the most appropriate.

16.5 There will be a general duty on local authorities (and possibly RSLs) to assist in the provision of accommodation insofar as this is compatible with their other responsibilities - in effect, where they have spare stock. As a back up to this general provision there will be a reserve power for the Secretary of State to require the assistance of an authority which has available, but fails to offer, spare accommodation. The precise nature of this power to require assistance has not yet been finalised. There would be safeguards setting out the circumstances under which the power could be used, and requiring proper remuneration to be paid to authorities affected. In Wales and Scotland the arrangements would need to reflect the devolved nature of housing responsibilities; and in Northern Ireland, the different organisational structures which exist for the provision of housing (local authorities have no housing responsibilities: the Northern Ireland Housing Executive is the single, comprehensive regional housing authority).

16.6 The law on security of tenure and eviction will need to be modified to take account of the temporary status of asylum seekers, and the need to ensure speedy repossession, both to free up property for new applicants, and to assist removal from the country.

16.7 Local authorities will need to be assured of proper compensation for the non-housing burdens associated with additional asylum seekers. The extent to which this is already taken into account in standard spending assessments will need to be considered, together with the case for a power to pay specific grant to local authorities (and the voluntary sector) for providing additional services. Provision will also need to be made to compensate authorities for loss of council tax that would otherwise be paid.

Support: basic living needs

16.8 This would cover the full range of basic living needs: food, clothing and other necessities such as toiletries. Provision will also need to be made for the applicant to perform functions in connection with the pursuit of their application or appeal, eg. the means to keep in touch with legal representatives and the asylum process, and to attend any interviews or hearings involving travel. The latter may well involve the making of cash payments. Support for legal matters etc would also need to be available to someone who needed neither accommodation nor food support (eg. because they were being looked after by relatives).

16.9 Cash payments might need to vary depending on the nature of the accommodation provided (eg. hostel or private sector). Consideration will also need to be given to how to meet emergency/exceptional expenses which cannot be met from the regular income, eg funeral expenses or maternity costs.

16.10 An important issue will be how the *level* of support will be determined. In order to provide a secure basis for the level of provision and to prevent continuous judicial review, it may be necessary to make some sort of general linkage with the level of basic income support, and to provide both for that and for variations on it – eg., for a reduced level where the applicant

is living with relations – in regulations. The precise nature of this linkage is yet to be decided, the value of the support would be lower than income support rates, given the temporary nature of support for asylum seekers. It will also be necessary to decide whether there will be any discretion and if so what the extent of that discretion would be. Another issue concerns the needs of particularly vulnerable asylum seekers (eg. those with HIV who need to supplement diets).

17. Role of existing support agencies

17.1 The voluntary sector will clearly play an important role in the new support arrangements. It will be necessary to consider the nature and extent of voluntary sector involvement, in particular for emergency support or exceptional cases. The role of voluntary organisations in providing support at the end of the asylum process will be explored.

17.2 Reception services for asylum seekers arriving in the UK, including temporary accommodation and emergency subsistence payments, are currently provided by a number of organisations in the voluntary sector (see Annex D). It will be necessary to review the operation of this aspect of the asylum process under the new scheme, and in particular the role of the new agency in the provision of temporary accommodation, etc, pending assessment of eligibility for support but it is possible that it might continued to be provided by the voluntary sector, rather than by the new statutory scheme. The scope for EU support for reception of asylum seekers will also be considered.

17.3 In terms of the legislation which will be required, there will need to be a broad power for the Secretary of State to pay grants to voluntary organisations for any measure to support asylum seekers that he thinks fit. This would allow provision to be made to enable voluntary organisations to give support in the event of an emergency. More routinely, this money would allow grants to be paid to ethnic voluntary organisations providing counselling and support to their own nationals.

18. Delivery of the support

18.1 The Government has proposed that support for asylum seekers should no longer generally by founded on cash payments, in order to remove the incentive to economic migration and reduce abuse of the system. This leaves two main options:

- vouchers/electronic systems; or
- a mixture of cash and vouchers/electronic systems.

In some cases, however, an accommodation package purchased by the national body (see below) might cover food and other provision as well, thus reducing the cash or voucher payment.

18.2 Although the objective will be to minimise the use of cash as far as possible, it is likely that a mix of vouchers and (limited) cash payments will be the most practical way to cover provision of certain items. Although it is envisaged that cash may need to be provided for certain basic living items, it would also be advisable not to rule out the possibility of making cash payments in respect of accommodation: if all other arrangements fail it may be necessary, in limited circumstances, to fall back on this. In order to provide maximum flexibility, the legislation will need to enable provision to be made in cash, in kind, or in voucher form, or in any combination of these.

18.3 The project team will investigate the feasibility of a voucher or other non-cash scheme, including the longer-term opportunities for utilising new "smartcard" technology. (It is of course unlikely that the introduction of such technology would coincide with the introduction of the new arrangements, but there is clearly potential for the use of such systems in due course.) . Issues will include:

- production of vouchers;

- distribution of vouchers to applicants. Delivery will need to be local, using outlets such as retailers, the Post Office and (possibly) landlords as the agents;

- redemption process (including implications for giving "change"); and

- involvement of retailers in the scheme.

19. Development of new national machinery to co-ordinate provision of support

19.1 The administration and co-ordination of the new support arrangements for asylum seekers will be undertaken by a new national body. The body will be responsible for the overall planning and co-ordination of provision, including:

- assessment of asylum seekers to determine their eligibility for support (arrangements will also need to be made for the assessment, at the point of release, of those asylum seekers who are released into the community after a period of detention);

- decision on whether to offer provision;

- provision of eligibility certification (eg photo/identity/smart card);

- provision and organisation of housing support;

- provision of other support (cash/vouchers), including travel arrangements - to housing location and subsequently to keep in touch with asylum application process; and

- ending of provision at the outcome of asylum application (whether refugee or ELR status, or application refused).

The new body will also operate the budget and the machinery for administering it (see Part II above).

19.2 The way in which the new body will work in practice will depend in large part upon the extent of its purchaser/provider role. A number of the functions described above - for example, assessment of asylum seekers - might be sub-contracted. Similarly, provision of housing and other support might be made directly by the agency, or through contracts with local agencies. This is an important issue which will need to be resolved in the initial stages of the project. The main options for purchaser/provider models are described at **Annex F**.

19.3 The extent of involvement of the new agency in the provision of immediate short-term support pending eligibility assessment will also need to be considered. These services (which include temporary accommodation and emergency subsistence payments) are currently provided by a number of voluntary sector organisations (see Annex D), and it may be that this arrangement should continue in some form or other.

19.4 The body will be constituted as a Next Steps agency of the Home Office (or part of the Home Office Immigration and Nationality Directorate) rather than as an executive NDPB, given the extent to which it will be tied in to broader immigration and asylum policy objectives and the position of the funding it will administer as the major part of the new Home Office asylum budget. There will need to be the capacity to switch funds at relatively short notice between the support machinery and the processing of applications. Whatever the body's precise relationship with the Home Office, it will be necessary to consider the role of local authorities and NGOs in its operation.

19.5 The responsibilities of the new body will extend throughout the UK, although the implications of this for Scotland, particularly the issue of how to give the Home Secretary

powers to make payments to local authorities in Scotland, will need to be considered. The following issues will also need to be considered in the course of setting up the agency:

- Shape and organisation of the new body. This will depend to a large extent on the shape of the purchaser/provider split, but one possible model is that of a small screening and co-ordinating national body, with tiers below of regional co-ordinators and local providers.

- IT requirements (this is potentially a major issue).

- Location of the new body.

- Nature of links with other organisations (IND, local authorities, OGDs and agencies, CAB, Refugee groups, "provider groups", etc). One possibility is the establishment of an advisory body involving various stakeholders.

20. Review of decision not to provide assistance

20.1 The aim is to create a speedy, uncomplicated procedure for independent review of refusals of accommodation and/or assistance with living needs. A key objective will be to ensure that the review has sufficient status and scope to prevent excessive incidence of judicial review, but without becoming over-complicated and unwieldy. The project team will consult with colleagues from other departments which operate review or appeal processes in the welfare/benefit field in developing the new procedure.

Scope of review

20.2 The precise scope of the review is yet to be determined. It will certainly cover the question of whether or not assistance should be given (in the case of accommodation and/or

support). It may also need to extend to review of the "appropriateness" of the accommodation which has been offered, in order to avoid challenges by judicial review. For the same reason, it may also be necessary to enable the review to look at whether the level of support is correct for the particular case (although not the question of whether it is sufficient to meet needs).

20.3 There will inevitably be some scope for judicial review on questions of mistake or interpretation, but as has been emphasised above, a key aim will be to restrict judicial review challenges. The nature of the review suggests that many cases are likely to turn on their facts rather than to any great degree on points of law, so that in practice, recourse to judicial review should be limited.

Review mechanism

20.4 Considerably more work is required on the detail of the review system, but thinking thus far suggests that it might have the following features:

- it should be a single tier review (there does not appear to be a need for an avenue of appeal from the review panel to any new tribunal or to the Court of Appeal);

- applicants should be allowed a limited period (say, 5 working days) in which to request a review;

- the grounds for requesting a review should be either that the national body's decision to refuse support was made without being in possession of all the facts; or a mistake was made in the applicant's case; or (possibly) that the award was inadequate;

- an independent review panel composed of a legally qualified Chair and (possibly) a local authority appointee and a representative from the voluntary sector should be established.

- the panel should sit regularly and should be required to issue its decisions as soon as practicable.

It will also be necessary to consider conditions of appointment and remuneration of the panel members, and to devise rules of procedure.

20.5 On the basis that the support, like most social security benefits, could be called a civil right for the purposes of Article 6 of the ECHR, it will be necessary to ensure that the review procedure complies with this Article.

21. Other issues

21.1 The following issues will also need to be considered in the course of the work to develop the new support arrangements:

Linkages with enforcement

21.2 Depending on the final form of the scheme adopted it should be possible for the new arrangements to make a contribution to enforcement potential by linking information about an asylum seeker's address to procedures such as reporting requirements operated by the police and Immigration Service, although the data protection implications of any proposed exchanges of information will have to be carefully explored. The project team will also explore with the Immigration Service the opportunities for linkages with wider enforcement issues, such as IS plans for reporting centres for asylum seekers in respect of absconder tracing. It will also be important to establish effective liaison mechanisms between the new agency and other relevant agencies to ensure smooth transition of responsibilities once an immigration officer has decided to grant temporary admission.

Monitoring

21.3 A sophisticated monitoring system will be required. Amongst other things, it will be necessary to monitor the flow of people in and out of accommodation, to ensure that accommodation is not left empty for significant periods. Arrangements for audit of the system will need to be considered.

Fraud prevention

21.4 It will clearly be important to minimise the incidence of fraudulent abuse of the provision on offer, for example illicit sub-letting of accommodation, and the project team will draw upon the full range of experience of those who currently administer housing and welfare benefit provision. The integrity of the identity document will be an important factor in reducing abuse.

Information/data sharing

21.5 Information/data sharing requirements might include the following:

- information on levels of take-up and unit costs;
- periodic surveys of asylum seeker needs for support;
- information on the geography of applicant nationalities in terms of where accommodation should be located (there is currently no official statistical source able to meet this requirement);
- devising (in conjunction with others) suitable targets and how these would be reflected in any sub-contracting of the provision for support;
- establishing and implementing management information for the national agency and ensuring adequate links with other IT systems for MIS purposes; and

- information sharing with local authorities, DSS and other bodies.

21.6 In drawing up the requirement it will be important to ensure compliance with the Data Protection Act, and to consider whether any of the information required might be held to engage Article 8 of the ECHR.

ANNEX A

SUMMARY OF LEGISLATIVE CHANGES REQUIRED

Provision required	
1.	**Power to provide or make arrangements for the provision of support**
●	Eligibility for support
●	Definition of "asylum seeker" for purposes of new arrangements
●	Nature of support: Accommodation Essential living expenses
●	Nature of discretion re living expenses
2.	**Powers for Secretary of State to provide support**
●	Directly by SofS and/or through arrangements made by him with other persons (eg local authorities, housing associations) in exchange for payment.
3.	**Principles on which SofS may exercise powers in Act**
●	Level of support (linked to income support)
●	SofS can have regard to support it is reasonable for asylum seeker to seek elsewhere
●	Support principally in kind with limited cash benefit
●	Asylum seeker to have no choice over accommodation
●	Link to reporting/non-compliance
4.	**Procedure**
●	By claim in prescribed manner to prescribed person with prescribed supporting documents
●	Power re procedural regulations
5.	**Right of review of decision not to support**
6.	**Transitional**
●	Those in receipt of benefit at time of commencement of new arrangements to

Provision required	
	continue to be entitled (implications for Scotland)
7.	**Powers to investigate**
●	Information from providing bodies
8.	**Provision of information/information sharing**
●	To and from the main benefit system, local authorities and possibly IR
9.	**Offences**
●	Deception
●	Breach of regulations
10.	**Recovery of overpayments**
11.	**Financial provisions**
●	From consolidated fund
●	Overpayments returned
●	Power to reimburse providers
●	Power to give indemnity to providers
●	Wider power to fund providers to allow for their administrative costs
12.	**Local authority provisions**
●	Powers to provide accommodation to asylum seekers
●	Powers to enter into arrangements for asylum seeker support with SofS?
●	SofS's ultimate power to direct such provision
●	Council tax
(Implications for Scotland)	
13.	**"Corporate powers"**
●	If HO agency/part of IND, SofS must be deemed to be corporation sole; have power to acquire land/leases; and power to enter into contracts and acquire

Provision required	
	property in connection with arrangements for support of "asylum seekers"
14.	**Severance of "asylum seekers" from main benefit legislation**
●	Replace s 11 96 Act with specific exclusion
●	Backdated payments for those recognised as refugees
●	Asylum seekers with another status may benefit by virtue of that other status (eg. ELR/ECSMA?)
●	Amendment to NA Act 1948, Order made under section 12 of Social Work (Scotland) Act 1968 and the Northern Ireland provisions
●	Amendment to the Children Act 1989 and the Children (Scotland) Act 1995
●	Repeal existing homelessness provision re asylum seekers/exclude from Housing Act
15.	**Landlord and tenant provisions re accommodation provided under scheme**

ANNEX B

ASYLUM SEEKERS SUPPORT PROJECT: HIGH LEVEL PLAN

Phase 1: Policy Resolution

September 1998

1. Production of high level overview report for the Chief Secretary.

October 1998

2. Finalising instructions for legislative requirements associated with the support arrangements.

October - December 1998

3. Resolution of major policy issues including:

   (a) nature of agency (size, purchaser/provider split etc)

   (b) nature of housing and other support arrangements

   (c) general overview of operation of system

Phase 2: System development

January - June 1999

4. Participate in work associated with parliamentary scrutiny of the Immigration and Asylum Bill.

5. Develop detailed arrangements associated with:

   (a) agency structure (accommodation, finance, staffing, linkages)

   (b) housing arrangements - potential contractors extent of packages

   (c) other support arrangements (voucher schemes, use of cash).

July - December 1999

6. Detailed planning for agency operation (construction of framework document, business and corporate plans).

January - March 2000

7. Appoint senior staff. Recruit general staffing. Ensure accommodation is available. Undertake appropriate training. Prepare for operational start 1 April.

COST OF THE NEW ARRA[illegible]

Summary information from the Asylum Costs Model
Option 1 (Cautious) White Paper (baseline) arrangements with cautious processing assumptions - Existing support arrangements, years 1-2 with currently projected growth rates in applications
New resources from year 2 for processing backlog cases and 8-12,000 removals per year and also to speed up initial decisions/appeals.
New support arrangements introduced from April 2000
Including costs for the initial backlog in applications, appeals and removals

	1998/99	1999/2000	2000/2001	2001/2002	2002/2003
Asylum Applications (Incl. backlog)	89,600	42,100	30,600	35,400	40,100
Asylum Decisions	39,500	59,000	58,300	34,600	39,300
Asylum backlog (as at end March)	50,000	33,100	5,400	6,200	7,000
IAA Intake	19,300	27,500	32,200	20,600	23,400
IAA output	27,800	28,500	36,900	19,700	22,500
IAA backlog (as at end of March)	12,200	11,000	6,300	7,200	8,100
Removals	6,000	8,000	10,600	12,000	12,000
Removals backlog (as at end of March)	62,200	82,100	109,700	117,800	127,800
Costs to Other Government Departments					
Benefits (DSS)	£232,000,000	£130,000,000	£10,000,000	£0	£0
Support (Childrens Act)	£72,000,000	£83,000,000	£88,000,000	£84,000,000	£76,000,000
Childrens Act from removals backlog	£47,000,000	£60,000,000	£61,000,000	£64,000,000	£60,000,000
Support (National Assistance)	£89,000,000	£109,000,000	£129,000,000	£116,000,000	£104,000,000
Voucher Payments	£0	£0	£8,000,000	£11,000,000	£13,000,000
Cash	£0	£0	£8,000,000	£9,000,000	£10,000,000
Health costs	£87,000,000	£66,000,000	£61,000,000	£66,000,000	£71,000,000
Education (DfEE)	£95,000,000	£83,000,000	£72,000,000	£73,000,000	£77,000,000
Total asylum support costs	£549,000,000	£471,000,000	£373,000,000	£356,000,000	£350,000,000
HO Support costs	£387,000,000	£321,000,000	£243,000,000	£219,000,000	£204,000,000
Process costs					
Home Office (initial decision and appeal)	£21,000,000	£29,000,000	£31,000,000	£18,000,000	£20,000,000
IAA (appeal)	£11,000,000	£11,000,000	£15,000,000	£8,000,000	£9,000,000
Home Office (removal)	£39,000,000	£50,000,000	£65,000,000	£70,000,000	£74,000,000
Total Process cost	£72,000,000	£90,000,000	£110,000,000	£95,000,000	£104,000,000
Total costs	£621,000,000	£613,000,000	£483,000,000	£451,000,000	£454,000,000

Summary information from the Asylum Costs Model
Option 2 (Circulars) White Paper (benefits) arrangements with cautious processing assumptions - Existing support arrangements, years 1-2 with 25% higher than currently projected growth rates in applications
New resource from year 2 for processing backlog cases and 8-12,000 removals per year and also to speed up initial decisions/appeals.
New support arrangements introduced from April 2000
Including costs for the initial backlog in applications, appeals and removals

	1998/99	1999/2000	2000/2001	2001/2002	2002/2003
Asylum Applications (incl. backlog)	69,100	52,600	40,300	47,800	55,400
Asylum Decisions	39,500	59,000	65,000	60,000	54,100
Asylum backlog (as at end March)	59,600	53,200	28,400	16,300	17,500
IAA intake	19,300	27,500	36,200	35,700	32,200
IAA output	28,100	28,400	33,400	36,900	33,400
IAA backlog (as at end of March)	11,900	10,800	13,500	12,400	11,200
Removals	6,000	8,000	10,000	12,000	12,000
Removals backlog (as at end of March)	62,400	82,400	105,900	132,400	152,500
Costs to Other Government Departments					
Benefits (DSS)	£250,000,000	£186,000,000	£74,000,000	£1,000,000	£0
Support (Childrens Act)	£72,000,000	£83,000,000	£96,000,000	£96,000,000	£90,000,000
Childrens Act from removals backlog	£47,000,000	£60,000,000	£58,000,000	£61,000,000	£61,000,000
Support (National Assistance)	£85,000,000	£115,000,000	£146,000,000	£140,000,000	£126,000,000
Voucher Payments	£0	£0	£11,000,000	£15,000,000	£17,000,000
Cash	£0	£0	£9,000,000	£11,000,000	£13,000,000
Health costs	£78,000,000	£73,000,000	£74,000,000	£75,000,000	£69,000,000
Education (DfEE)	£97,600,000	£90,000,000	£84,000,000	£85,000,000	£92,000,000
Total asylum support costs	£574,000,000	£549,000,000	£490,000,000	£425,000,000	£424,000,000
HO Support costs	£407,000,000	£324,000,000	£336,000,000	£264,000,000	£247,000,000
Process costs					
Home Office (initial decision and appeal)	£21,000,000	£29,000,000	£39,000,000	£31,000,000	£28,000,000
IAA (appeal)	£11,000,000	£11,000,000	£13,000,000	£15,000,000	£13,000,000
Home Office (removal)	£39,000,000	£50,000,000	£65,000,000	£70,000,000	£74,000,000
Total Process cost	£72,000,000	£90,000,000	£117,000,000	£116,000,000	£115,000,000
Total costs	£646,000,000	£702,000,000	£691,000,000	£561,000,000	£546,000,000

FROM THE PRIVATE SECRETARY

HOUSE OF LORDS,
LONDON SW1A 0PW

Seamus Gillen
PS/Deputy Prime Minister &
Secretary of State for the Environment,
Transport and the Regions
6th Floor
Eland House
Bressenden Place
London SW1E 5DU

1 October 1998

Dear Seamus,

QUESTION TIME/ ANY QUESTION ETC

A couple of recent requests for briefing for Ministers appearing on Question Time and Any Questions have omitted to include fax numbers to which briefing can be sent. This is just a gentle reminder to colleagues than when briefing is requested, the inclusion of a fax number is very helpful.

I am copying this request to Private Secretaries to other Cabinet Ministers

PATRICK SOUTH

loctps3.cc

ANNEX D

SUMMARY OF EXISTING SUPPORT ARRANGEMENTS FOR ASYLUM SEEKERS

Social welfare benefits

Under the Social Security (Persons From Abroad) Miscellaneous Amendments Regulations 1996, which came into force on 5 February 1996, and which were confirmed by the Asylum and Immigration Act 1996, a person is no longer entitled to receive income support, housing benefit, council tax benefit or jobseeker's allowance if, from 5 February 1996, he/she applies for asylum after arrival in the United Kingdom.

However, a person who claims asylum at a United Kingdom port on arrival is entitled to receive those benefits until such time as an initial decision is taken on his/her claim for asylum. All persons in receipt of benefits immediately prior to 5 February 1996 continue to receive those benefits until an initial decision is taken on their asylum application or, if they had an appeal outstanding, until the next negative decision.

A person who is granted refugee status can claim an urgent cases payment of income support retrospectively for the period they were denied benefit as an asylum seeker. The claim must be made within 28 days of being notified of their refugee status. The urgent cases payment of Income Support can be awarded for the period from the date of the claim of asylum (in-country case), or the first refusal of the asylum claim if the asylum claim was made on arrival to the date refugee status was recorded. No payment can be made for any period prior to 5 February 1996.

Persons granted asylum or exceptional leave to enter or remain are eligible for the full range of benefits as a UK citizen.

Homelessness assistance

Under the Homelessness Regulations 1996, made under powers contained in the Housing Act 1996, the same categories of asylum seeker are eligible for assistance under the Housing Act 1996 as are eligible for social welfare benefits under the Social Security Regulations. In particular, this has the effect of aligning entitlement to assistance under the Housing Act 1996 with entitlement to housing benefit and council tax benefit.

Upheaval declaration

Under powers contained in the Social Security Regulations and the Homelessness Regulations, a person becomes an asylum seeker for the purpose of these regulations, that is they become entitled to receive social welfare benefits and to assistance under the Housing Act 1996, if, while they are present in the United Kingdom, the Home Secretary makes a declaration to the effect that the country of which the person is a national is subject to such a fundamental change

in circumstances that he would not normally order the return of the person to that country. The claim for asylum must be lodged within three months of the date of the declaration.

Child benefit and other allowances

Under the Child Benefit Regulations, made under section 10 of the Asylum and Immigration Act 1996, and which came into force on 7 October 1996, only those persons from abroad who are settled, or who have been recognised as refugees or who have exceptional leave to remain, are entitled to receive child benefit. However, anyone in receipt of child benefit prior to 7 October 1996 will continue to receive the benefit until such time as entitlement to it is reviewed in the normal way. The 1996 regulations also introduced an immigration test into the eligibility for entitlement to the following: Disability Living Allowance, Invalid Care Allowance, Attendance Allowance, Severe Disability Allowance, Disability Working allowance and Family Credit.

The Children Act 1989

Under the Children Act 1989, local authorities have a duty to provide services for children in need. This includes under section 17 a general duty to provide services to safeguard and promote welfare and under section 18 a duty to provide day care facilities. Furthermore, any service provided by an authority in the exercise of functions conferred on them by section 17 may be provided for the family of a particular child in need, or for any member of his family, if it is provided with a view to safeguarding or promoting the child's welfare, irrespective of the immigration status of the child.

The National Assistance Act 1948

In August 1996, four asylum seekers, whose applications had been refused and who, as a consequence, had had their entitlement to benefits withdrawn, challenged the decision of the respective local authorities where they were resident to refuse to provide them with care and accommodation under section 21 of the National Assistance 1948. Section 21 provides that:

> "(1) It shall be the duty of every local authority, subject to and in accordance with the provisions of this part of this Act, to provide -
>
> > (a) residential accommodation for persons who by reasons of age, infirmity or any other circumstances are in need of care and attention which is not otherwise available to them..."

In October 1996 the High Court found in favour of the applicants and this was upheld by the Appeal Court on 17 February 1997. Leave to appeal to the House of Lords has been granted, although the hearing, which was scheduled for 8/9 February 1998, was adjourned. Westminster City Council have, however, applied for the hearing to be re-scheduled and one has been set for 16 November.

A High Court judgement in July 1997 confirmed the DoH view that assistance under the 1948 Act must be provided in kind by local authorities and not by way of cash payments. This judgement was upheld in the Court of Appeal in July of this year.

Housing Benefit loophole

A loophole has occurred in the Housing Benefit and Council Tax Benefit regulations following the failure to make similar amendments to those made to the Income Support regulations in 1996 which removed access to the benefit system for certain categories of persons from abroad. As a result, a number of people retain access to Housing Benefit and Council Tax Benefit although they are no longer entitled to Income Support or Jobseeker's Allowance.

A Person From Abroad is defined in Regulation 7A of the Housing Benefit (General) Regulations, but the definition does not cover a person who has been granted temporary admission, nor some other categories of persons for whom access to Income Support and Jobseeker's Allowance has been withdrawn. This means that these people remain entitled to Housing Benefit and Council Tax Benefit although it was intended that they be excluded. These include:

- a person on temporary admission;
- a person subject to deportation or removal as an illegal entrant where action has been deferred in writing (in effect anyone who has made representations against removal and who is not detained);
- a person allowed to remain in the UK pending an appeal, or whilst awaiting the outcome of an appeal, under the Immigration Act 1971; and
- a person who has no right of appeal under the Immigration Act 1971, but who is allowed to remain in the UK whilst the Secretary of State considers representations made by, or on behalf of, the person.

Reception and settlement services

The Home Office currently spends about £1.5 million a year on the following organisations to provide reception services for asylum seekers arriving in the UK:

(A) *Refugee Arrivals Project*: provides reception services at London's airports for asylum seekers who have no funds, no contacts in the UK and (usually) do not speak English.

(B) *Migrant Helpline*: provides reception services for asylum seekers arriving at the Channel Ports.

(C) *Children's Panel*: provides specific services for unaccompanied refugee children.

The services provided by these organisations include temporary accommodation and emergency subsistence payments. Although these organisations are in receipt of funds from other sources they are, in practice, wholly dependent on the Home Office for their funding.

ANNEX E

SUMMARY OF ONGOING EDUCATION, EMPLOYMENT AND TRAINING PROVISION

Education

Local education authorities (LEAs) have a duty under section 13 of the Education Act 1996 to secure that efficient primary, secondary and further education is available to meet the needs of the population in their area. Section 14 of the Act places LEAs under a duty to secure that education is available for all children in their area of compulsory school age (5-16), appropriate to their age, abilities and aptitudes. This duty applies irrespective of a child's immigration status or rights of residence in a particular location and would thus include children of asylum seekers.

Additional support may be provided to LEAs for children of displaced persons with additional educational needs, eg. for those whose first language is not English, through a specific grant programme funded under section 11 of the Local Government Act 1966. Support is also available for the education of displaced persons under section 488 of the Education Act 1996, which is available to those children of displaced persons "for the time being resident in the camp or other accommodation or establishment provided for refugees or for displaced or similar persons".

Employment and training

The Government's employment and training programmes are open to asylum seekers and refugees with limited, exceptional or indefinite leave to remain in the UK, provided they have been granted permission to work by the Home Office and fulfil the eligibility criteria which apply to all UK residents.

The New Deal programmes are part of the wider Welfare to Work strategy and receipt of the Jobseeker's Allowance (JSA) counts towards eligibility for the programmes. To be eligible for JSA, asylum seekers/refugees must fulfil the normal labour market declaration that they are available for and actively seeking work.

Basic eligibility for the New Deal for young people is that applicants are 18-24 years old and have spent six months both unemployed and claiming JSA. Refugees/asylum seekers whose first language is not English may have early access to the programmes.

Basic eligibility for the New Deal for people aged 25 plus is two years unemployed but people who are considered to be at a disadvantage in the labour market may enter after one year of claiming JSA. One disadvantage is the absence of English as a first language. Asylum seekers may also count periods in receipt of income towards the two year qualifying period for the education and training measures of the New Deal 25 plus

Asylum seekers/refugees may enter Training and Enterprise Council (TEC) programmes for adults and young people. Those with a severe need for English for speakers of other languages (ESOL) tuition may have early entry to programmes.

ANNEX F

NATIONAL AGENCY: EXTENT OF PURCHASER/PROVIDER SPLIT

The determination of the extent of the purchaser/provider split is an important issue which will need to be resolved over the next few months. Extreme and mid-point options are:

Option A: Wholly contracted out

The HO contracts out to one or more suppliers to provide a fully comprehensive scheme, based on (for example) a set price per asylum seeker per week.

Option B: Wholly in-house

The HO sets up an agency which acquires and provides all the services (housing, support, local payment centres etc) as part of its own operation.

Option C: "Mixed approach": agency co-ordination with service elements bought in

The central agency might provide some services directly, and co-ordinate the provision of others by other agencies. For example, it might have agreements with:

- IND asylum section - to provide a photo/identity card to the asylum seeker at the outset;
- Local authorities/ housing associations/voluntary organisations to provide accommodation packages, although accommodation could also be purchased directly by the national agency; and
- Post Office, banks etc, to provide vouchers/cash.

The new arrangements must be flexible, workable, and sensitive to local conditions. Preliminary thinking suggests that Option C seems most likely to fit these criteria. The other advantages of a mixed approach are the opportunities it provides to utilise existing expertise; apply competitive tendering processes; an enhanced ability to meet different needs; and flexibility within a framework of national standards.

Top AL
cc: PV
Pons

RESTRICTED - POLICY

Prime Minister

SLOVAK ASYLUM SEEKERS: VISA REGIME

I was very grateful for your support, and that of HS colleagues, for the proposal in my minute of 2 September concerning the imposition of a visa regime on Slovak nationals. It was left that whilst preparatory action would begin straight away we would not take any action until after the Slovak elections.

2 Now that the elections have taken place, with I understand a broadly favourable outcome, I believe that it is imperative that we move as quickly as possible to impose a visa regime. There is no sign that the highly organised influx of Slovak asylum seekers will cease without this measure. I have therefore agreed with the Foreign Secretary that a visa regime, together with a simultaneous Direct Airside Transit Visa regime, will be introduced for Slovak nationals with effect from 8 October.

3 I shall be laying the necessary Order and Statement of Change to the Immigration Rules on 7 October.

4 I am sending a copy of this minute to the Deputy Prime Minister, the Foreign Secretary, members of HS and to Sir Richard Wilson and Sir Stephen Wall.

3-1 October 1998

RESTRICTED - POLICY

Top: HA/PS
cc PU
Press

Foreign &
Commonwealth
Office

London SW1A 2AH

1 October 1998

1. JEH to note
2. file.
AR

Dear Ken,

Reform of Extradition Law

Replies or nil returns were requested by 2 October on the Home Secretary's minute to the Prime Minister of 19 September seeking agreement to publish a consultation paper concerning extradition law. We have also seen the Prime Minister's response (Angus Lapsley's letter of 24 September to you). We welcome publication of the interdepartmental working group's report.

The complexity and scope for delay or obstruction inherent in our present extradition arrangements are undeniably an irritant in our relations with other key partners, including the United States and the EU. The report's examination of a fast-track procedure with countries whose legal systems are trustworthy, within the EU, the Commonwealth and elsewhere (eg the US) is welcome.

Given the importance we attach to EU co-operation on crime and drugs, we want to be in a position to ratify the two EU extradition conventions sooner rather than later. We certainly want to avoid being among the last to do so. We therefore fully support pressing on with the consultation exercise, while recognising that the nature of the implementing legislation is primarily a matter for the Home Office.

There is one presentational issue: in streamlining our procedures, we should not lay ourselves open to the charge that our EU obligations are forcing us to do away with traditional safeguards afforded to persons facing extradition from the United Kingdom. We hope that the maintenance of proper legal safeguards can be stressed when the reforms are being presented.

I am copying this letter to Angus Lapsley, the Private Secretaries to the members of HS, Liz Lloyd (No 10 Policy Unit) and Sebastian Wood (Cabinet Office).

Yours ever,
Tim

(Tim Barrow)
Private Secretary

Ken Sutton Esq
Home Office

SKP 2/10/98

THE SCOTTISH OFFICE
DOVER HOUSE
WHITEHALL
LONDON SW1A 2AU

Top AL
cc CH/E
PJ

The Rt Hon Stephen Byers MP
Chief Secretary to the Treasury
HM Treasury
Parliament Street
LONDON
SW1P 3AG

30 September 1998

Dear Stephen,

ASYLUM AND IMMIGRATION: RESERVE CLAIM

I am extremely disappointed with your reply of 22 September to Henry McLeish. It will cause both practical and presentational difficulties if Scotland is excluded from access to the Reserve when access has been agreed to cover the very same costs which are incurred by local authorities in England.

My aim has always been to ensure that externally we maintain a consistent policy line on the system to support asylum seekers across the UK. This has involved detailed negotiations with the Department of Health and with Scottish local authorities, so that there appears to be a seamless system in place both north and south of the Border. This is important both now and for the future. To date, we have succeeded. This achievement is put in danger because of this dispute about funding. I view the present arrangements in Scotland as being very much transitional ones until it is possible to resolve the problem at the UK level. I do not consider it fair to be penalised as a result. It is also important to recognise that the costs in Scotland will remain an issue not just for this financial year but for next year and for the future system unless the UK dimension is recognised.

At the outset, the Government gave a commitment that Scottish local authorities would be treated on an equal basis to their counterparts in England. Any other decision would be quite unfair to Scotland. I do not think it is unreasonable to expect parity of treatment to extend to providing funds on the same basis as agreed in England. The Scottish Block accrued no savings as a result of the changes to the benefit rules in relation to asylum seekers. Since we received no benefit then, I can see no justification for singling out Scotland for harsher treatment now. The Block itself is under severe pressure in the current year, having been restricted to the overall level already agreed for 1998-99 by the previous administration. The Block is facing additional demands, including costs arising from the Scottish Parliament elections and the attendant publicity costs (currently estimated at some £7.6m, but expected

to rise). Other significant expenditure is expected from providing interim accommodation for the new Parliament, and indeed costs for staff to service the new Parliament, all of which will arise in the current year.

There is a point of principle involved here to ensure parity of treatment. I do not consider this to have been achieved if the £1.5 million estimated cost is met at the expense of other Scottish programmes. I therefore cannot accept the argument that access should be denied to Scotland.

I must ask you to reconsider this decision and to agree access to the Reserve to cover the additional £1.5 million costs which will be incurred in Scotland. I hope this matter can be resolved quickly so that it need not delay the legislative process.

I am copying this letter to the Prime Minister, Robin Cook, members of HS, Hilary Armstrong and Sir Richard Wilson.

Yours sincerely,

Donald.

DONALD DEWAR

jab02109

Top AL
cc: JH
PV
RR

DEPARTMENT OF SOCIAL SECURITY

Richmond House, 79 Whitehall, London SW1A 2NS
Telephone 0171 - 238 0800

From the Secretary of State for Social Security

Chief Secretary to the Treasury
HM Treasury
Parliament Street
London
SW1P 3AG

Signed?

24 September 1998

Dear Andrew

Asylum seekers and the loophole in the Housing and Council Tax Benefit regulations

Further to my letter of 8 September. I have seen all the responses to my letter of 30 July in which I set out the need to resolve the issue of the loophole in the Housing Benefit and Council Tax Benefit regulations for asylum seekers. I agree with the Prime Minister and the Home Secretary that we need to establish the net implications for the Government before we take the final decision on this issue.

However I need to resolve this issue quickly if agreement is reached to close the loophole. If I am to introduce legislation to close the loophole from April 1999 I am obliged to consult on changes to the Housing Benefit and Council Tax Regulations with the Social Security Advisory Committee and Local Authority Associations, and this could take a number of months given its potential controversy. I suggest that the best approach is for officials to meet as a matter of urgency to discuss this matter and provide Ministers with a statement of the net financial implications.

We will then be in a position to decide the way forward, and meet if necessary.

Unless I receive objections to this approach from colleagues by 1 October I shall ask my officials to take this forward as outlined above.

E R.

A copy of this goes to the Prime Minister, HS colleagues, Sir Richard Wilson.

Yours

AD

ALISTAIR DARLING

Top AL
cc JH
PU
RR

DEPARTMENT OF HEALTH

Richmond House 79 Whitehall London SW1A 2NS Telephone 0171 210 3000
From the Secretary of State for Health

The Rt Hon Stephen Byers MP
Chief Secretary
Treasury Chambers
Parliament Street
London
SW1P 3AG

24 September 1998

Dear Steve

HOUSING AND COUNCIL TAX BENEFIT ASYLUM SEEKERS

I have seen a copy of Jack Straw's letter to you of 14 September. I have also seen a copy of John Prescott's letter of 8 September.

I would agree with Jack's suggestion that perhaps a meeting of Ministers to decide the best course of action would seem sensible. I have difficulty in quantifying the extent to which the savings of £30m a year in the Social Security Budget would be directly transferred to claims on our special grants from local authorities. We do not have sufficient data on the numbers of asylum seekers in local authority support that currently qualify for these benefits. How this would have a knock-on effect on demand for our grants would also depend on how this affected expenditure by local authorities over their threshold limit for the persons from abroad with families grant. But as John has pointed out more to the point is the increased cost to local authorities for which they would not be reimbursed which would be a very difficult position to sustain.

I am copying this letter to the Prime Minister, Robin Cook, HS colleagues, Hilary Armstrong and Sir Richard Wilson.

Yours ever

FRANK DOBSON

ps2309.01

RR

FILE

RESTRICTED - POLICY

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

24 September 1998

Dear Ken,

REFORM OF EXTRADITION LAW

The Prime Minister was grateful for the Home Secretary's minute of 19 September about reform of extradition law.

As you know, the Prime Minister has been cautious about committing the Government to a full scale review of the law in this area. Having seen this report it remains his view that the scale of the problems in this area do not make it a high priority for legislation given the other pressures on the Government's legislative programme. That said, there clearly are some issues that need to be addressed and, subject to the views of others – notably the Foreign Secretary and the Secretary of State for Northern Ireland - he would be content for the Home Secretary to publish the report. The timing of publication is a matter for the Home Secretary to decide, but the Prime Minister would be grateful if your press office would liase closely with ours when we get that to that point.

In the meantime, I am copying this letter to John Grant (FCO), the private secretaries to the members of HS, Liz Lloyd (Policy Unit) and Sebastian Wood (Cabinet Office).

Yours,

Angus

ANGUS LAPSLEY

Ken Sutton Esq,
The Home Office.

RESTRICTED - POLICY

29 SEP 1998

23 September 1998

Foreign &
Commonwealth
Office

London SW1A 2AH

From the Parliamentary Under Secretary of State

All Members of Parliament
House of Commons
London
SW1A OAA

1. Ros
2. file
PRB
1/10

Dear Colleague,

As Parliament reassembles and with the busy summer season at entry clearance posts almost behind us, I thought it would be a good time to bring you all up to date on recent developments in this important area of the FCO's work.

When I wrote to you all in May I mentioned the arrangements we were making at our overseas posts to cope with the summer rush of visa applications. I asked for your help in encouraging your constituents to advise sponsors and relatives in this country to apply in good time for visits planned to the UK this summer. In most posts the summer rush is now over and I am happy to report that despite one or two blips (including in Islamabad - of which more later), we have been largely successful in coping with the substantial increase in applications which we receive at this time every year. Although waiting times for interviews at some posts have been longer than we would have liked, our service standards have been largely maintained.

The summer months also saw publication of two important reports relating to our entry clearance service, the Report of the Independent Monitor which was published in July and distributed to all MPs, and the FAC sub-committee's Report which was published at the beginning of August. The FAC Report, which focussed mainly on our Posts at Islamabad and New Delhi, dealt constructively with issues of concern in both places. I welcome the recognition in the report of the difficult task which Entry Clearance Officers (ECOs) perform. I also accept the criticisms expressed in the Report and where we have not already done so we shall tackle the issues raised as a matter of urgency. We shall, of course, be responding formally very shortly.

The 1997 Report by the Independent Monitor, Dame Elizabeth Anson, was the fifth since the abolition of visitor appeal rights in 1993. Here again there are a number of constructive criticisms which shall as usual follow up quickly, but I was encouraged by the acknowledgement in the report that the aim

of everyone involved in the entry clearance operation is to provide a fair, firm and fast service, and that the management and training of staff had improved greatly since 1993. In Chapter 4 of her report Dame Elizabeth deals with the question of facilitation and support for visa applications by MPs. This Chapter contains some useful suggestions for MPs (and others) who handle visa cases.

A word about the Migration and Visa Correspondence Unit (MVCU) which features in both the reports mentioned above. The summer rush of visa applications is usually mirrored by a corresponding increase in the number of letters from MPs. This year has been no exception with almost 900 letters in both July and in August. Although I believe that we are now providing a better service for the more urgent cases I am still concerned (as was the FAC sub-committee) that we are not always able to respond as quickly as we should like to routine correspondence. Sometimes the need to consult our more remote Posts can cause unavoidable delay but with additional staffing now in place in the Unit (and summer holidays over) we are hoping to make further progress in achieving a quick turnaround for the overwhelming majority of correspondence received.

The entry clearance section at Islamabad continues to occupy much of our time and attention. In June we carried out specialist training courses in Islamabad for the entry clearance staff there. These covered quality of service, racial awareness and equal opportunities. For a short period in July it looked as though the rush of applicants might overwhelm the resources we had available at the High Commission with staff there unable to process all those who applied on a particular day. Thankfully these problems were short-lived and normal service was resumed on 28 July. Since then the post has been able to deal with all personal callers who arrive during public hours. Alterations to the waiting areas are now under way and their completion at the end of November will mark an important improvement to the quality of service we provide in Islamabad.

Yours sincerely,

Liz Symons.

BARONESS SYMONS

MS Catchpole

H1
Top: AL
SE: SSH
PJ

RESTRICTED - POLICY

Treasury Chambers, Parliament Street, SW1P 3AG

Paul Boateng MP
Department of Health
Richmond House
79 Whitehall
LONDON
SW1A 2NS

22 September 1998

Dear Paul,

ASYLUM AND IMMIGRATION

Thank you for your letter of 20 August.

2. I am content to include £53.9 million in the Winter Supplementary Estimates for the Persons from Abroad Children's Grant (PFACG). I understand that we may need to revisit this if the recent upsurge in numbers of asylum seekers being supported continues, and I would be grateful if your officials could continue to keep mine informed as your cost estimates are updated. I also note that the effects of closing the housing benefit loophole are not included.

3. You mention a caveat on the cost of the PFACG. I am aware that local authorities have expressed concerns about the grant conditions, but I would be reluctant to make any change. The existing grant conditions provide a useful incentive to local authorities to contain support costs, and hence the call on the Reserve. It would, however, be helpful to know what progress has been made on the withdrawal of the House of Lords appeal, and in developing contingency arrangements should Westminster pursue it and win.

CHIEF SECRETARY TO THE TREASURY

RESTRICTED - POLICY

4. I am copying this to the Prime Minister, other members of Cabinet and to Sir Richard Wilson.

Yours,

Stephen

STEPHEN BYERS

RESTRICTED - POLICY

Top AL
cc: JEH
JP
PV

Prime Minister

REFORM OF EXTRADITION LAW

Summary

We need primary legislation on extradition in order to ratify two EU Conventions, signed in 1995 and 1996. Denmark, Portugal and Spain have ratified the 1995 Convention, and Denmark and Spain have ratified the 1996 Convention. The Council of Europe has set December 1998 as a deadline, which we are bound to miss. Pressure to ratify will increase as time passes, but the 1996 Convention includes provisions on the extradition of own nationals, which may delay ratification for a number of European colleagues.

An interdepartmental working group has reviewed our extradition arrangements, and I attach a copy of its report. I am writing to seek agreement to publication of this report as a consultation paper this autumn - I have not yet made any firm decision on timing.

Consideration

The reasons for change set out in the report are compelling. The 1989 Act was an important step forward for the UK, but our extradition arrangements are still a source of frustration to many of our international partners. I have had representations on this subject from Spain, from France, from the United States and Australia. Without primary legislation, there is very little that we can do.

The working group report contains some robust arguments for moving a pretty long way from our existing extradition arrangements, particularly with our EU partners.

I would draw your attention in particular to the proposals to bring our main Commonwealth extradition partners in line with our ECE partners, by no longer insisting on the *prima facie* evidential requirement, and the discussion of options on the decision-making process and a fast-track in Sections V and VI of the report.

Commonwealth

There was strong Parliamentary opposition in 1988 to any inroads into the *prima facie* evidential requirement, but I judge that this might be less sensitive now. There is a small handling difficulty over creating an "inner circle" within the Commonwealth, but I am clear that we should drop the *prima facie* requirement for Commonwealth countries with respectable criminal justice systems and with which we have a reasonable amount of extradition traffic. Our first preference would be for Australia and Canada, with possibly India and New Zealand.

Decision-making process

There are a number of issues here, but the one that might attract attention is the suggestion that the incorporation of the ECHR may make it possible to revoke some of the existing legal safeguards in the 1989 Act. Although the report is carefully worded, something could be made of this. In answer to possible accusations that important safeguards are under threat, the incorporation of the ECHR will certainly provide a platform for fugitives to argue ECHR points from a very much earlier stage in extradition proceedings than is possible now.

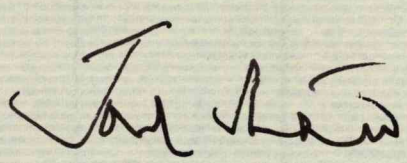
Fast-track

Extradition processes were designed in the last century when periodically extradition partners became locked in war. Within the EU it is, in principle, a wholly outdated idea. We already have a fast-track system with the Republic of Ireland, by which we simply enforce each of their arrest warrants. With progress elsewhere within the EU in the mutual recognition of legal systems, we should be moving towards similar fast-tracks for all EU countries. The report therefore canvasses this option.

This minute seeks your approval for circulation of the consultative document. I will in due course consult colleagues about the scale and timing of legislation in the light of responses, and make a bid for a slot in session 99/00 in the normal way.

It is however worth noting that the only real prize to be achieved without primary legislation would be to renegotiate the UK/US extradition treaty. I shall talk to Mo Mowlam about this in due course - we have held back from pushing this with the US because of their inability to guarantee that we would not also lose the hard-fought supplementary treaty which meant that Republican escapees could not avail themselves of the political offence exception.

I am copying this letter to John Prescott, Robin Cook and HS colleagues.



19th September 1998

A REVIEW OF EXTRADITION LAW

The Extradition Working Group held its first meeting on 4 September 1997 and met eleven times. The group was chaired by the Judicial Cooperation Unit of the Home Office; its membership included officials from the Crown Prosecution Service, Foreign and Commonwealth Office, Lord Chancellor's Department, Legal Secretariat to the Law Officers, Scottish Office, Scottish Crown Office, Serious Fraud Office, Northern Ireland Office and Bow Street Magistrates' Court. A list of members is at Appendix 1.

The group's terms of reference were to develop and agree proposals for the reform of extradition law, excluding the Backing of Warrants (Republic of Ireland) Act 1965. The Extradition Act 1989 is largely silent on outgoing requests, with the exception of Part IV of the Act which deals with the treatment of persons returned to the United Kingdom: this report makes no wider points on outgoing requests.

The report is intended to be a public consultation document and comments are welcomed on its contents. Unless confidentiality is requested, it will be assumed that responses can be made available to others. They should be sent to Julian Gibbs, Extradition Section, Judicial Cooperation Unit, Room 483, Home Office, Queen Anne's Gate, London SW1H 9AT, by [ ].

INDEX

SECTION I: INTRODUCTION

1. The 1989 Extradition Act ("the Act") is a complex consolidation Act, covering three main extradition schemes[1] (see Appendix 2 for greater detail):

(i) countries which have ratified the European Convention on Extradition ("ECE partners"),

(ii) Commonwealth countries ("Commonwealth partners") and

(iii) countries with which the United Kingdom has bilateral extradition treaties ("treaty partners").

2. This Act will need to be amended to allow the United Kingdom to ratify two EU Conventions which it signed in 1995 and 1996[2]. These amendments would bring the United Kingdom into line with its international obligations. Over and beyond this, however, we believe that there is a clear need for fresh thinking about extradition.

3. Extradition is an important tool in dealing with crime: no-one should be able to escape justice simply by crossing a border. Extradition law needs to provide a quick and effective way of bringing fugitives before a court of trial in the country where they are alleged to have committed serious crime, or to be returned to serve a sentence if they have already been convicted. Extradition law also needs to provide protection if there is a real risk that, if returned for trial or to serve a sentence, someone might suffer a breach of their fundamental human rights.

4. The Act provides a large number of checks on the extradition process. The decision-making process is slow, has a number of different stages, and allows for a number of routes of appeal, which can be exploited by an individual determined to delay return to stand trial. Most requests for extradition come from countries with which the United Kingdom has increasingly close political and economic ties: we believe that our law should provide for a procedure that allows a fair decision to be taken quickly.

// does this mean speeding up?

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1 The full list of categories in the Act is: Part III treaty partners, Schedule 1 treaty partners, ECE partners, Commonwealth partners, the Hong Kong Special Administrative Region (HKSAR), overseas territories ("colonies" in the Act) and special arrangements.

2 The 1995 Convention on Simplified Procedures ("the 1995 Convention") and the 1996 Convention on the Improvement of Extradition ("the 1996 Convention"). See Appendix 7. The European Council has urged Member States to ratify the two Conventions by the end of 1998.

5. Extradition requests to the United Kingdom do not always succeed: for every three fugitives that were returned to stand trial or serve a sentence in 1997, one extradition request did not meet the standards of United Kingdom extradition law.

6. The United Kingdom is willing to extradite its own citizens to other countries. Some argue that this justifies the rigour of our domestic extradition law, but we believe that this presumption should be examined carefully. We are not convinced that this is a strong enough argument when extradition requests, many of which are not for United Kingdom nationals, fail on procedural or technical grounds, and those suspected of serious crime are freed in this country.

7. The international community is working towards closer judicial cooperation. International tribunals have been set up to consider war crimes in Rwanda and the former Republic of Yugoslavia, and work is underway to set up a permanent International Criminal Court to deal with crimes against humanity, genocide and war crimes. The UN is working on a draft Convention on Serious Crime, which could be an ambitious vehicle for closer judicial co-operation.

8. Against this background, we should look, certainly within the EU, and possibly beyond, for a straightforward fast-track extradition procedure that places the fugitive where they should be: defending their case before the court of trial in which they are accused of committing an offence.

9. Most extradition from the United Kingdom takes place under the European Convention on Extradition ("ECE"), a multilateral Council of Europe convention. Extradition under the ECE has been possible since 1991. This was a ground breaking innovation in United Kingdom extradition law and practice. The United Kingdom has also concluded a number of bilateral treaties (see Appendix 2), the most frequently used of which is the US/UK extradition treaty. ***It is the view of this working group that, in the interest of the modernisation of the United Kingdom's extradition arrangements, the Government should aim to renegotiate its bilateral treaties.*** There is no need for new legislation for the Government to do so, and we have therefore confined our recommendations to general points in Section VIII.

10. This report looks in Section II at the reasons for change in greater detail. It then sets out recommendations in Sections III and IV on legal safeguards and evidential standards, and in Sections V, VI and VII, discusses the decision-making process, fast-track extradition and simplified procedures for extradition when the fugitive consents to return. Section VIII covers miscellaneous recommendations. The recommendations of the report are summarised in Section IX, and a glossary of extradition terms is in Section X.

11. The report refers to the technical detail of the two EU

conventions, which are complementary to the ECE. Both conventions include articles where an EU Member State can declare whether it accepts a lower or higher position on that particular subject at the point of ratification, or decide to place reservations on an article.

12. We have included references to the 1995 and 1996 Convention where they fall most easily in the text, and have identified those provisions separately that are intended to apply to EU Member States only. While we also considered whether there may be advantage in considering whether some of the EU proposals might also be extended to apply to other extradition partners, we have refrained from doing so for the sake of clarity, and have noted that in any event, new Member States would accede to both conventions as part of the formal *acquis* of EU membership.

SECTION II: REASONS FOR CHANGE

13. The 1982 Extradition Working Party Report said: *"Many countries find the requirements of our [UK] law difficult to meet. We believe that their experience of these difficulties when their applications fail (or succeed only with disproportionate effort) has on occasion discouraged some countries from applying to the United Kingdom for the return of accused persons. This may have meant in some cases that criminals have escaped justice."*[3] Although the United Kingdom ratified the ECE in 1991 (many years after our EU partners: only Belgium, which ratified in 1998, was slower) and the number of those returned from the United Kingdom to other countries has risen from seventeen in 1991 to forty three in 1997, the United Kingdom is still regarded by many regular extradition partners as a difficult country from which to achieve extradition.

14. The most frequently cited problems are:

(i) the length of time it takes to reach a decision, particularly when the request is contested;

(ii) the United Kingdom's authentication requirements; and

(iii) (by those countries still required to meet it) the *prima facie* evidential requirement.

15. We have examined the record of extradition requests to the United Kingdom to see if these complaints are substantiated, and also looked at an overall success rate. There are considerably more extradition requests than there were, say, ten years ago, but they remain relatively few.[4] We have been conscious of the dangers of extrapolating judgements from a very small statistical base, but our analysis confirms that it is taking longer to reach decisions in all extradition cases, and that some of them are failing on technical grounds that relate to authentication and factors associated with the *prima facie* evidential requirement.

16. Appendix 3 shows the outcome of incoming extradition requests which were decided during 1997. The United Kingdom

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3 Page 3 of "A review of the law and practice of extradition in the United Kingdom"

4 The United Kingdom makes around 40 requests a year to other countries, and receives around 100 requests a year from around the world.

receives around one hundred such requests a year[5] (see Appendix 4). In 1997 twelve requests were withdrawn by the requesting state, the Secretary of State decided not to issue an Authority to Proceed (ATP[6]) in two requests, and decided not to issue a surrender warrant in one request. Eleven requests were dismissed by the courts (seven by the Bow St. magistrate and four by the Divisional Court). Forty three people were returned, of whom sixteen had consented to their return.

17. The grounds for failure vary. Two requests failed on medical grounds, two failed because of difficulties related to convictions in absentia, two failed because papers did not arrive within ECE deadlines, five failed because they were not extradition crimes[7], and four failed because of inadequacies in the supporting documentation.

18. We note that Schedule 1 cases feature disproportionately among those that did not succeed, and note also that extradition proceedings have become more and more complicated. The latter judgement is difficult to quantify: there is no accepted method of "weighting" extradition cases. There is, however, no doubt among members of the working group that challenges are brought on the basis of arcane legal technicalities, that representations made to the Secretary of State have expanded enormously in volume (raising questions that should, often, be considered by the court of trial), and that there is a greater willingness to automatically appeal at every opportunity.

Delay

19. The extradition process should be swift. The Act contains statutory deadlines governing decisions made by the Secretary of State at the beginning and at the end of extradition proceedings. While there are some time limits within the court process, there are no time limits on the disposal of court proceedings which is where the process takes the longest.

20. In 1996, a decision on an extradition request where the

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5 Cases can take more than one year, and there is therefore no direct correlation between the number of requests received in 1997 (107) and the number of decisions taken in 1997 (70).

6 Used in ECE Commonwealth, and Part III treaty requests: used throughout this report for drafting purposes. "Order to Proceed" (OTP) is used in Schedule 1 requests.

7 The Preddy judgment was influential in the failure of a number of these cases. This lacuna has since been remedied.

fugitive agreed to return[8] took an average of two months: in 1997[9], the average was three months. In 1996, decisions on an extradition request that was contested by the fugitive took an average of thirteen months: in 1997, the average was twenty-two months. A significant proportion of fugitives were detained during some or all of the period it took to take a decision[10]. Even allowing for distortion (one case in 1997 took seven years to decide), decisions are taking longer.

21. Delay is certainly related to the number of routes of appeal available in extradition proceedings: the cumulative effect of gaps of several months between different stages means that decisions in extradition requests from the United Kingdom can take several years. The average amount of time taken for a decision where the United Kingdom has made an outgoing request is much lower: very few take more than twelve months,[11] and hardly any are refused. The difference is striking.

22. Extradition proceedings in the United Kingdom are multi-tiered (see Appendix 5). An extradition request made for an individual is examined by the Secretary of State[12] at an early stage: although it is rarely exercised, Ministers have the power to halt an extradition request very soon after it is made. The request is passed to the courts, where it is considered by the Bow St. magistrate[13] with routes of appeal to the Divisional Court and, without a need for certification but with leave, to the House of Lords. The case is considered in the round again by the Secretary for State. The individual also has open the routes of judicial review proceedings, and the right to apply for discharge if the Secretary of State or the requesting state have missed a statutory or treaty deadline.

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8 Around 60% of the total of those returned in 1996.

9 Around 40% of those returned in 1997.

10 51 of those whose extradition was requested from the United Kingdom spent time in detention during 1997. It is estimated that 40% are refused bail by the courts. At any given time between 30 and 40 people are detained awaiting a decision on extradition proceedings.

11 The average is 10 months for those returned in 1997.

12 For requests made to England, Wales and Northern Ireland it is the Home Secretary, for requests made to Scotland it is the Secretary of State for Scotland.

13 In Scotland, the court of committal consists of the Sheriff of Lothian and Borders.

The Secretary of State and the courts

23. We have also concluded that the overlap of functions between the Secretary of State and the courts contributes to both the complexity of extradition law and to the increasing delay in decision-making. Extradition law must cater for genuinely exceptional circumstances. It is, however, questionable that the decision-making process needs to be so complicated.

24. Although the Secretary of State and the courts have different roles[14], the Act also lists a set of statutory bars to extradition (section 6 of the Act), which can be considered and decided by "an appropriate authority", ie. the Bow St. magistrate, the Divisional Court or the Secretary of State. We have a preference for ascribing judicial and executive functions where they are most effectively carried out. There is further overlap in the Act: the Divisional Court and the Secretary of State on surrender expressly consider the same issues; the Secretary of State is obliged to consider them, notwithstanding their earlier consideration by the courts.

25. In Section III we have examined the statutory bars to see whether they can be simplified, particularly in the light of the forthcoming incorporation of the ECHR. We have considered in Section V whether it would be useful to clarify the nature of representations made to the Secretary of State and whether it remains necessary, given a greater clarification of responsibilities and of the statutory bars to extradition, for the Secretary of State's discretion, or the nature of representations to him, to remain uncircumscribed.

The *prima facie*[15] requirement

26. Around 80% of the United Kingdom's extradition traffic is now with ECE partners (see Appendix 6). This means that, numerically, fewer requests have to meet the *prima facie* standard. Requests from the United States, from Canada, Australia and our other Commonwealth partners must meet a higher standard than those from our European partners. The arguments for and against the *prima facie* standard in extradition proceedings are well-known, and were debated in full during the passage of the 1989 Act. At that time, most of the countries which had ratified the ECE were EU members,

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14 Proceedings before the Bow St. magistrate are set out in section 9 of the Act, statutory habeas corpus in section 11, and the Secretary of State's role is covered by sections 7 and 12.

15 We refer throughout the text to the *prima facie* requirement for ease of drafting. The Act describes it in section 9(4) as:"... a case requiring an answer by the arrested person if the proceedings were the summary trial of an information against him".

or close European neighbours.[16] Since 1989, wider ratification has seen a marked increase in the number of ECE partners.[17] The ECE has become the legal basis for most extradition from the United Kingdom, and is likely to remain so. The EU conventions are supplementary to the ECE.

27. Although geography plays its part, we believe that the number of requests from extradition partners outside the ECE is artificially low because of the evidential requirement. The main reason for this is historical and we believe that the level of evidential requirement has come adrift from operational needs, or a realistic assessment of the standards of criminal justice in the requesting state. There is no international legal obligation - although there are considerations of reciprocity and diplomacy - for the *prima facie* requirement to remain in place for Commonwealth partners: the Commonwealth Scheme was amended in 1991 with the express purpose of allowing for a more flexible approach.

28. Despite the intentions of the Commonwealth Scheme, the Act prevents the United Kingdom from taking advantage of this flexibility. Although the Act allows for the possibility of a bilateral treaty with an evidential standard other than the prima facie requirement, the United Kingdom has not negotiated any such treaty.

29. We have considered in Section IV whether the *prima facie* requirement should remain as the evidential standard for requests from the Commonwealth, and requests made where no extradition arrangement exists.[18]

Authentication

30. We have also looked in Section IV at our authentication procedures. Some of our European partners argue that our authentication requirements are so stringent that the United Kingdom has still not achieved the ECE standard. The United Kingdom has 3 remaining reservations to Article 12 of the ECE, in order to meet domestic authentication requirements. We have examined how the United Kingdom's authentication

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16 Austria, Cyprus, Denmark, Finland, France, Germany, Greece, Iceland, Israel, Italy, Liechtenstein, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and Turkey.

17 Albania (1998), Belgium (1998), Bulgaria (1994), Croatia (1995), Czech Republic (1995), Estonia (1997), Hungary (1993), Latvia (1997), Lithuania (1995), Malta (1997), Moldova (1998), Poland (1993), Romania (1998), Slovakia (1995), Slovenia (1995), Ukraine (1998)

18 Either under a special arrangement (section 15 of the Act) or on the basis of an international Convention relating to specific offences which also makes provision for extradition (section 22 refers).

requirements can be lightened.

Simplified procedures

31. The Act already allows for simplified procedures when the fugitive consents to return. There is, however, a lack of clarity about these procedures (exposed in the Akbar[19] case). The 1995 EU Convention requires the United Kingdom to adjust its proceedings. This report examines this in greater detail in Section VII.

Structure

32. The report has already noted the complexity of extradition legislation. One of the central difficulties of the Act is the way in which extradition partners are categorised. The introduction of extradition arrangements unique to EU partners will add another category, so that, were the present structure of the Act to be maintained, it would have to cater for: Part III treaty partners, Schedule 1 treaty partners (unless all older bilateral treaties are renegotiated), Commonwealth partners, ECE partners, the HKSAR (in a category of its own) and EU partners. There is an obvious need for any simplification that can be achieved, but of greater substantive concern is the rigidity and a range of minor anomalies caused by the structure of the Act.

Cost

33. Although there are exceptions, most extradition arrangements work on a reciprocal basis. The United Kingdom bears the bulk of the cost of processing incoming requests, with the Crown Prosecution Service (CPS)[20] acting on behalf of the requesting state in our courts. The requested states bear the bulk of the costs for outgoing requests made by the United Kingdom.

34. Costs for incoming requests are divided among a number of agencies in our criminal justice system. Extradition requests are often part of a wider responsibility of that agency and figures are not kept separately: the figures in Appendix 8 are estimates, obtained from each agency for the calendar year of 1997. A fugitive may consent to return almost immediately after arrest, in which case the costs to the United Kingdom are low. Return may be contested at every stage: in exceptional cases the cost of complex court proceedings can be substantial. The fugitive may or may not be eligible for legal aid: it is our experience that the most expensive and heavily contested extradition requests are privately funded.

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[19] R v The Secretary of State for the Home Department and Others ex parte Akbar and In Re Akbar (unreported: 31 July 1996).

[20] In Scotland, it is the Crown Office.

35. It is striking that the cost of detention of those fugitives who have not been granted bail by the courts is around one third of the total estimated costs for 1997. Reform of extradition law which can cut into delay should provide some savings in detention costs, although it is worth noting that the number of extradition requests is essentially demand-led: a future rise in the number of requests, or fewer decisions to grant bail by the courts could outweigh savings made on detention costs.

What sort of kind of costs?

SECTION III: SAFEGUARDS

36. We have already referred to the need to provide protection to an individual, of any nationality, from being forcibly returned to another country to stand trial or to serve a sentence if there is a real risk that to do so would be in breach of their fundamental human rights. One of the safeguards against such an eventuality is the standard of the criminal justice system and the protection afforded a defendant in the legislation of the requesting state.

37. The main safeguards in extradition law are well-known: specialty, dual criminality, protection against being prosecuted for an offence of a political character, protection against being returned when the death penalty might be carried out. The Secretary of State is required to consider all the statutory bars to extradition and has an unfettered discretion to cover any other reasons why it may be unjust or oppressive to return a fugitive to the requesting state. The incorporation of the ECHR into domestic law will allow individuals to argue points relating to their treatment by the authorities of the requesting state on return before the courts at an earlier stage than at present.

<u>The requesting state</u>

38. The majority of the United Kingdom's extradition traffic is with ECE countries (predominantly with fellow-members of the EU), with the United States and the larger Commonwealth partners accounting for the rest.

39. This is, in itself, a powerful protection for an individual. Most of the countries with which we have extradition traffic are well-established democracies. There is close political and economic cooperation among EU Member States: cooperation on criminal justice matters is a fully-accepted part of that overall cooperation. Commitment to the rule of law and democratic principles is a requirement of accession to the Council of Europe. Of the countries which have ratified the ECE more recently, ten are applicants to join the EU, and are already involved in pre-accession preparation that will include, if necessary, improvements to their criminal justice systems.

40. While the overall standard of criminal justice in a requesting state cannot hold out an absolute guarantee that it would be right to return every individual requested for extradition purposes, it is a reasonable presumption to make with most extradition partners that the individual whose return is sought will receive a fair trial. The requesting state, in turn, relies on the United Kingdom to provide the same protection for those who are returned here in response to our outgoing extradition requests.

41. The United Kingdom has, because of its history, an extremely wide range of extradition arrangements, some of which rest on older bilateral treaties with countries with which there has been little or no extradition traffic. There are also some Commonwealth partners with which we have had little or no extradition traffic since designation. These older extradition arrangements are kept under review: there are operational grounds for keeping the legal basis for extradition with as many countries as possible, even if the treaty or arrangement appears out-of-date. Any individual request is judged against the safeguards contained in the Extradition Act 1989: these include provisions which bear on the standards of criminal justice he or she will be exposed to on return.

42. The Act contains a number of provisions that relate to conditions on return in the requesting state:

(i) whether the accusation against him is not made in good faith in the interests of justice, it would, having regard to all the circumstances, be unjust or oppressive to return him (section 12 (2) (a) (iii) and section 11 (3) (c));

(ii) whether the request for his return is in fact made for the purposes of prosecuting or punishing him on account of his race, religion, nationality or political opinions (section 6 (1) (c));

(iii) whether he might, if returned, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions (section 6(1) (d);

43. There are fine distinctions: sections 11(3)(c) and 12(2)(a)(iii) of the Act relate to the good faith of the accusation in the requesting state, rather than the good faith of the request itself. We have drawn the conclusion that, with the addition of ECHR criteria (the relevant case is Soering), new legislation needs to be clearer on the role of the courts with regard to issues that relate to conditions on return in the requesting state.

44. "Unjust or oppressive"[21] is a guiding criterion in

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[21] Lord Diplock provided guidance in the case of Kakis (1978), where he said: "*'Unjust' I regard as directed primarily to the risk of prejudice to the accused in the conduct of the trial itself, 'oppressive' as directed to hardship of the accused resulting from changes in his circumstances that*

individual extradition cases, and is a standard that is used by the courts and by the Secretary of State when making a final decision on surrender. It has a broad application which also draws in issues relating to the conduct of the trial in the requesting state. In addition, representations presently made to the Secretary of State under his discretion under section 12 of the Act often refer to prison conditions as well as issues relating to trial or sentencing on return.

45. It will, in future, be for the court to deal with allegations that relate to alleged breaches of the ECHR. If, as we recommend in Section V, it is agreed that the Secretary of State, when making his decision on surrender, should be able to rely on the court's decision on extraditability unless fresh evidence is raised, then we question whether it is necessary to retain all of the criteria listed above or to require that they should all be considered by the courts and the Secretary of State.

46. This will need careful assessment. Allegations of breaches of the ECHR will be determined against the standards of that Convention: the working group is concerned at the potential for confusion if ECHR criteria are considered in parallel to an overlapping set of criteria relating to extradition. Article 2 of the ECHR (right to life), Article 3 (torture or inhuman or degrading treatment), Article 5 (right to liberty and security of a person) and Article 6 (entitlement to a fair and public hearing) obviously overlap with a number of the safeguards presently given distinct expression in the Act.

47. **We recommend that new legislation should be clearer. The incorporation of the ECHR will provide an early route of appeal that can apply to allegations regarding the fairness of the trial in the requesting state and allegations concerning treatment on return. We recommend that these should guide the courts, and that some of the existing statutory bars in the Act that relate to conditions on return in the requesting state could be revoked, or revised.**

Specialty

48. Specialty is an important historical principle in extradition. At its simplest, it is designed to prevent a requesting state trying someone, on return, for offences completely different from those for which extradition had been granted, and thereby evading, for example, other barriers to extradition, such as the bar on military offences. Such considerations are, however, increasingly rare in extradition

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have occurred during the period to be taken into consideration; but there is room for overlapping and between them they cover all cases where to return would not be fair."

requests made to the United Kingdom: the principle of specialty can be used to attempt to narrow the charges the requesting state wishes to bring. If successful, a fugitive can return to the country they escaped from with greater legal protection than if they had not attempted to evade trial. The significance given to the relaxation of the specialty principle in the 1996 Convention is, we believe, an indication of an international need to modernise specialty protection.

49. Although specialty is a relatively straightforward principle, it has found complicated expression in the Act. Section 6(4) says that there must be provision by the law of the requesting state or by an arrangement that the person returned will not be tried for any offence other than the offence for which his return was ordered; or an offence disclosed by the facts in respect of which the surrender was ordered; or any offence in respect of which the Secretary of State may consent to the fugitive being dealt with.

50. Paragraph 1(3) of Schedule 1 contains similar provisions, although there is no provision for the Secretary of State to consent to the person concerned being dealt with for further offences. Extradition arrangements with Commonwealth countries can rely on parallel legislation which also contains specific reference to specialty protection. Section 6(7) provides that a certificate signed by the Secretary of State is evidence of specialty protection in requests from Commonwealth countries.

<u>The 1996 Convention</u> (specialty)

51. The 1996 EU Convention Relating to Extradition between Member States of the European Union relaxes the specialty requirements of Article 14 of the ECE between EU Member States. Further background detail is at Appendix 7.

52. Article 10 of the 1996 Convention states that in certain circumstances the requesting Member State may prosecute for offences other than those for which extradition is requested without the consent of the requested Member State. The offences are restricted to lesser offences, which do not involve imprisonment (unless the fugitive waives specialty protection).

53. Article 11 of the Convention allows a Member State to which a person has been extradited to prosecute in respect of offences other than those on which the extradition was granted - committed before the surrender of the person - without obtaining the permission of the requested state. This means a requesting state may assume that a blanket consent has been given for it to prosecute, try, or execute a sentence or detention of the extradited person in relation to offences other than those for which extradition was granted and committed before the extradition took place. Article 12 states that specialty protection under Article 15 of the ECE shall not apply to re-extradition to another Member State, unless it

declares on ratification that Article 15 continues to apply.

54. Articles 11 and 12 propose a more extensive relaxation of specialty protection than is envisaged by the 1995 Convention; the effect of Articles 11 and 12 would in effect remove protection from prosecution and re-extradition within the EU. For both articles, Member States may adopt a lower position where consent is still necessary. The Member States which have ratified so far (Denmark and Spain) have accepted the articles without reservation.

55. **We recommend that the United Kingdom should accept Articles 10, 11 and 12 of the 1996 Convention, thereby relaxing specialty requirements between EU Member States.**

Commonwealth countries (specialty)

56. We have considered whether specialty could be relaxed for Commonwealth countries. Provisions in respect of specialty are set out in Clause 15 of the Commonwealth Scheme for the Rendition of Fugitive Offenders. Clause 18 of the Scheme allows for any part of the Commonwealth to adopt supplementary or alternative provisions for application between another part or parts of the Commonwealth. There is no bar under the Scheme to the United Kingdom relaxing its specialty requirements for some or all Commonwealth countries on a bilateral or multilateral basis, with or without reciprocity. **We recommend that the United Kingdom should relax its specialty requirements for its main Commonwealth extradition partners.**

57. The Commonwealth system relies on protection being primarily provided in domestic legislation. Section 6(7) of the Act provides for the Secretary of State to issue a specialty certificate, for requests from Commonwealth partners only, in addition to an ATP. Given our recommendation that specialty should be a consideration for the Secretary of State when taking a decision on return, it follows that there should no longer be a need to issue a certificate at this stage in extradition proceedings.

Section 6(4)

58. As with any safeguard contained in section 6, "an appropriate authority" , ie the Bow St. magistrate, the Divisional Court or the Secretary of State, must discharge a fugitive if the requirements of the Act on specialty are not met. In Launder[22], the Divisional Court ruled that section 6(4) required specialty protection to be in place at all times between committal and return, irrespective of whether the fugitive was on bail or in custody.

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22 R v the Secretary of State for the Home Department ex parte Launder and In Re Launder [1998] 3 WLR 221.

59. **We are not convinced that specialty protection needs to be in place throughout the extradition proceedings; the test is whether it is available on the fugitive's return. We believe that it is primarily a question relating to the strength of international relations and respective trust between extradition partners and we recommend that it should be a question for the Secretary of State to decide at the point of return.**

Dual criminality

60. Section 2 of the Act sets out the principle of dual criminality in domestic law. The equation of criminal conduct as a means of deciding whether the offences in question are extradition crimes is uncontentious, subject to the proposed derogation below. We have noted, however, that extradition with Schedule 1 treaty partners is still bound by the antiquated list system of determining extradition crimes, and recommend modernisation in Section VIII.

The 1996 Convention (dual criminality)

61. Article 3 of the 1996 Convention provides for a derogation from the dual criminality requirement for conspiracy or association to commit serious offences such as terrorism, drug trafficking or other organised crime. This aims to facilitate the extradition of fugitives who, at present, may escape because of the differing technical construction of legal offences in Member States. Article 3(3) allows a Member State to declare that it reserves the right not to apply this derogation, or to apply it under certain specified conditions. Under Article 3(4), any Member State which enters such a reservation will make extraditable under Article 2(1) of the Convention the behaviour of a person which intentionally contributes to the conspiracy.

62. **We recommend that the United Kingdom should accept derogation from the principle of dual criminality as set out in Article 3 of the 1996 Convention.**

Political offence exception

63. No person may be extradited if the offence for which his or her extradition is sought is regarded as being of political character by either the courts or the Secretary of State. This is an increasingly rare consideration in extradition, and the derogations from this principle contained in the European Convention on the Suppression of Terrorism and the supplementary treaties with the United States and India were negotiated in order to prevent those wanted for terrorist crimes from claiming as a defence that those crimes were of a "political character".

64. As with the considerations of those provisions of the Act that relate to conditions on return in the requesting state

set out above, there is room for confusion. We have examined the statutory safeguards in the Act and concluded that it is almost impossible to conceive of a situation where the question of whether the offence was one of a political character would be the only avenue of protection for an individual, as long as sufficient protection was provided against the motivation of any such request. **We recommend that the political offence safeguard should remain in its present form (subject to the derogation recommended for EU Member States in the 1996 Convention) but that this should no longer be examined by the Secretary of State: it should be considered by the courts.**

The 1996 Convention (offence of a political character)

65. Article 5(1) of the 1996 Convention sets out the broad principle that between EU Member States, no offences should be regarded as political offences. However, 5(3) allows Member States to declare a lower position, whereby offences in Articles 1 and 2 of the European Convention on the Suppression of Terrorism, and conspiracies to commit such offences, will not be regarded as political offences. The lower position would be close to the status quo.

66. The United Kingdom already has derogations from the political offence exception in the European Convention on the Suppression of Terrorism and the supplementary treaties with the United States and India. In practice, this too is an increasingly rare consideration in extradition; and it is hard to see how it could be claimed as the only defence against extradition to an EU Member State.

67. **We recommend that the United Kingdom should agree to Article 5(1) of the 1996 Convention, thereby providing that the political offence defence can no longer be claimed by those whose extradition is sought by another EU Member State.**

Conclusion

68. We have made recommendations above regarding the substance of the main safeguards for the individual above. Our consideration of the way in which the safeguards could be allocated between the Secretary of State and the courts continues in Section V.

SECTION IV: EVIDENTIAL REQUIREMENTS AND AUTHENTICATION

69. Evidential requirements for extradition requests made to the United Kingdom are set at two levels: those for ECE partners and those for Commonwealth and treaty partners. Requests from ECE extradition partners are not required to make a *prima facie* case against the person whose extradition is requested, but must provide the court of committal with identification particulars, particulars of the offence and a statement of the relevant law.

70. Provision for removing the requirement in extradition requests was made in the Criminal Justice Act 1988, although the requirement was not removed until 1991, when the United Kingdom designated those countries which had at that time ratified the ECE. The United Kingdom, subject to renegotiation of its extradition treaties, could remove the *prima facie* requirement for treaty partners, although it has only done so for its ECE extradition partners. Section 4(5) provides that any Order in Council is subject to annulment by either House of Parliament, thus in effect allowing Parliament to veto a non-*prima facie* extradition treaty. The Act does not allow the United Kingdom to abolish the *prima facie* requirement for its Commonwealth partners.

71. In the international context, the requirement is looking increasingly outdated. Since the United Kingdom ratified the ECE, a further fourteen countries have ratified and been designated. We do not believe that removal of the *prima facie* requirement for requests from the ECE has weakened the protection available to individuals. Safeguards for the individual are found elsewhere in extradition law: in the various statutory bars to extradition and in the Secretary of State's discretion not to order return. Nor is the court of the requested state the proper place to judge the evidence against the individual; this is properly done in the court of trial in the requesting state.

72. There are two main objections to the *prima facie* requirement. The first is one of principle: the United Kingdom is insisting on applying a domestic standard to evidence that will, ultimately, be considered in the requesting state under its own laws and procedures. The second is one of form: the requesting state's ability to meet the *prima facie* requirement can be affected, not by lack of evidence, but by whether it can present its case in a way that meets United Kingdom authentication and/or evidential requirements.

Commonwealth partners

73. The United Kingdom has extradition relations with Commonwealth countries which have been designated under section 5(1) of the Act. The number of extradition requests received by the United Kingdom from Commonwealth countries is considerably fewer than those from ECE countries. Within the

Commonwealth, our main partners are Canada and Australia.

74. *Prima facie* evidence is required from a Commonwealth country making an extradition request; there is no provision in the Act to remove the requirement from Commonwealth countries. The requirement is a feature of the Commonwealth Scheme, although the Scheme's provisions regarding the *prima facie* requirement were amended in 1991 to allow any two or more Commonwealth countries to replace the requirement with other provisions to be worked out between them. The Scheme now features a proposed model for alternative provisions, a "record of the case".

75. Individual Commonwealth countries have already made moves to dispense with the requirement. Australia has legislation which enables it to apply a "no evidence" extradition procedure, and has to date applied this to 31 countries. The Canadian Government is considering whether to introduce a lower standard for all extradition partners. Any move to remove or narrow the requirement would be in keeping with trends for closer and more effective international co-operation.

76. **We recommend that new legislation should permit the *prima facie* requirement to be removed for our main Commonwealth partners, without an insistence on reciprocity.** We considered whether the United Kingdom should require reciprocity. There is no exact reciprocity in extradition, and although we expect, given the development of international cooperation, that reciprocity will be usual, we do not see its absence as a major sticking point.

77. We have also considered what information should be required in support of a request, if the *prima facie* requirement were removed. Under the ECE, the requesting state has to provide an authenticated copy of the conviction or arrest warrant, a statement of offences with reference to relevant legal provisions, a copy of the relevant law and particulars of identity.

78. We considered alternatives to the ECE standard. A model for a "record of the case" is set out in the Commonwealth Scheme, although the United Kingdom could specify the information which should appear in the record; it could be a higher standard than the ECE. Under the Commonwealth Scheme model, a record of the case would include particulars of the fugitive's description, identity, nationality and whereabouts; details of each offence for which extradition is sought, including a certified copy of the definition in the law; the original or certified copy of any document or process issued against the fugitive; and a recital of the evidence acquired to support the request.

79. The record must be accompanied by a certificate from the Attorney General of the requesting state confirming that the

record discloses sufficient evidence to justify a prosecution. The fugitive may be committed if the contents of the record, whether or not they are admissible in evidence under the law of the requested state, are sufficient to warrant a trial. We did not see that this alternative had any advantages over the ECE requirement.

80. We have also looked at the evidential standard known as "probable cause". This requires a basis for the belief that there is a substantial likelihood that an individual has committed a crime. There is no definition of the exact degree of probability required, though it has to be more than mere suspicion; it must be based on known facts and circumstances, and there must be a rational belief that relates to the identity of the alleged offender. We have concluded that this would not offer any particular advantages in extradition cases; the concept would be new to the criminal law of the United Kingdom and would be likely to cause unnecessary confusion.

81. **We recommend that the ECE standard should apply as a replacement for the *prima facie* requirement for our main Commonwealth partners; there are obvious advantages in aiming for a single standard in extradition requests made to the United Kingdom.**

Authentication

82. The abolition of the *prima facie* requirement in ECE requests has not removed challenges to extradition requests. The challenges have shifted, however, from the evidential requirements and rules to those governing authentication. If our recommendation to move away from the *prima facie* standard is accepted, the question of admissibility of evidence will fall away in the consideration of extradition requests: this will be a matter for the courts of the requesting state. Admissibility may, however, remain an issue if the *prima facie* requirement remains in place for some countries. In that event, we believe that note should be taken of the consideration below.

83. The United Kingdom has already agreed to review its authentication requirements during discussions on the 1996 European Convention. The requirements have proved to be a difficulty for all extradition partners; even ECE requests can fail to meet authentication requirements, and the United Kingdom has three reservations to Article 12 of the ECE which reduce the effectiveness of its operation. We have looked at whether the current authentication provisions should be changed.

84. The authentication of extradition documents is required to establish that the documents are an official request and that they have not been tampered with. Section 26 (2) of the Act also has the benefit of rendering the documents admissible

in court proceedings. The provisions relating to the authentication of the evidence sent by the requesting state, and whether such evidence is receivable or admissible, are contained in sections 26 and 27. Section 26 sets out the requirements for foreign states covered by Part III of the Act; these are the basis for the United Kingdom's three reservations to the ECE. Section 27 sets out similar requirements for Commonwealth partners. Paragraph 12 of Schedule 1 covers documents which may be received in evidence from Schedule 1 treaty partners.

85. Section 26 provides that documents are authenticated if they purport to be signed by a judge, magistrate, or officer of the foreign state where they were issued and if they purport to be certified by being sealed with the official seal of the Minister of Justice or some other Minister of State. Some of our EU partners find it difficult to meet the dual authentication requirement within the statutory time limits. This is particularly acute when extradition requests originate from federal authorities which, in their domestic system, need no authorisation to initiate a prosecution. The request is therefore subject to an additional, and largely symbolic, certification.

86. The current wording of Section 26 could be amended to allow for either the signature of the judge, magistrate or officer of the foreign state or authentication by the Minister of Justice. This would introduce a greater degree of flexibility, while still maintaining a means of establishing that the request was properly made. A stamp from the Ministry of Justice, rather than a seal, would be preferable as one of the authentication options for the requesting state.

87. We also believe that this function could be carried out by the Secretary of State, rather than at present, being considered by the courts. If the Secretary of State had satisfied himself that the request was a genuine one made by a recognised authority, the validated request could be passed to the court as being duly authenticated and therefore admissible as evidence (see also Section V).

88. **We recommend that authentication requirements should be simplified. There should be one tier of authentication for the requesting state. We recommend that the authentication of a document should have the effect of rendering a document and its contents admissible in a court in the United Kingdom.**

The 1996 Convention (authentication)

89. Article 15 of the 1996 Convention allows for the relaxation of authentication requirements; any document or copy document shall be exempted from authentication unless expressly required by the Convention or the ECE. This would establish a general principle under which any document or copy shall be exempted from authentication or any other formality.

This does not apply when Article 12(2)(a) requires authentication; but in such cases, the judicial authorities or central authorities will certify copies of documents as true copies.

90. **We recommend that the provisions of Article 15 of the 1996 Convention should be adopted, thereby restricting authentication requirements to key documents.**

Extradition schemes

91. We have already noted that the Act is a consolidation Act. For definitional purposes, it uses the term "foreign state" to distinguish all treaty partners, including ECE partners, from Commonwealth partners and overseas territories). It is clear why this terminology was used at the time, but it is not without its difficulties. For example, the United Kingdom cannot agree a special arrangement under section 15 with a country which is a member of the Commonwealth that has not been designated under section 5(1), although it can do so with many other countries with which it does not have any extradition arrangements. Section 13 of the Act gives the right to make representations to the Secretary of State to requests made for return to foreign states only. Although the latter anomaly makes no difference in practice to the present handling of requests - the rights in section 13 are applied by analogy - such differences only cause confusion.

92. We have already noted the advantages of, over time, modernising extradition arrangements so that there are no Schedule 1 treaty partners. We also note here that new legislation needs to be more flexible than it is. **We recommend that new legislation should define what is meant by an "extradition partner", and that, as far as is legally possible, legislation should aim to provide one main extradition scheme, removing any unintended and unnecessary procedural distinctions between requests from "foreign states" and Commonwealth partners.**

SECTION V: THE SECRETARY OF STATE AND THE COURTS

93. We have made recommendations, in Sections III and IV, relating to the safeguards contained in the 1989 Act, and expressed the view that there is room for greater clarification of the respective roles of the Secretary of State and the courts. We have made proposals regarding specialty, the *prima facie* requirement and authentication. We have drawn attention to:

(i) the number of possible routes of appeal before the courts and the delay caused to applications if those are all invoked;

(ii) the overlapping nature of the safeguards in the Act that relate to conditions on return in the requesting state;

(iii) the wide discretion afforded to the Secretary of State at the beginning and at the end of the process; and

(iv) the duplication whereby the courts and the Secretary of State consider the same issues.

94. Our recommendations below focus on the need for swift, clear decision-taking. They are made on the basis that consideration of extradition requests should be simplified by a wider abolition of the *prima facie* requirement, and that our courts and the Secretary of State should avoid judging decisions and considerations that are properly for the court of trial in the requesting state.

95. There are, at present, three main stages in extradition proceedings in the United Kingdom:

(i) initial consideration by the Secretary of State;

(ii) the court stage; and

(iii) a final decision on surrender by the Secretary of State.

96. It is not self-evident to the working group that this structure must be retained, and we questioned the need for the Secretary of State to look at the same request twice, as well as the possibility of two distinct court decisions: the first by the magistrate and the second by the Divisional Court. There are arguments for and against retaining an initial filter role for the Secretary of State: we have not reached a firm recommendation on this issue.

Initial consideration by the Secretary of State

97. The Act requires the Secretary of State to act as an initial filter for extradition requests. This manifests itself in a decision to issue an ATP. The Secretary of State must be satisfied that the conduct which forms the basis for the request is an extradition crime; that there are no treaty bars which would prevent extradition; and that the papers are sufficient and are properly authenticated. The decision is governed by time limits if the request is made by means of a request for provisional arrest. The Secretary of State also considers (under section 7(4) of the Act, applied by analogy to Schedule 1 requests) whether to exercise his discretion to refuse the request and, in Commonwealth cases only, certifies specialty protection. Section 7(4) requires the Secretary of State to examine the request as if he were making a final decision on surrender, and to look ahead as to whether he would, in taking his final decision under section 12, order surrender. The Secretary of State therefore also considers all the statutory bars on return under sections 6 and 12 of the Act.

98. The ATP serves the function of formally authorising the court to consider a request which has been passed through diplomatic channels, and also identifies the equivalent offences under domestic law which correspond to the alleged criminal conduct. It also indicates to the court that the Secretary of State has carried out his scrutiny function.

99. We have isolated two possible structural models: the first is one in which the extradition request, once made, would be passed to the court, thereby removing the Secretary of State's filter role; the second is one in which the Secretary of State retains discretion to refuse an extradition request before it is put before the court.

Model I

100. The arguments for a model in which the Secretary of State has no initial discretion rest on the foundation that, in general, the Secretary of State's primary responsibility should lie in establishing the legislative framework and establishing international extradition arrangements. It should be for the court to decide whether the individual is extraditable, and for the Secretary of State to overrule that decision only in exceptional circumstances.

101. The present structure requires the Secretary of State to examine all incoming requests, and to provide authorisation to the court before they can consider a case. It is not self-evident that this is a function which must be carried out by the Secretary of State. The court needs to be satisfied that the request comes from an extradition partner: that can be ascertained by referring to domestic law. It also seems possible that the Secretary of State could assist the courts,

by, for example, providing the court with the names of those authorities, within the criminal justice system of an extradition partner, he regards as authorised to make an extradition request. Although the Act requires the Secretary of State to list the generic domestic offences on an ATP, those are translated by the magistrate into draft charges: this function could probably be dispensed with altogether.

102. The working group has also considered whether the Secretary of State's initial filter role is really necessary. He is, at present, required to assess the request and to look forward to his final decision on surrender. Why should he not assess the substance of each request just once, after the court has ruled whether an individual is extraditable? If the court found grounds to dismiss the request, it would not reach the Secretary of State: if there were genuinely exceptional circumstances to warrant his intervention, he would do so at the end of the process at the same time he was taking a decision, rather than have to look ahead as to what decision he might take. Extradition decisions would retain a judicial stage and the involvement of the Secretary of State, but the Secretary of State would exercise his discretion only once, at the end of the process.

Model II

103. We have also considered whether Model I above risks sacrificing the advantages of a filter, namely that extradition requests which deserve to fail are weeded out at the earliest possible opportunity. The CPS has also expressed concern at being given *de facto* responsibility for the function presently carried out by the Secretary of State if he decides to refuse an extradition request at this early stage. The CPS act, at present, as if they were the solicitors of the requesting state: the proposals for Model I could have profound consequences for how they carry out their part in the extradition process.

104. Even if the arguments for retaining a function for the Secretary of State prevail, we do not believe that section 7(4) need necessarily be retained in its present form. We believe that the Secretary of State could be responsible for authenticating an extradition request, in effect certifying that it has been received from an authority he recognises to be authorised to make an extradition request, and that he should have the power to discontinue a request only if it raised concerns over national security or exceptional humanitarian concerns that would make it unjust or oppressive to allow the case to proceed, even to a court hearing. We have argued already that specialty should not be a ground for refusal by the Secretary of State at this stage.

105. *This report invites views on whether the Secretary of State should continue to retain his initial filter role before an extradition request proceeds to the court stage and whether*

some or all of his functions can be carried out by the court.

Court stage

106. The Act sets out the magistrate's responsibilities in section 9. He is required to decide whether the fugitive should be committed to await a final decision by the Secretary of State. Section 11 governs a second hearing by the Divisional Court, if the fugitive decides to appeal against the magistrate's decision by means of statutory habeas corpus. We have already pointed to the difficulties of overlapping responsibilities: the Divisional Court has wider grounds of refusal than the magistrate, and may also be invited to consider grounds for refusal which will be looked at again by the Secretary of State.

107. The introduction of the ECE standard means that the magistrate's court now consider the evidence in fewer cases; the majority follow the ECE. Extradition hearings are presently conducted as if they were "old style" committal hearings, and have not been affected by the procedural changes introduced by the Criminal Justice Proceedings Act 1996.

108. We have recommended that there should be a further move away from the *prima facie* requirement, and that authentication requirements should be simplified. We consider that some of the functions presently carried out by the Secretary of State could be passed to the court to consider. We are also, as elsewhere, governed by the view that our authorities are not being asked to decide whether a fugitive is guilty or innocent, but whether there are any overriding grounds why they should not be returned to stand trial or serve out a sentence. Decisions should be taken swiftly, and we believe that the number of consecutive routes of appeal need to be addressed: we believe that a fugitive should have a single court hearing, and a single right of appeal.

109. There are powerful arguments for retaining a central court for extradition. It is a specialised subject; the majority of fugitives are arrested and detained in the London area, which also allows for easy transfer abroad as well as access to lawyers with expertise in extradition. We believe that this should continue to be the presumption, but that new legislation should retain the capacity for the court to be convened elsewhere, for example, where there are exceptional security considerations. We have also recommended in Section VIII that it should be possible, again in exceptional circumstances, for a fugitive to be detained pending extradition proceedings in Northern Ireland as well as in England and Wales.

110. We see no reason why the main hearing of an extradition request should not, as it is now, be heard by a specialist stipendiary magistrate. We have a strong preference for the court to move away from the language of "committal": the

hearing should establish, subject to the Secretary of State's final discretion, whether a fugitive is extraditable. We believe that the main functions of such a court should be to establish:

(i) a fugitive's identity;

(ii) whether the offences concerned are extradition crimes[23], whether requirements of information (we have proposed the ECE standard as the norm) are met, or that the fugitive is unlawfully at large, or in conviction requests, has been convicted;

(iii) whether the fugitive has already been convicted or acquitted for the same offences for which his or her extradition is now sought;

(iv) whether the fugitive should be returned to serve out a sentence imposed as a result of a conviction *in absentia*, or whether he has been accused of a political offence;

(v) whether the length of time since the offences are alleged to have been committed or since the fugitive has been unlawfully at large, would make it unjust or oppressive to return him to the requesting state.

111. We have already noted, in Section III, the earlier route of challenge available to individuals once the ECHR is incorporated into domestic law: any allegations of breaches of the ECHR would be heard alongside the above, and allow the court to decide whether the fugitive might, if returned, be prejudiced, detained, or restricted in his personal liberty by means of his or her race, religion, nationality or political opinions.

112. Our first preference is for extradition hearings to be heard, as now, in a magistrate's court. We have, however, not excluded the possibility of creating a separate, specialist, extradition tribunal in order to expedite decisions on extradition requests.

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23 We believe that the definition of extradition crime could explicitly exclude offences which are offences under military law only (section 6 1(b) of the Act). We have also, in selecting the above functions for the court, endorsed the earlier working group's recommendation that there was no need to retain a ground for refusal because of the trivial nature of an offence (section 11(3)(a)).

113. We have noted, in Section II, that if an appeal via statutory habeas corpus is made, that a fugitive may apply to the House of Lords for leave to appeal. We believe that there is a strong case for requiring that leave may only be requested if a point of law of general public importance is certified by the Divisional Court.

114. *This report invites views on:*

(i) *the extent of the functions proposed for the court stage in future extradition hearings;*

(ii) *the proposal that hearings should be conducted by a specialist magistrate, with a route of appeal to the Divisional Court;*

(iii) *whether there should be a separate tribunal to hear extradition requests; and*

(iv) *the proposal that appeals to the House of Lords should require certification of a point of law of general public importance.*

Decision on surrender

115. Section 12 of the Act governs the Secretary of State's final decision on surrender. We have set out above those questions which we believe are for the court to consider. We do not believe that the Secretary of State should duplicate that consideration. He should be able to rely on the court's decision on extraditability.

116. We believe that the Secretary of State should decide not to extradite an individual if:

(i) there are issues of national security or exceptional humanitarian concerns that would make it unjust or oppressive to return that individual;

(ii) specialty protection required by that particular extradition arrangement will not be in place on return;

(iii) if the fugitive is facing the death penalty for an offence and the Secretary of State has not received satisfactory assurances that it will not be imposed;

(v) if another request has been made in respect of the person to which, having regard to all the circumstances, it appears to the Secretary of State

preference should be given.

117. The Act places no restrictions on issues that may be put before the Secretary of State in making representations against return. His discretion is unfettered. While it is important that the Secretary of State's discretion should not be so narrow that an individual has no effective remedy, we are clear that the Secretary of State's discretion should be used sparingly and that he should not be obliged to consider matters that are either properly for the court of trial or have already been decided by the UK courts. The Secretary of State should be able to dismiss representations that raise no new points, or that claim, without new evidence, that the court's decision on extraditability should be overturned. The Secretary of State should provide reasons for his decision, which continues to be subject to scrutiny by means of judicial review.

118. *We recommend that the Secretary of State should retain discretion on a final decision on surrender. This report invites views on the proposed narrowing of the Secretary of State's functions when making a final decision on surrender, and that he should be able to dismiss representations that raise no new points or challenge, without new evidence, the court's decision on extraditability.*

Time limits

119. Time limits in the Act currently affect the time given to the requesting state to provide full documentation after a provisional arrest, the time given to the Secretary of State to make a decision on surrender and to remove the fugitive. These time limits are all upon the executive; there are some time limits within the court process, but no time limits on the disposal of court proceedings. Fugitives can be discharged if the requesting state does not provide full papers in time; they can also apply for discharge if the Secretary of State, without sufficient cause, takes too long over either a decision on return or the physical process of removal. The 1995 Convention will, when ratified, introduce new time limits on the process for those who consent to their return to EU countries.

120. Different time limits apply for different categories of cases, and in any event, we recommend that, wherever possible, existing time limits should be standardised. Commonwealth countries do not have any time limits and the setting of them is discretionary on a case to case basis. Accordingly, there is scope for uniform time limits without renegotiating international agreements.

121. We have expressed our concern over delay in the extradition process. We believe that the recommendations we have made will go some way to streamlining the extradition process, and that this should have a knock-on effect on the

overall length of consideration of extradition requests.

122. We do not, however, see why the court, or a specialised tribunal, should not be subject to fixed targets for reaching a decision. We were recently presented with a vivid example from an extradition partner: consideration under UK extradition law of three co-accused had taken so long that the case was dealt with in the requesting state as three separate prosecutions, with the witnesses appearing three times. A balance has to be struck: some delay may be necessary in fairness to the fugitive, but in most instances, delay makes the trial in the requesting state more difficult and benefits the fugitive. Further consideration needs to be given to how effective and fair targets could be introduced to the court stage in extradition proceedings.

123. **We recommend that the existing time limits should, where possible, be standardised, and that consideration should be given to providing targets for the court, or a new specialised tribunal, to take decisions in extradition proceedings.**

Conclusion

124. The proposals above are primarily concerned with those extradition requests that are contested by the fugitive, where we have judged that it continues to be right that the court and the Secretary of State examine the request. We have, however, also considered two other categories of extradition requests: first, requests which could be decided by the courts without reference to the Secretary of State, and, secondly, cases where the fugitive consents, typically, shortly after arrest, to return to the requesting state without going through the full extradition procedure. The first category is examined in section VI, and the second in Section VII.

SECTION VI: FAST-TRACK

125. While we believe that our recommendations will speed up the consideration of extradition cases, and that eventual abolition of the *prima facie* requirement would mean that the majority of extradition requests will be treated in the same way as requests from ECE partners are now, we still question whether this is sufficient for the future. We have noted the increasing closeness in international judicial cooperation, particularly within the EU, and we have noted that the majority of our extradition traffic is with extradition partners whose criminal justice systems are of a high standard. We have therefore taken this opportunity to recommend that consideration should be given to closer extradition arrangements between the United Kingdom and countries other than the Republic of Ireland. The most natural, but not the only, place to look for partners in a new fast-track extradition scheme is the European Union, and the most obvious model to follow is a form of backing of warrants scheme.

126. We acknowledge that there is a danger of further complicating extradition arrangements, and that there are good reasons for our backing of warrants arrangement being made with the Republic of Ireland, given the historic ties, legal similarities and geographical proximity of our two countries. The United Kingdom will also want to avoid negating the benefits of a multilateral agreement such as the ECE. On the other hand, if we have complete faith in the criminal justice system of a requesting state, then we believe that there are strong arguments to reduce procedure in the United Kingdom to the minimum necessary to allow for a swift return for the individual to have his or her case considered by the court of trial.

127. There are other parallels: Australia and New Zealand operate a backing of warrants system between their two countries, and it is possible to extend backing of warrants arrangements within the Commonwealth, mainly on a regional basis.

128. As with extradition requests made under the ECE, there are safeguards built in to extradition requests made from the Republic of Ireland, which are dealt with under the 1965 Backing of Warrants (Republic of Ireland) Act ("the 1965 Act"). Under section 2 of the 1965 Act, return will be not be ordered if:

(i) the offence on the warrant does not correspond with an offence in the United Kingdom which is an indictable offence or is punishable on summary conviction with imprisonment for six months;

(ii) the offence is an offence of political

character or under military law, or there are grounds for believing that the subject of the warrant will, if returned, be prosecuted or detained for another offence of political character or under military law;

(iii) the warrant is for the arrest of a person accused of an offence in Northern Ireland which constitutes an extra-territorial offence under the law of the Republic, or that the person has been acquitted or convicted in Northern Ireland in respect of the same act for which the warrant is issued;

(iv) there are grounds for believing that the person will be prosecuted or punished on account of his race, religion nationality or political opinions, or that he would be punished or detained by reason of his race, religion nationality or political opinions.

Under the 1965 Act, the Secretary of State may by order provide specialty protection for fugitives returned from the Republic.

129. We believe that further consideration of the use of a fast-track extradition procedure with some of the United Kingdom's extradition partners should be undertaken, and that consideration should be given to including a provision in new legislation, allowing the Secretary of State to enter into fast-track extradition arrangements. The precise nature of any such fast-track would have to be agreed on a bilateral or regional basis, and we do not make detailed recommendations. The Government will have to take account of reciprocity in such an arrangement: there is, for example, full reciprocity on extradition of own nationals with the Republic.

130. The backing of warrants arrangement with the Republic is an obvious model, but it is not the only one. It would be possible to consider closer extradition arrangements for some offences only, or to consider introducing a special warrant in carefully-defined circumstances, which once issued by one country would be accepted as valid by the police or prosecuting authorities of another country.

131. *This report invites views on the establishment of a fast-track extradition procedure.*

SECTION VII: SIMPLIFIED PROCEDURES

132. The United Kingdom needs to incorporate into domestic legislation the 1995 Convention on Simplified Extradition Procedure between the Member States of the European Union (see Appendix 7). Also, the law needs clarifying to better distinguish between full extraditions, waiving the right to appeal against the magistrate's decision and consensual returns.

133. Section 14 of and paragraph 9 of Schedule 1 to the 1989 Act allow a fugitive to waive his or her rights; the Act then ceases to apply. The Magistrates Courts' (Extradition) Rules 1989 prescribe forms for the waiving of these rights. A fugitive should be returned within one month or may apply to be discharged. In 1997, around 40% of those returned from England, Wales and Northern Ireland consented to return; the figure for 1996 was closer to 60%.

The 1995 Convention

134. The 1995 EU Convention sets out streamlined procedures for cases where the fugitive and the requested state consent to extradition.

Revocation of consent

135. Article 7 lists various conditions under which the arrested person's consent to return, and (where appropriate - see discussion below) renunciation of specialty, is to be given. Article 7(4) states that consent and renunciation, once given, may not be revoked. **We recommend that United Kingdom provisions should not permit the revocation of consent or renunciation of specialty protection as allowed by Article 7 of the 1995 Convention.**

Specialty

136. Articles 9 and 13 of the Convention allow for the relaxation of specialty protection for a person who consents to return to an EU Member State. The United Kingdom must decide whether to relax specialty protection.

137. The main provision is Article 9, which allows Member States to declare that the specialty protection in Article 14 of the ECE shall not apply to an arrested person who either (a) consents to extradition, or (b) consents to extradition and expressly renounces entitlement to specialty protection. The choice between (a) and (b) is to allow for the differences between legal systems; in some systems consent automatically entails renouncing specialty, in others express renunciation is required.

138. **We recommend that the United Kingdom should relax**

specialty protection as allowed by Article 9 of the 1995 Convention; the United Kingdom should declare Article 14 of the ECE does not apply to a person who consents to return under simplified procedures within the EU. We would recommend the option at (a) in Article 9, with consent automatically entailing renunciation of specialty.

139. Article 13 provides that, where a person has renounced specialty protection under the Convention, the renunciation also applies in relation to re-extradition to a third EU Member State (ie the requirement in Article 15 of the ECE for the consent of the requesting state will not apply), unless the Member State which returned him has declared otherwise. **If the United Kingdom is content to relax specialty protection as allowed by Article 9, it is logical to relax it for re-extradition within the EU, as allowed by article 13 of the 1995 Convention.**

Consent after the 10-day deadline

140. Article 8 requires the requested state to notify the requesting state within ten days of the arrest whether the fugitive has consented to return under the simplified procedure. Article 12 covers what happens if consent is given after this ten day period has expired. Article 12(3) states that each Member State when ratifying the Convention shall state whether it intends to apply the second indent in Article 12(1) and Article 12(2), and if so, under what conditions.

141. The second indent in Article 12(1) allows for the use of simplified procedure if a formal request has been received: the requested state may still apply the simplified procedure, but is not obliged to do so. A Member State must declare on ratification whether or not the simplified procedure will be available where a formal extradition request has been received. The reason for having these separate provisions is that it may not be possible for some Member States to reconcile the use of the simplified procedure with their national court procedures, which come into play once a full extradition request has been received (Portugal has signed up to the second indent).

142. **We would wish to be able to use simplified procedures at whatever stage consent to return is given; and recommend that the simplified procedure be followed whether or not a formal request has been received. We therefore recommend that the United Kingdom should apply no conditions to Article 12(3) of the 1995 Convention.** Many people who consent to extradition only do so after the request has been received; some consent as late as surrender stage.

Simplified procedure: Section 14 and paragraph 9 of Schedule 1

143. The effect of the introduction of simplified procedures specific to the EU will create a double system, with those who wish to consent to their return to countries other than EU Member States, being subject to different procedures.

144. *We recommend that consideration is given to whether the EU proposals for simplified procedure should also be applied to requests from other extradition partners. In addition, we recommend that section 14 of and paragraph 9 of Schedule 1 to the Act are clarified.*

SECTION VIII: MISCELLANEOUS

145. This Section covers a range of issues which were considered by the working group. The most significant are those relating to simplified procedures. We have already noted the desirability of renegotiating older treaties with a view to revoking Schedule 1 to the Act. In the event that this may not be achieved, we have also noted, partly for the record, the most significant discrepancies between the extradition arrangements for ECE, Commonwealth and Schedule 1 treaty partners. This Section is, in general, aimed at simplification and clarification.

Convictions in absentia

146. The 1989 Act treats convictions in absentia in three slightly different ways. The provisions in paragraph 20 of Schedule 1 are out-dated: the key difference is between those requests made from Commonwealth countries, which must be treated as accusation cases, and those which fall under section 6(2), where provision is made for the return of a fugitive convicted in his or her absence, provided that it is "in the interests of justice" to do so.

147. Not many requests are made to the United Kingdom on the basis of convictions in absentia. As far as we have been able to establish, those that have been made since 1989 have failed, on a variety of grounds. A conviction in the fugitive's absence does not necessarily mean that the trial is unjust or without safeguards for the individual. It is difficult to justify that people should escape extradition because they deliberately absented themselves from their own trial. We believe that there are circumstances, particularly when a fugitive has made this choice, that it should be possible for that person to be returned to the requesting state. We consider that there are circumstances in which a re-trial might not be necessary.

148. We recommend that this issue should be a matter for the courts rather than the executive. This should not longer be a question for "an appropriate authority". **We do not believe there should be either a blanket policy of refusing to recognise convictions in absentia, or to accept all such convictions without further questioning. New legislation should set out clearly the specific criteria for dealing with such requests.**

Temporary transfer for trial for those awaiting extradition

149. Under section 12(3) of the Act, an order for return cannot be made against a person until any charges against that person in the United Kingdom have been dealt with, or until any sentence of imprisonment in the United Kingdom has been served. If a person who is accused of an offence in another country is serving a lengthy sentence here, this means the

extradition and subsequent trial of that person will be delayed, possibly for several years. The delay may affect the case against the person in the requesting state, especially if evidence depends on the memory of witnesses.

150. We believe the possibilities for delay should be reduced. **We recommend that there should be a power to allow for the temporary transfer of a person so that he or she may be tried before their sentence in the United Kingdom has been completed.**

Special arrangements

151. Sections 15 of the Act refer to requests from countries with which the United Kingdom has no extradition relations. Section 15 allows for a request to be made for a particular individual under a special arrangement. To date, no extraditions under section 15 have been successfully concluded.

152. We have considered whether the fact that the United Kingdom does not have extradition relations with a country should mean that any request from that country should have to conform to a higher evidential standard. The lack of extradition relations with a particular country may be a result of concerns about that country's criminal justice system, or it may be that there has been no apparent operational need to have an extradition arrangement. The evaluation of the criminal justice system is a separate matter from the evidential requirement; concerns about the criminal justice system in the requesting state can be raised during the extradition process. **We recommend that judgements should be made on a case by case basis, but that there should be no automatic presumption in favour of the *prima facie* requirement for special arrangements.**

153. Despite its lack of use, we believe that the provision is still needed. The fact that it has not yet been tested does not mean it should be abandoned; it is meant to be for an exceptional situation. It is easy to conceive of circumstances where the United Kingdom might wish to pursue extradition outside normal arrangements; criminals should not be able to evade justice simply by fleeing to a particular country.

154. **The provisions for special arrangements in section 15 only apply to foreign states. We recommend that they should be extended to Commonwealth countries with which the United Kingdom has no extradition arrangements.**

Part IV of the Extradition Act 1989

155. We noted that any amendments to the specialty requirements for requests made to the United Kingdom would have to be considered in the context of similar amendments to the provisions in the Extradition Act in respect of outgoing requests. Sections 18 and 19 relate to restrictions upon proceedings for other offences in the case of persons returned by foreign states and by designated Commonwealth countries or colonies.

156. **We recommend that, where possible, reciprocal arrangements should be put in place in respect of specialty so that the Crown Prosecution Service could prosecute for additional minor offences when a fugitive has been returned to the United Kingdom.**

Definition of extradition crime

157. Section 2 of the Act, together with paragraph 20 of Schedule 1 defines what constitutes an extradition crime. We have noted our view that older bilateral treaties should be renegotiated, partly to allow for modernisation. **We recommend that the list system as a means of defining what should be an extradition crime should be replaced by a minimum sentence threshold as older treaties are renegotiated. If Schedule 1, or a similar transitional provision is still required in order to preserve remaining older treaties when new legislation is introduced, we recommend that the definition of "extradition crime" contained in section 2 be amended so as to ensure that the list system is not a barrier to successful extradition.**

The 1996 Convention (definition of extradition crime)

158. Article 2(1) amends the definition of what constitutes an extradition crime. It provides that for an offence to be extraditable it needs to be punishable by at least 6 months' imprisonment in the requested state, rather than the present requirement under the ECE of a maximum period of at least 12 months' imprisonment in both the requested and requesting states (the United Kingdom has a reservation to Article 2 of the ECE, defining an extradition crime as an offence punishable by 12 months' or more imprisonment in both the United Kingdom and the requesting state).

159. Article 2(3) states that extradition may in certain circumstances be granted for offences punishable by fines; it refers back to Article 2(2) of the ECE. **We recommend that the UK should accept the relaxation of the definition of extradition crime set out in Article 2(1) of the 1996 Convention.**

Death penalty

160. Under section 12(2)(b) of the Act, the Secretary of State may decide not to order surrender if the person is facing the death penalty for an offence for which that penalty is not available in Great Britain. In effect, this means that a decision is taken in each individual case, generally, relying on an individual undertaking by the requesting state. Some Countries have no provisions for such an undertaking, but will, under their law, respect any conditions attached to an order for surrender.

161. **We believe that the Secretary of State should continue to refuse extradition unless he is given satisfactory assurances by the requesting state if a fugitive faces the death penalty on return, but recommend that provision is made, on this issue alone, for a formal condition to be attached to future orders for surrender issued by the Secretary of State.**

Schedule 1

162. There are a number of anomalies in the Act between the provisions for requests made under Schedule 1 and those relating to other countries. We believe that new legislation should, as far as possible, tidy up these anomalies. Some of these can only be achieved by renegotiating bilateral treaties, and we recommend that they are taken into account if and when the treaties are renegotiated.

163. The list below highlights some of the differences between Schedule 1 and other parts of the Act:

(i) provisional arrest under Schedule 1 is not currently available for a person on his way to the United Kingdom. This provision should be extended to bring Schedule 1 into line with the rest of the Act;

(ii) there is a difference in the Secretary of State's powers to discharge a person from custody. Under section 8(4) of the Act, the Secretary of State may cancel a warrant and discharge a person from custody if he decides not to issue an authority to proceed. Under paragraph 5(2) of Schedule 1, the Secretary of State may order a provisional warrant to be cancelled and order the person to be discharged "if he thinks fit".;

(iii) the US/UK Treaty requires that provisional arrest requests must be made through the diplomatic channel. Requests should be able to be made through police channels, as in other categories.

(iv) Schedule 1 has no provision for consent to be given to a fugitive being dealt with for another offence once he has been returned. This provision should be added to bring the Schedule into line with the rest of the Act;

(v) Schedule 1 does not have any equivalent to the habeas corpus provisions in section 11; or to the requirements regarding giving notice, representations and judicial review from section 13. Nor does section 13 technically apply to Commonwealth countries. Currently, all these provisions are applied to all countries by analogy. We recommend that this be clarified;

(vi) for people returned to the United Kingdom by foreign states, section 18 refers to trial and conviction for offences committed prior to extradition. Paragraph 17 of Schedule 1 refers only to trial; this should be brought in line with section 18.

Other miscellaneous amendments

164. There are a number of other amendments which should be made to the Act:

(i) section 9 covers the proceedings for committal by the magistrate; section 27 of the Act covers admissibility of evidence. The Act does not include provisions for evidence taken in any foreign state as being admissible for extradition to Commonwealth countries, or evidence taken in Commonwealth countries to be authenticated for the purposes of a request from a foreign state. This anomaly should be addressed in any subsequent legislation;

(ii) overseas territories: section 31 only applies where there is no treaty between United Kingdom and a foreign state. This should be extended to cover the situation where there is a treaty but it has not been extended to the overseas territories;

(iii) there is currently no power to hold prisoners in Northern Ireland pending extradition. Such a power should be introduced;

(iv) there should be a power of discharge for the courts in cases where a request is withdrawn;

(v) amendments to the Extradition Act have led to the Act having two sections numbered 2(4)(d);

one inserted by the Criminal Justice and Public Order Act 1994, the other by the Hong Kong Act 1985 (incorporated by SI 1178 of 1997). The latter should be re-numbered for the sake of clarity.

SECTION IX: SUMMARY OF RECOMMENDATIONS

SECTION I: INTRODUCTION

It is the view of this working group that, in the interest of the modernisation of the United Kingdom's extradition arrangements, the Government should aim to renegotiate its bilateral treaties. (Paragraph 9)

SECTION III: SAFEGUARDS

We recommend that new legislation should be clearer. The incorporation of the ECHR will provide an early route of appeal that can apply to allegations regarding the fairness of the trial in the requesting state and allegations concerning treatment on return. We recommend that these should guide the courts, and that some of the existing statutory bars in the Act that relate to conditions on return in the requesting state could be revoked, or revised. (Paragraph 47)

We recommend that the United Kingdom should accept Articles 10, 11 and 12 of the 1996 Convention, thereby relaxing specialty requirements between EU Member States. (Paragraph 55)

We recommend that the United Kingdom should relax its specialty requirements for its main Commonwealth extradition partners. (Paragraph 56)

We are not convinced that specialty protection needs to be in place throughout the extradition proceedings; the test is whether it is available on the fugitive's return. We believe that it is primarily a question relating to the strength of international relations and respective trust between extradition partners and we recommend that it should be a question for the Secretary of State to decide at the point of return. (Paragraph 59)

We recommend that the United Kingdom should accept derogation from the principle of dual criminality as set out in Article 3 of the 1996 Convention.(Paragraph 62)

We recommend that the political offence safeguard should remain in its present form (subject to the derogation recommended for EU Member States in the 1996 Convention) but that this should no longer be examined by the Secretary of State: it should be considered by the courts. (Paragraph 64)

We recommend that the United Kingdom should agree to Article 5(1) of the 1996 Convention, thereby providing that the political offence defence can no longer be claimed by those whose extradition is sought by another EU Member State. (Paragraph 67)

SECTION IV: EVIDENTIAL REQUIREMENTS

We recommend that new legislation should permit the *prima facie* requirement to be removed for our main Commonwealth partners, without an insistence on reciprocity. (Paragraph 76)

We recommend that the ECE standard should apply as a replacement for the *prima facie* requirement for our main Commonwealth partners; there are obvious advantages in aiming for a single standard in extradition requests made to the United Kingdom. (Paragraph 81)

We recommend that authentication requirements should be simplified. There should be one tier of authentication for the requesting state. We recommend that the authentication of a document should have the effect of rendering a document and its contents admissible in a court in the United Kingdom. (Paragraph 88)

We recommend that the provisions of Article 15 of the 1996 Convention should be adopted, thereby restricting authentication requirements to key documents. (Paragraph 90)

We recommend that new legislation should define what is meant by an "extradition partner", and that, as far as is legally possible, legislation should aim to provide one main extradition scheme, removing any unintended and unnecessary procedural distinctions between requests from "foreign states" and Commonwealth partners. (Paragraph 92)

SECTION V: THE SECRETARY OF STATE AND THE COURTS

This report invites views on whether the Secretary of State should continue to retain his initial filter role before an extradition request proceeds to the court stage and whether some or all of his functions can be carried out by the court. (Paragraph 105)

This report invites views on:

(i) *the extent of the functions proposed for the court stage in future extradition hearings;*

(ii) *the proposal that hearings should be conducted by a specialist magistrate, with a route of appeal to the Divisional Court;*

(iii) *whether there should be a separate tribunal to hear extradition requests; and*

(iv) *the proposal that appeals to the House of Lords should require certification of a point of law of general public importance.* (Paragraph 114)

We recommend that the Secretary of State should retain discretion on a final decision on surrender. This report invites views on the proposed narrowing of the Secretary of State's functions when making a final decision on surrender, and that he should be able to dismiss representations that raise no new points or challenge, without new evidence, the court's decision on extraditability. (Paragraph 118)

We recommend that the existing time limits should, where possible, be standardised, and that consideration should be given to providing targets for the court, or a new specialised tribunal, to take decisions in extradition proceedings.
We recommend that the existing time limits should, where possible, be standardised, and that consideration should be given to providing targets for the court, or a new specialised tribunal, to take decisions in extradition proceedings.
(Paragraph 123)

SECTION VI: FAST-TRACK

This report invites views on the establishment of a fast-track extradition procedure. (Paragraph 131)

SECTION VII: SIMPLIFIED PROCEDURES

We recommend that United Kingdom provisions should not permit the revocation of consent or renunciation of specialty protection as allowed by Article 7 of the 1995 Convention. (Paragraph 135)

We recommend that the United Kingdom should relax specialty protection as allowed by Article 9 of the 1995 Convention; the United Kingdom should declare Article 14 of the ECE does not apply to a person who consents to return under simplified procedures within the EU. (Paragraph 138)

If the United Kingdom is content to relax specialty protection as allowed by Article 9, it is logical to relax it for re-extradition within the EU, as allowed by article 13 of the 1995 Convention. (Paragraph 139)

We would wish to be able to use simplified procedures at whatever stage consent to return is given; and recommend that the simplified procedure be followed whether or not a formal request has been received. We therefore recommend that the United Kingdom should apply no conditions to Article 12(3) of the 1995 Convention. (Paragraph 142)

We recommend that consideration is given to whether the EU proposals for simplified procedure should also be applied to requests from other extradition partners. In addition, we recommend that section 14 of and paragraph 9 of Schedule 1 to the Act are clarified. (Paragraph 144)

SECTION VIII: MISCELLANEOUS

We do not believe there should be either a blanket policy of refusing to recognise convictions in absentia, or to accept all such convictions without further questioning. New legislation should set out clearly the specific criteria for dealing with such requests. (Paragraph 148)

We recommend that there should be a power to allow for the temporary transfer of a person so that he or she may be tried before their sentence in the United Kingdom has been completed. (Paragraph 150)

We recommend that judgements should be made on a case by case basis, but that there should be no automatic presumption in favour of the *prima facie* requirement for special arrangements. (Paragraph 152)

The provisions for special arrangements in section 15 only apply to foreign states. We recommend that they should be extended to Commonwealth countries with which the United Kingdom has no extradition arrangements. (Paragraph 154)

We recommend that, where possible, reciprocal arrangements should be put in place in respect of specialty so that the Crown Prosecution Service could prosecute for additional minor offences when a fugitive has been returned to the United Kingdom. (Paragraph 156)

We recommend that the list system as a means of defining what should be an extradition crime should be replaced by a minimum sentence threshold as older treaties are renegotiated. If Schedule 1, or a similar transitional provision is still required in order to preserve remaining older treaties when new legislation is introduced, we recommend that the definition of "extradition crime" contained in section 2 be amended so as to ensure that the list system is not a barrier to successful extradition. (Paragraph 157)

We recommend that the UK should accept the relaxation of the definition of extradition crime set out in Article 2(1) of the 1996 Convention. (Paragraph 159)

We believe that the Secretary of State should continue to refuse extradition unless he is given satisfactory assurances by the requesting state if a fugitive faces the death penalty on return, but recommend that provision is made, on this issue alone, for a formal condition to be attached to future orders for surrender issued by the Secretary of State. (Paragraph 162)

SECTION X: KEY EXTRADITION TERMS

Incoming request: an extradition request from another country for someone who is in the United Kingdom to stand trial or to serve a sentence for extradition crimes.

Outgoing request: a request made by the United Kingdom for the return of someone who has committed an extradition crime in UK jurisdiction.

Requesting state: the country making an extradition request.

Requested state: the country from which extradition is requested.

Authority to proceed (ATP): formal authorisation to Bow Street Magistrates' Court to hear the case against the fugitive (ECE, Commonwealth and Part III treaty requests).

Order to proceed (OTP): formal authorisation to Bow Street Magistrates' Court to hear the case against the fugitive (Schedule 1 treaty requests).

ECE partners: countries which have ratified the European Convention on Extradition and have been designated under section 4(1) of the Act.

Commonwealth partners: countries which are members of the Commonwealth and have been designated under section 5(1) of the Act.

Bilateral treaty partners (Part III): countries which have concluded a bilateral extradition treaty with the United Kingdom since 1989, when an Order in Council directs that the Act applies under section 4(1).

Bilateral treaty partners (Schedule 1): countries which have concluded a bilateral extradition treaty with the United Kingdom before 1989, and which are incorporated in Orders in Council made under section 2 of the 1870 Extradition Act.

Specialty: a principle in extradition cases; a person may not be prosecuted following return for offences other than those for which he or she was surrendered (there are circumstances in which the requested state could agree to the prosecution of offences other than those for which surrender was ordered which requires either the consent of the person returned and/or the requested state).

Dual criminality: conduct must amount to a criminal offence in both the requesting and requested states.

Double jeopardy: an offender may not be prosecuted twice in different jurisdictions for the same offence.

EXTRADITION ARRANGEMENTS

European Convention on Extradition (ECE partners)

1. The ECE was opened for signature in 1957; it came into force in the United Kingdom in 1991. Most of the United Kingdom's extradition traffic is with ECE partners: in 1997, 80% of fugitives who were extradited from the United Kingdom were returned to an ECE country.

2. The main feature of ECE cases is that the ECE does not require a *prima facie* case be submitted in support of an extradition request. The court of committal must be provided with identification particulars, particulars of the offence and a statement of the relevant law. All ECE extraditions are governed by Part III of the Act. The following countries have been designated under section 4(1) of the Act:

Austria (1991*)
Belgium (1998)
Bulgaria (1994)
Croatia (1995)
Cyprus (1991)
Czech Republic (1995)
Denmark (1991)
Estonia (1997)
Finland (1991)
France (1991)
Germany (1991)
Greece (1991)
Hungary (1993)
Iceland (1991)
Israel (1991)
Italy (1991)
Latvia (1997)
Liechtenstein (1991)
Lithuania (1995)
Luxembourg (1991)
Malta (1997)
Moldova (1998)
The Netherlands (1991)
Norway (1991)
Poland (1993)
Portugal (1991)
Romania (1998)
Slovakia (1995)
Slovenia (1995)
Spain (1991)
Sweden (1991)
Switzerland (1991)
Turkey (1991)

* Year of UK designation

Commonwealth partners

3. The United Kingdom has extradition arrangements with most Commonwealth countries under the Commonwealth Scheme, which was first adopted in 1966. The arrangement relies on parallel extradition legislation, supported by a formal undertaking on specialty. The prima facie requirement applies, although the Scheme was amended in 1991 to allow for alternative arrangements to be reached on a bilateral basis. The United Kingdom still applies the *prima facie* requirement to all requests from Commonwealth partners.

4. The provisions of the Extradition Act relating to requests from Commonwealth countries differ in some respects from those relating to foreign states. There is no provision

for making representations prior to surrender (although the provisions are applied in practice); a person convicted in absentia must treated as an accused person; and there is no provision for special arrangements with Commonwealth countries. Specialty provisions are slightly different; a certificate is be issued by the Secretary of State confirming the existence of a specialty arrangement.

5. The following countries have been designated under section 5(1) of the Act:

Antigua & Barbuda*
Australia
The Bahamas
Bangladesh
Barbados
Belize
Botswana
Brunei
Canada
Dominica
Fiji
The Gambia
Ghana
Grenada
Guyana
India
Jamaica
Kenya
Kiribati
Lesotho
Malawi
Malaysia
Maldives
Mauritius
Nauru
New Zealand
Nigeria
Papua New Guinea
St Kitts and Nevis
St Lucia
St Vincent and the Grenadines
South Africa
Seychelles
Sierra Leone
Singapore
Solomon Islands
Sri Lanka
Swaziland
Tonga
Tanzania
Trinidad & Tobago
Tuvalu
Uganda
Vanuatu
Western Samoa
Zimbabwe
Zambia

* All designated in 1991, with the exception of South Africa which was designated in 1996. Pakistan, Namibia, Cameroon and Mozambique have not been designated under section 5(1). An extradition treaty was agreed between the Government of Great Britain and Northern Ireland and the Government of the Republic of India in September 1992.

Hong Kong Special Administrative Region

6. Although it stands as a separate category in the Act, extradition arrangements with the HKSAR are very close to those which apply to Commonwealth partners.

Bilateral treaty partners (Schedule 1)

7. Schedule 1 to the Act applies where bilateral treaties signed before 1989 under the 1870 Extradition Act are the basis for extradition arrangements. Most bilateral treaties date from the late nineteenth or early twentieth century, and are seldom used. The United States is the only treaty partner with which the United Kingdom has regular extradition traffic.

8. The *prima facie* requirement applies, and there are a number of subtle differences to the main body of the Act, the main difference being in the way in which an extradition crime is defined. Where there is no explicit provision, for example, for the individual to make representations against return, Part III is applied by analogy.

9. Although some of these treaties are often described as "moribund", no active steps have been taken to terminate them, and a decision would be taken by the Government, in consultation with its treaty partner, in the event of a request, as to whether the treaty was still in force.

Albania (1927)*
Argentina (1894)
Bolivia (1898)
Chile (1898)
Colombia (1889)
Cuba (1905)
Ecuador (1886)
Guatemala (1886)
Haiti (1876)
Iraq (1933)
Liberia (1894)
Mexico (1889)
Monaco (1892)
Nicaragua (1906)
Panama (1907)
Paraguay (1911)
Peru (1907)
Salvador (1882)
San Marino (1900)
Thailand (1911)
Uruguay (1885, 1891)
USA (1976, 1986)
Yugoslavia (1901, 1931)

* Date of entry of force under United Kingdom law.

Bilateral treaty partner (Part III)

10. The *prima facie* requirement applies; otherwise these follow the same procedures as for ECE requests. Only one country has been designated under section 4(1) of the Act since 1989:

Brazil (1997)

Scotland, Wales and Northern Ireland

11. Scotland has its own jurisdiction under the Act for deciding incoming extradition requests, with the exception of requests from Schedule 1 treaty partners, where Bow St. still has jurisdiction. In Scotland the court of committal consists of the Sheriff of Lothian and Borders. Under the Government's proposals for devolution, the functions of the Secretary of State for Scotland in relation to extradition cases will be transferred to Ministers of the Scottish executive, although extradition will be a reserved matter. Incoming extradition requests to England, Wales and Northern Ireland are dealt with by Bow St. and the Secretary of State for the Home Department.

Channel Islands and the Isle of Man

12. The Act applies to the Channel Islands and the Isle of

Man and defines them as part of the United Kingdom for the purposes of extradition. However, as a matter of constitutional practice, the Islands are consulted on whether any extradition treaties or conventions entered into by the UK should be extended to them.

Overseas territories

13. Extradition requests to the United Kingdom's Overseas Territories are made via the Foreign and Commonwealth Office, who will pass on the request to the Governor of the territory concerned. The request will be dealt with under the laws of that territory; the ECE has been extended between Finland, Hungary, Israel, Liechtenstein, Norway, Poland and Switzerland to:

Bermuda
British Indian Ocean Territory
British Antarctic Territory
Cayman Islands
Falkland Islands
Gibraltar
Montserrat
St Helena and Dependencies
South Georgia and South Sandwich Islands
Turks & Caicos Islands
British Virgin Islands

14. Extradition may, depending on the terms of the treaty concerned, also be possible on a bilateral basis with the Overseas Territories, as with Spain.

Republic of Ireland

15. Extradition arrangements with the Republic of Ireland are founded on reciprocal legislation as opposed to international treaty, although Ireland is a signatory to the European Convention on Extradition. Arrangements are based in United Kingdom legislation on the Backing of Warrants (Republic of Ireland) Act 1965 and, in Irish legislation, on the Irish Extradition Act 1965, as amended by the Extradition (European Convention on the Suppression of Terrorism) Act 1987, the Extradition (Amendment) Acts of 1987 and 1994, and the Extradition (Rule of Specialty and Re-extradition for Purposes of Part III of the Extradition Act 1965) Order 1994.

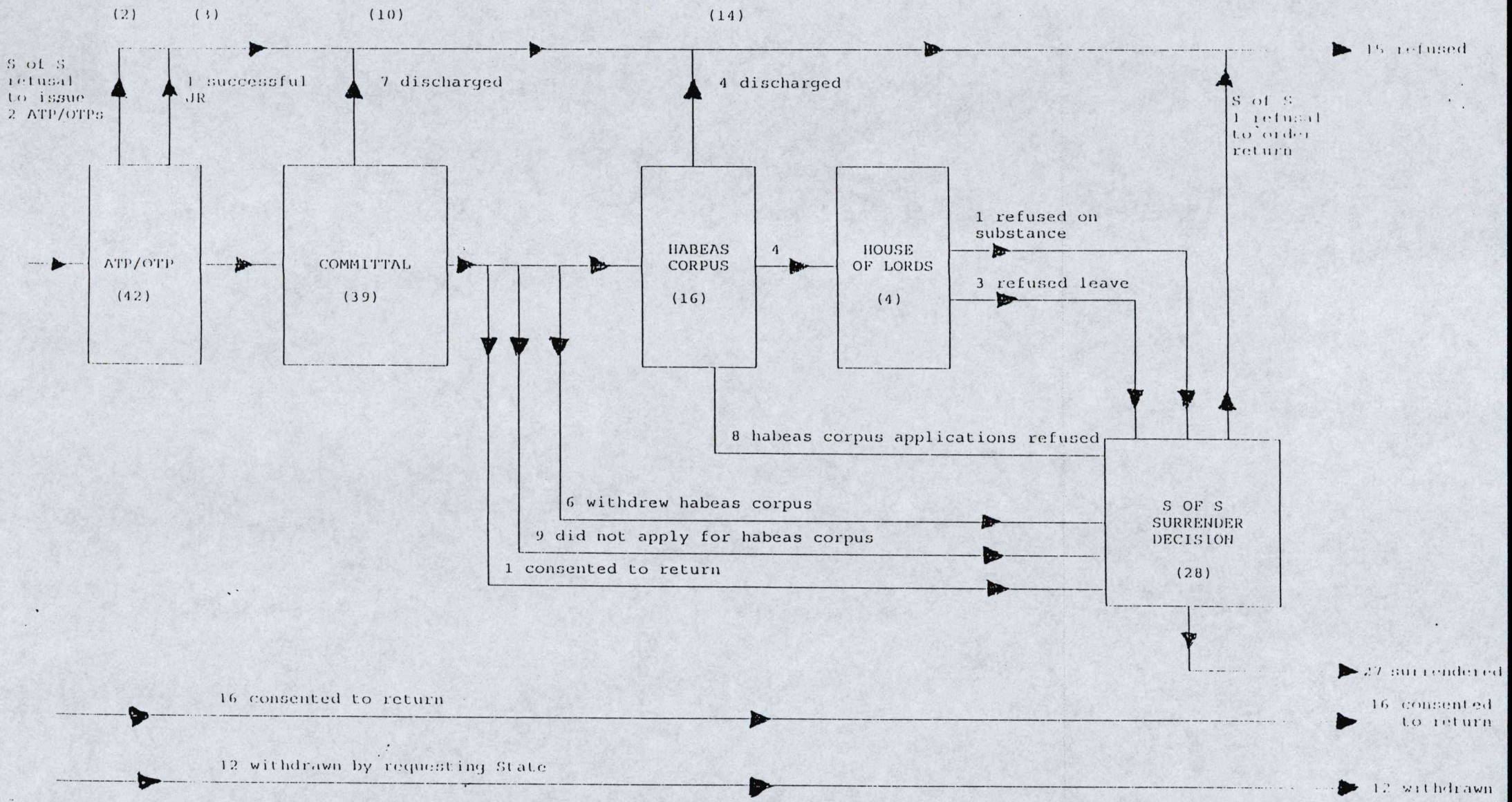
16. There is no formal request for extradition; rather, the police send over arrest warrants which are endorsed in the requested State and executed as if they were warrants emanating from the courts of that State. The fugitive is then brought to court. Safeguards are built into the system as with general extradition legislation.

Special arrangements

17. The Act allows for the establishment of a special extradition arrangement with a foreign state with which there is no other extradition arrangement (this provision does not apply to Commonwealth countries). The arrangement would take the form of a mini-treaty for the return of a particular individual. No special arrangement has been successfully completed.

APPENDIX 3

FLOWCHART OF THE EXTRADITION PROCESS APPLIED TO 70 REQUESTS TO ENGLAND, WALES AND NORTHERN IRELAND DECIDED IN 1997



APPENDIX 4

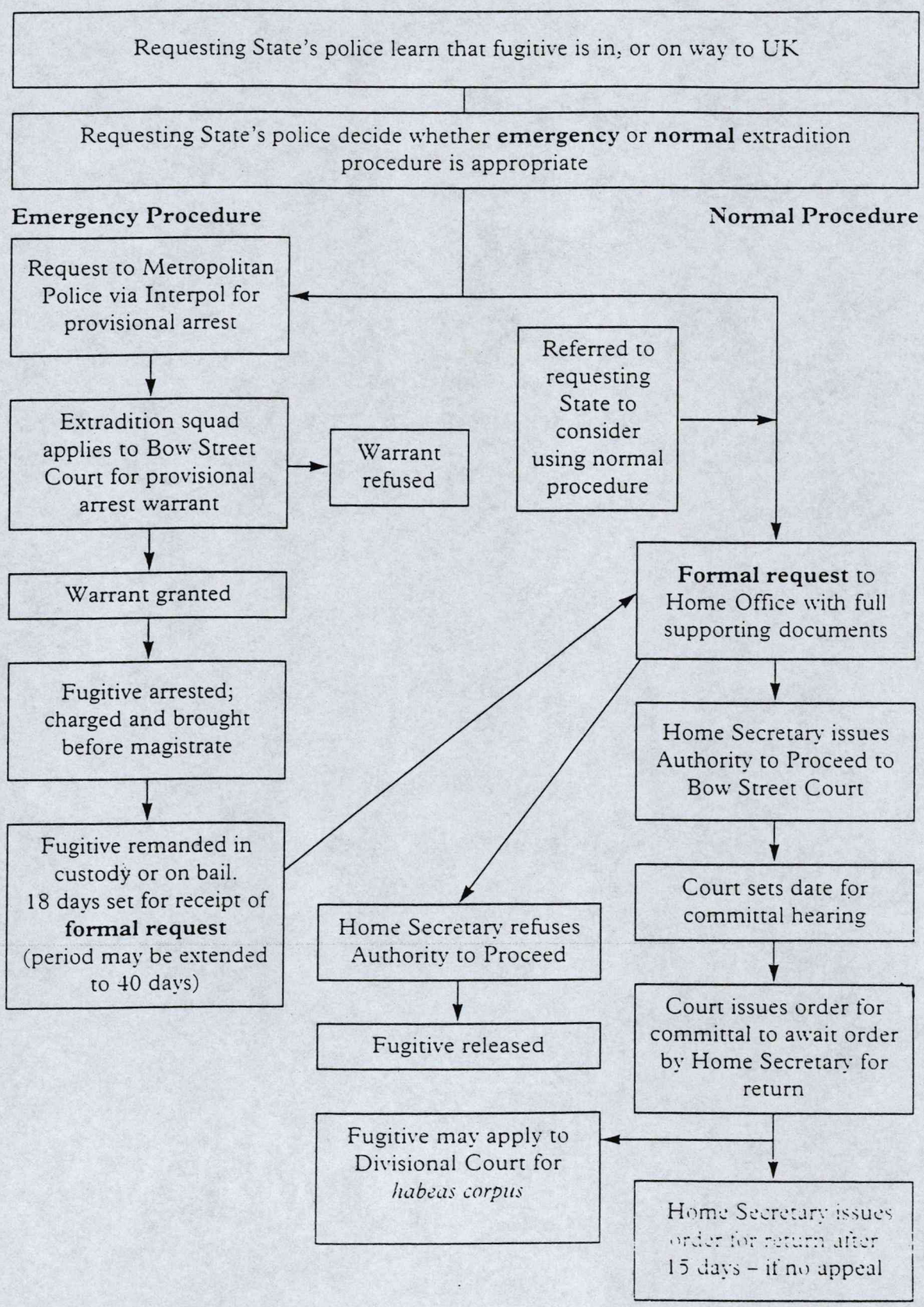
EXTRADITION FROM THE UNITED KINGDOM[1]: 1969 - 1997

1997	43 (107 requests)	1982	19 (48 requests)
1996	35 (116 requests)	1981	20 (45 requests)
1995	31 (101 requests)	1980	17 (58 requests)
1994	35 (100 requests)	1979	14 (45 requests)
1993	27 (100 requests)	1978	14 (43 requests)
1992	36 (78 requests)	1977	10 (47 requests)
1991	17 (52 requests)	1976	5 (43 requests)
1990	19 (65 requests)	1975	7 (25 requests)
1989	27 (35 requests)	1974	8 (24 requests)
1988	31 (57 requests)	1973	7 (19 requests)
1987	26 (43 requests)	1972	5 (17 requests)
1986	32 (60 requests)	1971	4 (29 requests)
1985	24 (63 requests)	1970	12 (19 requests)
1984	19 (58 requests)	1969	9 (17 requests)
1983	10 (36 requests)		

[1] These figures are based on those held by the Home Office and do not include figures for Scotland. Scotland has its own jurisdiction since the 1989 Act (previously Scotland dealt only with incoming Commonwealth requests). The Scottish Crown Office deals with one or two requests a year. There are no centrally held records of requests made under the backing of warrants legislation with the Republic of Ireland.

REQUEST FOR EXTRADITION FROM ENGLAND AND WALES

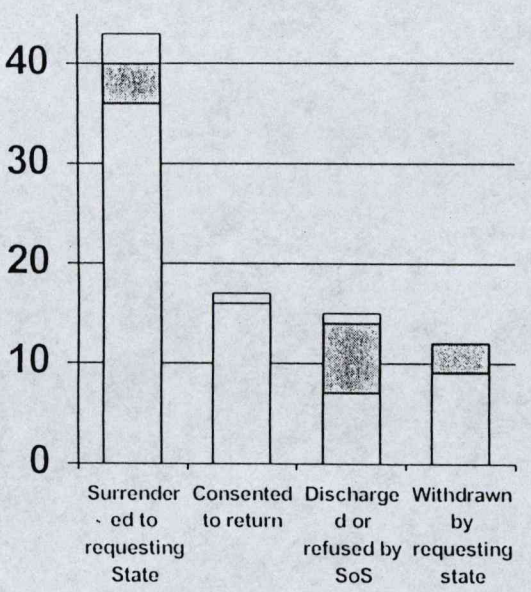
TYPICAL PATH

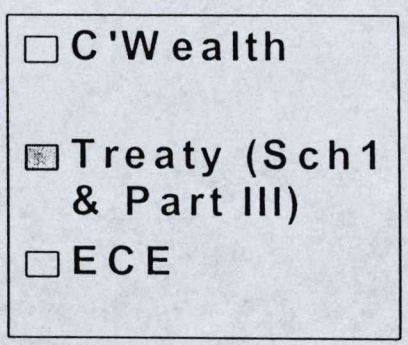


APPENDIX 6

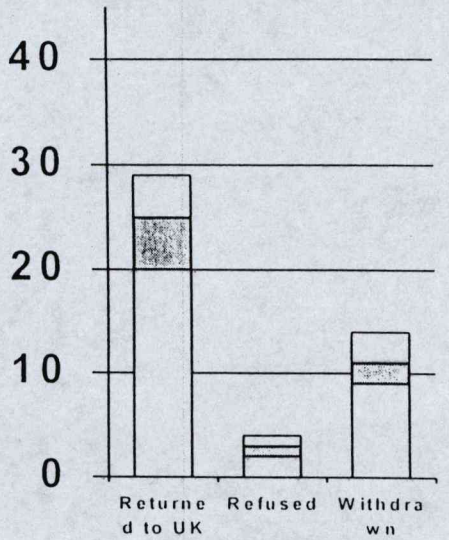
Extradition Decisions in 1997

Requests made to England, Wales and Northern Ireland





Requests made by England, Wales and Northern Ireland



EU CONVENTIONS: SUMMARY

1. The UK has signed two EU Conventions, one in 1995 and one in 1996. Both are intended to simplify extradition within the European Union, and are supplementary to the ECE. Before either Convention can be ratified, changes need to be made to the Extradition Act. The provisions of each Convention, and the legislative changes which will be needed prior to ratification, are summarised below.

1995 Convention on Simplified Extradition Procedure ("the 1995 Convention")

2. The United Kingdom signed the 1995 Convention on 10 March 1995 (Official Journal of the EU reference: 1995 OJ C78/1). It was laid before Parliament in September 1995, Cm 2958.

3. The 1995 Convention sets out streamlined procedures for cases where the fugitive and the requested state consent to extradition. It requires that a fugitive is to be notified when arrested about the possibility of consenting to surrender under simplified procedure. The fugitive may then consent to his return and renounce specialty protection. The Convention imposes a series of deadlines governing consent and surrender.

4. Before the Convention can be ratified, changes will be required to the following sections of the Extradition Act 1989:

- section 6: specialty
- section 7: information required to accompany an extradition request
- section 8: arrest for purposes of committal
- section 9: proceedings for committal
- section 14: simplified procedure

Conditions for surrender

5. Article 3 provides that a person who is subject to a request for provisional arrest shall be surrendered in accordance with the Convention, without the need for submission of a formal request or the information required under the ECE. This will require amendments to section 7 (information required to accompany an extradition request), section 9 (proceedings for committal) and possibly section 8 (arrest for purposes of committal).

Information to be provided

6. Article 4 sets out the information which shall be regarded as adequate by the requesting state for the purposes of the Convention. This is slightly different from the requirements of section 7(2) and 7(2A) of the Act and the ECE:

it refers to information on "the existence of an arrest warrant" rather than the warrant or authenticated copy of the warrant itself; and asks for information, insofar as possible, on the consequences of the offence.

Information to be given to the fugitive

7. Article 6 of the 1995 Convention requires that when a fugitive is arrested, he shall be informed of the request and of the possibility that he may consent to surrender under the simplified procedure. There is currently no requirement under the Act for a person to be given this information. This may require an amendment, possibly to section 8, although it could be achieved through administrative guidelines.

Specialty

8. Article 7 provides for a fugitive to consent to return and to renounce specialty protection. Once a fugitive has done so, he or she may not change his mind, although Member States may derogate from this provision in accordance with their national law. Under Article 9, each Member State may declare, when ratifying the Convention, whether the specialty protection in Article 14 of the ECE will apply. Article 13 states that where specialty does not apply, the protection on re-extradition to a third state in Article 15 of the ECE shall not apply either.

9. Whether amendments are necessary will depend on whether the UK decides to declare under Article 9 that the specialty protection in the ECE should not apply to a fugitive returned under this Convention. If, as is our intention, the UK decides that protection should not apply, amendments to section 14 of the Act will be required.

Deadlines

10. The Convention sets deadlines for each stage of the process. Article 8 states that the requested state shall notify the requesting state within 10 days of the fugitive's arrest, whether the fugitive consents to return; if the fugitive consents, notification shall be made immediately (Article 12 allows the procedures in the Convention to apply if consent is given after the 10 day period). Under Article 10, the requested state's decision on extradition shall be notified within 20 days of the date on which the fugitive consented. Under Article 11, surrender shall take place within 20 days of the date on which the extradition decision was notified; otherwise the fugitive will be released. Should it not be possible to surrender the fugitive within that period, due to circumstances beyond the control of the requested state, a new date shall be agreed; the fugitive must be surrendered within 20 days of the new date, or he shall be released.

11. The only deadline in the Act relating to simplified procedures is in section 14, which provides that a person must be surrendered within one month of the order for return being made. This will need to be amended to reflect the deadlines in the Convention.

Other points

12. Article 12 of the 1995 Convention requires a declaration on ratification as to which parts of the Article are to be applied.

13. Article 14, on transit, refers to Article 21 of the ECE. The UK has made a reservation to Article 21 of the ECE, and will therefore need to make a reservation to Article 14.

1996 Convention Relating to Extradition between Member States of the European Union ("the 1996 Convention")

14. The United Kingdom signed the 1996 Convention on 27 September 1996 (Official Journal of the EU reference: 1996 OJ C313/11). It was laid before Parliament in February 1997, Cm 3533.

15. The Convention relaxes and derogates extradition arrangements between EU member states. It amends the definition of extradition crime by allowing a lower sentence threshold; and contains provision to assist extradition requests made for certain types of offences, including terrorism, drug trafficking, political and fiscal offences. It also seeks to encourage the extradition of own nationals and to relax specialty and authentication requirements in certain circumstances, between EU Member States.

16. Before the Convention can be ratified, changes will be required to the following sections of the Extradition Act 1989:

- section 2 : meaning of extradition crime
- section 6 : general restrictions on return
- section 7(2)(b): extradition request and authority to proceed
- section 8(3) : arrest for purposes of committal
- section 9(8)(a): proceedings for committal
- section 12 : order for return
- section 18 : restrictions on proceedings for other offences in case of persons returned by foreign states
- section 26 : authentication of foreign documents
- possibly Schedule 1

Details are set out below.

Definition of extradition crime

17. Article 2 of the 1996 Convention states that extradition shall be granted for offences punishable by a sentence of a minimum of twelve months' imprisonment under the law of the requesting state and a maximum of at least six months under the law of the requested state. Ratification will require amendment to section 2 of the Act, which defines an extradition crime as one which attracts a sentence of twelve months or more in both the requested State and the requesting State.

Conspiracy and association to commit offences: derogation from dual criminality

18. Article 3 of the 1996 Convention states that a derogation may be made from the principle of dual criminality in respect of requests based on the offence of conspiracy or criminal association to commit serious types of crime. This would allow for requests to be made for conspiracy offences where the laws of the requesting and requested states do not provide for the same facts to be an offence. The types of crime listed are terrorist offences; drug trafficking; and other forms of organised crime and violence. This is extended to cover any person whose behaviour contributes to the commission of an offence, even if that person does not take part in the offence.

19. This Article represents a departure from the principle that an extradition crime is one which is a criminal offence in both the requesting and requested states. Amendments will be needed to change the definition of extradition crime, and to amend the statutory requirements for an extradition request. Amendments would be required to section 2 (meaning of extradition crime); section 7(2)(b) (extradition request and authority to proceed); section 8(3) (arrest for purposes of committal); section 9 (8)(a) (proceedings for committal) and section 12 (order for return).

Political offences

20. Under Article 5, for the purposes of the Convention, no offence shall be regarded by the requested Member State as a political offence; but Member States may declare a lower position whereby they will apply this Article only in relation to offences in Articles 1 and 2 of the European Convention on the Suppression of Terrorism and conspiracy to commit such offences.

21. The restrictions on return relating to political offences are set out in section 6(1) of the Act. This provides that a person may not be returned if it appears to an appropriate authority that the offence of which he is accused or convicted is an offence of a political character. Nor may a person be returned if it appears that the request was made for the

purpose of prosecuting or punishing him on account of his political opinions; or if it appears that he might, if returned, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his political offences. An amendment would be required to prevent a Court from discharging a person on these grounds, in contravention of the Convention.

Fiscal offences, extradition of own national and lapse of time

22. None of these provisions should require amendments to the Act for the United Kingdom to ratify the 1996 Convention.

23. Article 6 states that extradition shall be granted for fiscal offences which correspond to a similar offence under the law of the requested state, and shall not be refused on the grounds that the requested state does not have the same type of fiscal provisions. A Member State may however declare when ratifying the Convention that it will grant extradition only for fiscal offences connected to excise, VAT or Customs.

24. Article 7 states that extradition shall not be refused on the grounds that the person concerned is an own national. However, it also allows states to declare that they will not extradite their own nationals, with reservations to this Article to be renewed every 5 years.

25. Article 8 states that an extradition request may not be refused on the grounds that the prosecution of the fugitive will be barred in law by reason of the lapse of time. The requested state will have the option of not applying this Article if it has extra-territorial jurisdiction over the offences concerned.

Specialty

26. The amendments which will be needed depend, as with the 1995 Convention, on whether the UK decides to agree to the provisions regarding specialty protection. There is a read-across to the amendments which would be required to ratify the 1995 Convention (paragraphs 10 and 11 above).

27. Under Article 10, in certain circumstances the requesting Member State may prosecute for offences other than those for which extradition is requested without the consent of the requested Member State. The offences are restricted to those which do not involve imprisonment, unless the fugitive waives specialty protection. Article 12 states that specialty protection under Article 15 of the ECE shall not apply to re-extradition to another Member State, although a State may declare on ratification that it continues to apply.

28. The general safeguards for a fugitive to be found in the Extradition Act include the provision that he will not be dealt with on his return for any offence other than the one

Political offence exception: this provides that persons accused or convicted of "political" crimes should not be extradited. Its scope is narrowed for countries party to the European Convention on the Suppression of Terrorism, which is designed to restrict the circumstances in which the political defence can be claimed in extradition for terrorist crime cases between Convention countries. It has also been narrowed in respect of the USA by means of a supplementary Treaty and for India, with which the UK has a supplementary Treaty.

Request for provisional arrest: a request for the fugitive's arrest is made via police channels (older treaties require use of the diplomatic channel), pending receipt of a formal request and supporting documentation.

Full order request: a request where there is no immediate danger of the fugitive absconding and arrest follows the issue of a signed OTP/ATP, rather than a provisional arrest warrant.

Special arrangement: an "ad hoc" arrangement with a country with which there is no other extradition arrangement. The arrangement would take the form of a mini-treaty for the return of a particular individual. No special arrangement has been successfully completed.

APPENDIX 1

EXTRADITION WORKING GROUP: MEMBERS

Godfrey Stadlen	Home Office
Clare Checksfield	"
Sarah Denvir	" (until April 1998)
Julian Gibbs	" (from May 1998)
Stephen Goadby	"
Gavin Watson	Home Office Legal Adviser's Branch
Jim O'Meara	"
Jim England	Crown Prosecution Service
Rod McAuley	"
Alice Burnett	Foreign and Commonwealth Office (until April 1998)
David Bentley	" (until February 1998)
Ruma Mandal	" (from May 1998)
David Dunleavy	Legal Secretariat to the Law Officers (until June 1998)
David Noble	" (from July 1998)
Jenny Rowe	Lord Chancellor's Department (until December 1997)
Christine Pulford	" (from January 1998)
Colin Miller	Scottish Office
William Gilchrist	Scottish Crown Office
Joyce Ferley	Former Chief Clerk, Bow Street Magistrates' Court
David McIlroy	Northern Ireland Office

Top AL
cc: PU
Hom

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SW1H 9AT

The Rt Hon John Prescott MP
Deputy Prime Minister
Eland House
Bressenden Place
London SW1

18 September 1998

1. JKH 18/9.
Not shown to TB, but likely to generate more CLEE tensions in due course.

2. jdh.

Dear Mr Prescott, AR.

I am writing to alert you and colleagues to the very worrying rise in asylum applications. The difficulties caused by this is receiving considerable publicity, and reflect the strains both at the point of arrival and on subsequent installation in London and elsewhere.

In 1996 we received 29,640 applications for asylum (excluding dependants). In 1997 this rose to 32,500. In the first eight months, (to end August), this year we have already received 27,160 applications, close to the total for the whole of 1996.

Moreover, during the course of 1998 the number of applications received each month has risen dramatically. At the beginning of the year it was some 2,000-2,500 per month. By August it had effectively doubled, to 4,420 in August.

The trend is particularly worrying in respect of applications made at ports (including airports), as opposed to applications made in-country, for example by those who have entered Britain by clandestine means. These applications reached an all-time high in August, with 2,396 applications: an increase of 61% compared with August 1997 and 172% compared with August 1996. The July 1998 figure, 1,939 port applications, was itself the previous highest on record. The trend of port applications has continued in the first half of September.

Most applicants are accompanied by a number of dependants. For example, the 2,396 applications at ports in August were accompanied by almost, 1,000 dependants. Thus the total burden, both for processing at the port of arrival and the long-term costs of housing, welfare, education, healthcare, etc are much greater than that implied by the totals of applications, itself acutely worrying. The problems in London are particularly acute and some of the reception services are close to breaking point.

I am very grateful to colleagues for their support in respect of a visa regime for Slovaks. But our experience with the Slovak problem highlights the need to take swift action should one or more other countries in Eastern Europe start to generate similar pressures. I am very conscious of the political and commercial considerations, particularly in respect of front-runner accession countries. But I believe that we have to be very robust with the applicant CEE countries in making clear that if they wish their applications for EU membership to be given serious consideration then it is their responsibility - not ours - to ensure that there is an effective human rights regime within their countries.

The problem is now sufficiently serious to carry out some contingency planning and analysis looking at the pros and cons of wider imposition. We may then need to have a discussion in HS. My officials will set this work in motion. I recognise of course that visas are not the only possible measure and my officials have been looking at other possibilities. The White Paper strategy remains sound but many of the measures require legislation. While we wait for that we are taking a range of administrative measures to try to get asylum decisions in key groups taken extremely quickly (and so enable us to cut off benefit) even if a subsequent appeal means we cannot take removal action. We are also seeking to target traffickers and strengthen our preventive measures overseas. Finally, we are looking to see what we can do to tighten up our reporting regime and to remove benefit if requirements are breached.

I will keep you in touch with developments.

I have asked my Private Secretary to send a copy of this letter to Angus Lapsley (No. 10), John Grant (Foreign Office) and to Sebastian Wood (Cabinet Office) for information.

Yours sincerely,
Ken Smith

JACK STRAW

(approved by the Home Secretary
and signed in his absence)

RESTRICTED - POLICY

SN

bcc SW/LL

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

15 September 1998

Dear Peter,

HOUSING AND COUNCIL TAX BENEFIT AND ASYLUM SEEKERS

The Prime Minister has seen the Secretary of State for Social Security's letter of 30 July, and subsequent responses.

The Prime Minister's instinct is that we should delay closing this loophole until the new support arrangements for asylum seekers are in place. But he agrees with the Home Secretary that before final decisions can be taken we need further information on the net financial implications for government as a whole.

I am copying this to the Private Secretaries of Ministers in HS Committee, to John Grant (Foreign and Commonwealth Office) and Sebastian Wood (Cabinet Office).

Yours ever,

JEREMY HEYWOOD

Peter Unwin Esq
Department of the Environment, Transport and the Regions

RESTRICTED - POLICY

Top-AL
cc JH
PJ

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SW1H 9AT

14 SEP 1998

The Rt Hon Stephen Byers MP
Chief Secretary
Treasury Chambers
Parliament Street
LONDON
SW1P 3AG

JSH cc: HL/SW/John Elvi

I would have thought a meeting could do no harm, with HL/SW going along to give the PM's steer.

Dear Stephen,

thanks. 15/9

HOUSING AND COUNCIL TAX BENEFIT AND ASYLUM SEEKERS

I have seen your letter of 17 August to John Prescott and Frank Dobson's of 11 August.

I think we will need a meeting of Ministers to decide on the best course to take. On present evidence I am sceptical about the financial and political case for closing this loophole now. We need further information on the expected net costs to Government. I note that you state that closing the loophole would produce savings of £30m a year in the Social Security Budget. However, in his letter, Frank does not quantify the extent to which there would be an increase in expenditure by his Department. It would be useful to have this clarified. However, I believe there are practical presentational and considerations which may argue for not making the change at this time.

On a practical level, to close the loophole now could make even more severe the consequences of a successful appeal in the National Assistance Act 1948 case, should the hearing go ahead in the House of Lords. Access to Housing and Council Tax Benefit by those currently being supported under the 1948 Act would at least enable them to keep a roof over their heads, while new arrangements for providing the means to subsist were being put in place.

I share the concern that has been expressed about the effect closing the loophole would have on local authority finances. From the detail in John's letter of 8 September, it is clear that closing the loophole, in particular with regard to Council Tax benefit, would leave local authorities in an even worse position financially in accommodating asylum seekers than they are now.

Jan 14/9

It is, of course, essential that we keep the local authorities on our side, despite the severe difficulties that they are currently facing in accommodating asylum seekers, during the period in which we are devising the new support arrangements. The success of these arrangements will very much depend upon local authorities providing, or helping us to procure, accommodation for the asylum seekers we agree to support and thus they will have a significant role to play in devising the arrangements. Taking steps which will result in local authorities being penalised financially through a situation which is not of their own making will make this much more difficult to achieve.

As to presentation, although most of the refugee organisations are disappointed that we do not propose to restore welfare benefits to all asylum seekers, most are nevertheless eager to co-operate in the development of the new support arrangements. I regard this co-operation as an essential element in ensuring that we properly meet the needs of asylum seekers. To take action, therefore, which would be seen as having a deleterious effect on the ability of asylum seekers to find accommodation, and which might prejudice this co-operation, could seem to be imprudent. It could create additional handling difficulties for the legislation which will close the loophole as part of a coherent package of reform.

Copies of this letter go to the Prime Minister, the Deputy Prime Minister, Robin Cook, HS Colleagues and Sir Richard Wilson.

Yours ever

Jack

JACK STRAW

FROM HILARY ARMSTRONG MP
MINISTER FOR LOCAL GOVERNMENT AND HOUSING

DETR
ENVIRONMENT
TRANSPORT
REGIONS

DEPARTMENT OF THE ENVIRONMENT,
TRANSPORT AND THE REGIONS

ELAND HOUSE
BRESSENDEN PLACE
LONDON SW1E 5DU

TEL 0171 890 3000
FAX 0171 890 4489

YOUR REF: IDC/193

The Rt Hon John Prescott MP
Deputy Prime Minister
Department of Environment, Transport and the Regions
Eland House
Bressenden Place
LONDON
SW1E 5DU

14 SEP 1998

AL
C: JEH
PB

Dear John

CZECH AND SLOVAK ASYLUM SEEKERS - VISA REGIMES

Jack Straw wrote on 2 September to Robin Cook, seeking agreement to the immediate introduction of a visa regime on Slovak nationals.

This Department has two main interests in this matter resulting from our responsibilities for local government and housing on the one hand, and for the transport industry on the other.

In view of the number of asylum seekers arriving from Slovakia, their impact on local authorities, and the fact that Slovakia is not a major transport partner, I believe that we should agree to the introduction of a visa regime on Slovak nationals.

If, in the future, the imposition of a visa scheme on Czech nationals is contemplated, I would be grateful if it could be discussed with this Department at an early stage, since it could have much more serious financial consequences for UK airlines.

I am copying this letter to the Prime Minister, members of HS, and Sir Richard Wilson.

Yours
Hilary

HILARY ARMSTRONG

DEPARTMENT OF SOCIAL SECURITY

Richmond House, 79 Whitehall, London SW1A 2NS
Telephone 0171 - 238 0800

From the Secretary of State for Social Security

~~JJH~~ AL
C: ~~AL~~ ~~JJH~~
JEH
PBO/r
PU

SOS/82

Foreign Secretary
The Rt Hon Robin Cook MP
King Charles Street
London
SW1A 2AH

P

11th September 1998

Dear Robin,

CZECH AND SLOVAK ASYLUM SEEKERS - VISA REGIMES

I have seen a copy of Jack Straw's memorandum of 2 September seeking your urgent agreement to the imposition of a visa regime on Slovak nationals.

As Jack says, the number of Slovak nationals seeking asylum in the UK has been increasing in recent months and attempts to stem the flow have met with limited success. The figures are a cause for concern because of the pressure they place on both the benefit system and the asylum application system. There are significant pressures on my budget as a result. We also need to be seen to be tackling the asylum issue as a whole and where abuse has been identified taking appropriate action to remedy this.

I appreciate the difficulties set out in Jack's memorandum but strongly support the proposal to impose a visa regime of Slovak nationals.

I am copying this letter to the Prime Minister, Deputy Prime Minister, members of HS and Sir Richard Wilson.

Yours

Alistair.

ALISTAIR DARLING

PM 14/9

1. JSH Do you want to write?
2. SW/LL.

Fr.
10/9

From: Sharon White
Liz Lloyd
Date: 10 September 1998

Prime Minister

cc: Jeremy Heywood
Angus Lapsley
David Miliband

ASYLUM SEEKERS

Last year Harriet wrote asking your advice on whether to close a loophole left by the previous government, which inadvertently allowed asylum seekers disqualified from income support to claim housing and council tax benefits, at a cost to the DSS of £30 million a year.

The issue came up at the time of the lone parents' row and you decided to put off closing the loophole until Jack had completed his general review of asylum seekers.

Now that Jack's review is over, Alistair has written to the DPM asking for the loophole to be closed, a position backed by Stephen Byers.

There is no policy reason for closing the loophole and strong political reasons against.

In policy terms, closing the loophole will simply shift the cost of providing housing from DSS to LAs who can claim reimbursement for almost the full

amount - £25 million - from central government (DH before April, thereafter the Home Office when responsibility for asylum seekers shifts to Jack). In any case, Jack is bringing in an entirely new system of support (probably in 2000) which will replace any residual access to the social security system by voluntary and local provision.

In political terms, the local authorities need to be kept on board and this will needlessly rile them. Finally, it will be harder to get the Bill through Parliament if we close the loophole before getting alternative arrangements in place.

We, therefore, advise against closing the loophole. Do you agree?

Yes provided that / what are no real savings. what is DSS answer to that?

Shaun. tg

Foreign & Commonwealth Office

London SW1A 2AH

From the Parliamentary Under Secretary of State

Top – AC
cc JEM
JPo
PJ
AC

10 September 1998

The Rt Hon Jack Straw MP
Secretary of State
Home Office
Queen Anne's Gate
LONDON
SW1H 9AT

P

Dear Mr Straw,

Thank you for your letter of 2 September to Robin Cook about the continuing problem of asylum claims from Slovak Roma, and the difficulties which this is causing at Heathrow and for local authorities who have to cope with the inflow. I have seen the Private Secretary's letter from No 10 of 7 September.

In view of the large number of Slovak asylum seekers continuing to arrive at Heathrow I am willing to agree provisionally to a suspension of the Visa Abolition Agreement (VAA) with Slovakia, under clause 7 of the agreement, which has the advantage of not requiring us to give the Slovaks advance notice. If you and the DETR agree, we will assume that you will also wish to impose a transit visa (DATV) requirement, in order to avoid creating a loophole which would-be asylum seekers would be quick to exploit.

While proceeding rapidly with preparations to introduce a visa regime, I would wish to leave open the possibility of reviewing this decision in the light of the Slovak election campaign and the results. We agreed when we spoke that we should take stock at the end of next week. We should do so again after the 25/26 September election, and also keep open the option of suspending our decision if there is a significant drop in the number of Slovak asylum seekers during the next couple of months.

I would not wish to tell the Slovak Government of our decision to suspend the Visa Abolition Agreement until we are close to implementation. Any leak would risk the decision being misused for political purposes in the current election campaign and could, of course, provoke a rush of last-minute asylum applications.

For practical reasons, of which your officials are fully aware, we cannot introduce visas overnight. It will be impossible to run a visa operation of the size required from our present Embassy premises in Bratislava. We estimate that it will take at least 2 months to identify, lease and fit out suitable

premises. We are setting this work in hand urgently. We look to the Home Office to provide any necessary extra staff for Bratislava (and to reinforce other Posts, if we judge that necessary). In particular, we would like a CIO to go out to Bratislava as soon as possible to oversee practical arrangements in cooperation with the Embassy. He/she will then be able to agree with the Ambassador a timetable for reimposition which takes account of the practicalities and the political sensitivities. Ideally we would like the same individual to stay until implementation is complete.

Nevertheless it seems likely that we shall have to proceed. It is possible that by the time we do so a new Slovak Government, committed (unlike the current Government) to meeting fundamental democratic standards, will have taken office. We shall wish to minimise the damage which our action might do both to the domestic credibility of a new Government and to our bilateral (including commercial) relations. I therefore consider it especially important that we should make clear to the Slovaks that we would review the requirement regularly and lift it when we were able to do so. I would expect officials to keep the requirement under continuous review and report to Ministers at six-monthly intervals. To limit any damage from difficulties in the initial imposition, I hope that you will agree to operate a generous grace period during which those who had made travel arrangements in advance of the announcement are not inconvenienced solely for lack of a visa.

Public presentation of this decision will be particularly sensitive. I expect that our two press offices will liaise closely about the public line taken, in order to take full account of the bilateral sensitivities.

I am copying this letter to the recipients of yours. The DETR will wish to comment in particular on the DATV point.

Yours Sincerely

BARONESS SYMONS

(Approved by the Minister and signed in her absence overseas by her Assistant Private Secretary, Cecille El Beleidi)

DEPARTMENT OF HEALTH

Richmond House 79 Whitehall London SW1A 2NS Telephone 0171 210 3000
From the Secretary of State for Health

The Rt Hon Jack Straw MP
Home Secretary
The Home Office
Queen Anne's Gate
London SW1H 9AT

10 September 1998

CZECH AND SLOVAK ASYLUM SEEKERS - VISA REGIMES

I have seen ~~Jack Straw's~~ letter of 2 September to Robin Cook seeking agreement to proceed with the imposition of a visa regime on Slovak nationals and I support this proposal.

I am aware that the current influxes are having a major effect on local authority social services and any measures that will reduce this burden are welcomed.

I am copying this letter to the Prime Minister, Deputy Prime Minister, members of HS and to Sir Richard Wilson.

FRANK DOBSON

ps0909.01

FROM THE DEPUTY PRIME MINISTER

DEPARTMENT OF THE ENVIRONMENT,
TRANSPORT AND THE REGIONS

ELAND HOUSE
BRESSENDEN PLACE
LONDON SW1E 5DU

TEL 0171 890 3011
FAX 0171 890 4399

OUR REF: PT/PSO/16362/98

File
TOP - JJH
C. AL
RJ.

The Rt Hon Stephen Byers MP
Chief Secretary
HM Treasury
Treasury Chambers
Parliament Street
LONDON
SW1A 0AA

- 8 SEP 1998

RESTRICTED - POLICY

HOUSING AND COUNCIL TAX BENEFIT AND ASYLUM SEEKERS

Thank you for your letter of 17 August, concerning the closing of the loophole on the payment of housing and council tax benefit to asylum seekers. I have also seen Paul Boateng's letter of 20 August.

From my point of view, the important point is less how local authorities are funded to look after asylum seekers, but rather what proportion of their costs the funding meets.

At present, those asylum seekers who receive housing benefit and council tax benefit do not impose accommodation costs on local authorities. On the other hand, local authorities accommodating asylum seekers under the Children's Act receive reimbursement through two special grants: the Unaccompanied Asylum Seeking Children's grant and the Persons from Abroad Children's Grant. The latter covers only 80% of local authorities' costs above a threshold, which means that it in fact reimburses only about 75% of actual costs. The children's grant is currently cash-limited to £3 million per year.

In addition, local authorities are generally unable to collect council taxes from asylum seekers. (Although asylum seekers are not exempt from Council Tax, pursuing them for non-payment through the courts is unlikely to recover the money). While asylum seekers are receiving council tax benefit, their council tax is 95% met by subsidy. But withdrawing council tax benefit will result in local authorities losing this income, and so increase the net cost to them of looking after asylum seekers.

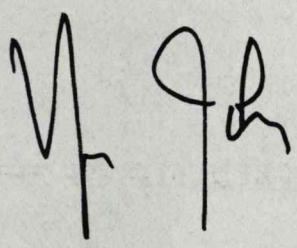
NM 9/9

As you accept, the net effect of closing the housing benefit loophole will therefore be to increase local authorities' costs. Even if we increase the total provision available under the current grant schemes, there will still be the costs not met by these grants, and lost council tax benefit income.

As you know, I am unhappy that local authorities are already incurring unfunded costs in looking after asylum seekers. I am particularly concerned that closing the housing benefit and council tax benefit loophole before Jack Straw's new regime is introduced could leave authorities in an even worse position. Local authorities will be under intense pressure to meet our education and other priorities, and, under the circumstances, I cannot agree that further unfunded burdens should be placed upon them.

Nevertheless, I could agree to closing the loophole earlier, if you, and Frank Dobson or Jack are prepared to meet all the additional costs this creates for local authorities, and ensure that they are left no worse off than now. If we do go down this route, then, in view of our commitment to dialogue with local government, I think we should discuss with the Local Government Association what the additional costs might be.

I am copying this letter to the Prime Minister, Robin Cook, HS colleagues, Hilary Armstrong and Sir Richard Wilson.



JOHN PRESCOTT

FILE

bc JEH
LL

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

7 September 1998

Dear Isobel,

CZECH AND SLOVAK ASYLUM SEEKERS – VISA REGIMES

The Prime Minister has seen the Home Secretary's minute of 2 September to the Foreign Secretary proposing the introduction of a visa regime on Slovak nationals in order to stem the flow of asylum applications from that country.

As you know, the Prime Minister has been reluctant to go down this route in the past because of the importance he attaches to fostering closer relations with both the Czech Republic and Slovakia. However, he is struck by how much the problem with Slovak asylum applications has grown and is inclined to agree with the Home Secretary that our previous approach of working with the Slovakian Government to deter applications is not working.

I understand that the Home Secretary has agreed with Baroness Symons that although preparatory work on a visa regime should begin now, a final decision will not be taken until after the Slovak elections next week. The Prime Minister agrees that this is a sensible approach, but unless the situation can be improved quickly, he accepts that the imposition of a visa regime will be necessary.

I am copying this letter to John Grant (FCO), the private secretaries to members of HS and Sebastian Wood (Cabinet Office).

Yours,

Angus

ANGUS LAPSLEY

Ms Isobel Hopton,
The Home Office

KK

025774
MDHIAN 1400

RESTRICTED
FM BRATISLAVA
TO DESKBY 070930Z FCO
TELNO 206
OF 070750Z SEPTEMBER 98
AND TO DESKBY 070930Z UKDEL OSCE VIENNA, PRAGUE

(CORRECTED VERSION - ADDED ADDRESSEES)

FOR H PEARCE VISITING, VIENNA

SUBJECT: SLOVAK/ROMA

SUMMARY

1. Slovaks now know what is in prospect and why. Understanding from opposition, hostility from government representatives. Likely post-election timing the lesser of two evils. Major media damage limitation effort will be needed.

DETAIL

2. Pearce (Head, CED, visiting) and I met Sestak (State Secretary, MFA) and a large team of senior officials on 4 September. Earlier meetings with Slobodnik (HZDS, FAC chair) and senior figures from the main opposition parties had also alerted them to the basis of our concerns and why there might be no alternative to reimposition of a visa regime (VR.). Opposition leaders were regretful, but understanding. Sestak and Slobodnik took a more predictable line, focusing as before on ignorance, bias etc.

3. Both argued that the present upsurge was politically motivated, with the aim once more of unjustifiably blackening Slovakia's name abroad. Sestak said Slovak intelligence had been tasked to find out who the orchestrators were at this end. All those who had been granted asylum had told lies. Could the UK really not take action against lawyers who were helping people lie and abuse our system? Slovak intelligence was willing to co-operate with UK counterparts in stopping this abuse at both ends. The fact that 3 times as many Slovaks as Czechs had been granted asylum showed that adjudicators were not being objective. Anyone knew how much worse the situation was in the Czech Republic. Singling out Slovakia would be discriminatory. A decision in the pre-election period would be very, very unfortunate. We should co-operate. Slovakia looked for

an early response to the invitation to the Home Office to send an expert, fact-finding mission.

4. Pearce explained patiently and thoroughly to him (and everyone else) the way our asylum system worked. While what was going on at the UK end might be close to the limits, nothing illegal was taking place. He rejected outright any suggestion that the adjudicators were anything other than objective and independent. The basic need to safeguard appellants' identity ruled out the sort of intelligence co-operation suggested. We were keen to co-operate in all other areas. But that would be in connection with solving a deep-seated, pan-central European problem. The immediate problem was different. The numbers were unsustainable. They had to be brought down. If the Slovak side could not do this, and quickly, there might be no alternative to a VR. We would envisage a temporary measure, to be regularly reviewed, and especially once the tougher provisions of the White Paper had been brought into law and given time to take effect. While there would be political implications, there would no political intentions about such a decision. It would be a practical decision in order to combat in the only way available a situation that was unsustainable, by transferring entry control from UK ports of entry to the country of origin. The same message had been given to the Czech Republic. The key difference was in the numbers, graphically illustrated in the bar charts that we gave Sestak.

COMMENT

5. The Slovak side are plainly taking the immediate problem seriously. Deputy PM Kalman is out east, where the main Roma communities are, and the embassy will participate in a multi-ministry, senior official mission to these communities later this week. But Pearce's and my 2 September meeting with Roma representatives in Kosice not only showed how grim their physical conditions are but also provided convincing testimony of generally unsympathetic policing and a generally unsympathetic populace. There remains little acknowledgement, and certainly none at the highest level, that social attitudes need changing and that grand plans concerning only social policy will not suffice.

6. Announcement of a VR in the heat of an election campaign would become a highly charged political football. But it will take some weeks to prepare the necessary arrangements. A new government will then be in prospect, and hopefully a democratic one. The Opposition

response at least showed that they understand the reasons why. And having dealt with the subject now will provide them with defences against the claims that Meciar, as a new Opposition leader, would be bound to level against them. It will nonetheless be a bitter inaugural pill for them. Whoever wins the election, we are going to have to mount a very effective media campaign at both ends in order to limit as far as possible the inevitable damage to our other interests here.

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Prime Minister
The FCO have been resisting this for a long time, but it is getting steadily harder. They may agree this time, for the Slovaks alone. We have previously sided with the FCO but it is getting to the point where Jack has a real point & the Slovaks need a clear message.
[illegible] 2/9.

Foreign Secretary

I agree: Jack is right

CZECH AND SLOVAK ASYLUM SEEKERS - VISA REGIMES

I am writing to you to seek your urgent agreement to the immediate imposition of a visa regime on Slovak nationals. You will recall our recent correspondence on this issue when I asked if you could instruct our Embassies in Prague and Bratislava to express to the Governments of both countries our renewed concern about this problem, and that the media campaigns be reinvigorated. Since I last wrote (25 June) the situation has worsened dramatically. It is now attracting exactly the media attention and the adverse publicity which I feared.

2. Since 1 June we have received a total of 1,120 asylum applications from Slovak nationals (405 principal applicants and 715 dependants) and 342 applications from Czech nationals (122 principal applicants and 220 dependants). This culminated in the arrival on Wednesday last of 105 Slovak asylum seekers at Terminal Two, Heathrow.

3. As you know, we have been implementing a number of measures to try and discourage these individuals from coming to the United Kingdom. These measures have included our Embassies in Prague and Bratislava engaging in talks with their counterparts in the two respective Governments and intensive media lobbying. This lobbying appears to have had some effect on the number of people arriving in the United Kingdom from the Czech Republic, but little or none on the number of arrivals from Slovakia. Officials here have also recently spoken to the Slovak Ambassador in the United Kingdom, but again this has had little or no effect.

4. In addition to the lobbying that your staff have undertaken, the Immigration Service have employed other measures aimed at discouraging applicants from coming here. These include the use of detention where appropriate and discussions with the airlines concerned. However, we are on difficult ground here. The airlines are doing nothing wrong in selling tickets to and carrying passengers who have the correct documentation. Asking airlines to deny boarding to these people sits uneasily alongside our acknowledgement, and the UNHCR's clear view, that discrimination against Roma does exist. There are also competing demands upon the very limited number of detention places available. We have devoted a number of places to Czech and Slovak applicants but with little discernable impact on the flow. Furthermore, adjudicators have granted bail to a number of those detained.

[illegible]

5. In spite of the measures we have taken therefore, the influx of Slovak nationals continues to rise. The time has come when I believe the only effective solution is the **immediate imposition of a visa regime on Slovak nationals**. Against my better judgement I accepted colleagues' views last year that we should try other measures as an alternative to a visa regime. But these have palpably not worked.

6. I appreciate that given the forthcoming election in Slovakia you may feel that imposition of a visa regime at this moment might encourage xenophobia and nationalism that will play into the hands of the current Slovak administration. But we can no longer cope with the numbers that are arriving. The influx has been placing intolerable strain on my staff, and on the local authorities involved. The costs to the Social Security and Social Services Departments is mounting daily. If we do not take action soon the operation of the immigration control at Heathrow will be severely affected. This will obviously have a knock-on effect on genuine visitors to the United Kingdom. It is becoming increasingly difficult, especially in the light of our statements about immigration control in the White Paper, to explain the perceived lack of action on our part to the media and to the local authorities who have to accommodate and support these families.

7. My officials are ready to discuss with yours the steps which would be necessary to introduce a visa regime urgently but with minimum inconvenience to genuine travellers, including any necessary interim arrangements.

8. I am copying this to the Prime Minister, Deputy Prime Minister, members of HS and Sir Richard Wilson.

Stephen Hawker (PRIVATE SECRETARY)
pp HOME SECRETARY
(Approved by the Home Secretary and signed in his absence).
2nd September 1998

ST ANDREW'S HOUSE
EDINBURGH EH1 3DG

The Rt Hon John Prescott MP
Deputy Prime Minister
Secretary of State for the Environment, Transport and the Regions
Eland House
Bressenden Place
LONDON
SW1E 6JP

Top AL P/R
cc CH. PO

31 August 1998

Dear John,

ASYLUM SEEKERS

I have seen the recent correspondence which began with Alistair Darling's letter of 30 July to you about closing the loophole in housing benefit and council tax regulations in relation to asylum seekers. I have also seen subsequent letters on the matter from Frank Dobson, Hilary Armstrong and most recently Stephen Byers' letter of 17 August. It seems timely to draw attention to the separate Scottish dimension to the problems being discussed.

Firstly however, there is the issue about the timing of the changes. My position all along has been to press for a UK solution to this problem and in that respect I have given my strong support to the proposal which will bring forward a UK based system of support. If this cannot be achieved before the year 2000, then I assume that it will be necessary to operate a separate system to reimburse Scottish local authorities for the costs incurred in supporting asylum seekers for another year. With the end in view however, I am confident that we can continue to mirror English arrangements closely and work towards a smooth transition whether the Home Office or the Department of Health has lead responsibility for this matter, provided I have agreement to a transfer of resources from the Home Office budget to cover the additional costs which will fall in Scotland in 1999-2000.

When it comes to housing benefit and council tax, there are added complications for Scotland in any proposal to close the loophole for asylum seekers. I have explained before the complications of operating the present support system when there are differences in Scottish legislation. This is most evident in housing law where it is not possible to give asylum seekers temporary access to council housing. The local authorities in Scotland have accepted this added difficulty only after some persuasion and have taken some comfort from the existing position on asylum seekers' access to housing benefit. A decision now to close the

loophole is likely to reopen this whole question. Since this is already an issue in Scotland, I am led to conclude that any change in the present arrangements before the new system is introduced is likely to become an issue in England too.

I am sure that we all want to ensure as smooth a transition as possible to the new support system and I question any action which is likely to put at risk the continuing co-operation of the local authorities at this crucial stage in the process. Whilst I understand the arguments made in Stephen's letter, I urge caution before embarking on short term action which may make our longer term goals more difficult to achieve. In principle, I therefore remain opposed to Alistair's proposal.

I am copying this letter to the Prime Minister, Robin Cook, Alistair Darling, Hilary Armstrong, other HS colleagues and to Sir Richard Wilson.

Yours sincerely,

DONALD DEWAR

THE RT HON DR JOHN REID MP
MINISTER OF STATE

DEPARTMENT OF THE ENVIRONMENT,
TRANSPORT AND THE REGIONS

ELAND HOUSE
BRESSENDEN PLACE
LONDON SW1E 5DU

TEL: 0171 890 3000

My Ref:

Your Ref:

DETR
ENVIRONMENT
TRANSPORT
REGIONS

TOP - AL
C: RR
PJ

The Rt. Hon. Jack Straw MP
Home Secretary
Queen Annes Gate
London
SW1H 9AT

18 AUG 1998

Dear Home Secretary,

Thank you for your letter of 29 July to the Deputy Prime Minister about illegal immigration by Eurostar.

As you say in your letter, DETR officials met with yours on 24 July to discuss the way forward with the French. At that meeting my officials outlined the concerns that I have about the possible adverse effect on Eurostar's commercial viability that the imposition of juxtaposed controls might have. Our officials have also met with Eurostar (UK) Ltd (EUKL) to discuss the way forward. I understand that EUKL have much the same concern as I do about the commercial and practical problems surrounding the type of flexible juxtaposed controls your people have in mind.

One of the issues surrounding this is the redevelopment of the arrivals hall at Waterloo which Gavin Strang mentioned in his letter of 17 July. This project is being planned in order to increase the size of the immigration facility at Waterloo so that static checks can replace those currently done on board the trains. I understand that in view of the uncertainty over the nature of immigration controls in the future, the EUKL Board no longer feel able to authorise the £3 million investment in this project. I appreciate that this will be a disappointment for the immigration service as they keen to see the redevelopment go ahead in meet their own operational requirements. I feel sure that EUKL would be happy to revisit the project when you have finalised your plans for immigration controls across the Eurostar business.

On a more general note, any proposals or juxtaposed controls on Eurostar should not have any adverse impact on the commercial operation of the business as this could put the CTRL project in jeopardy. Furthermore, any additional costs imposed on EUKL could result in them making contractual claims against my Department. You will appreciate that I do not have cover in the CSR settlement to meet any such claims so I would be looking for your Department to meet any costs.

Finally, I would be grateful if you could ensure that my officials are fully involved in any discussions with the French authorities.

I am copying this letter to the Prime Minister, the Deputy Prime Minister as chairman of HS, Robin Cook, members of HS Committee and Sir Richard Wilson.

Yours sincerely,

pp JOHN REID

[Approved by the Minister and signed in his absence].

Ref Halligan

As submission

CHIEF SECRETARY TO THE TREASURY

RESTRICTED - POLICY

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon John Prescott MP
Deputy Prime Minister
Secretary of State for the
Environment, Transport and Regions
Eland House
Bressenden Place
LONDON
SW1E 6JP

17 August 1998

Dear John,

HOUSING AND COUNCIL TAX BENEFIT AND ASYLUM SEEKERS

I have seen Alistair Darling's letter of 30 July, suggesting that the loophole should now be closed, and replies from Frank Dobson and Hilary Armstrong disagreeing.

2. I support Alistair's position. When there was correspondence on this exact same point at the end of last year, the Prime Minister ruled that closing the loophole should be delayed "until the current review has been completed". This has now been done and so the time has come to close the loophole.

RESTRICTED - POLICY

3. I can quite see that it is more convenient for Frank and Hilary to have housing and council tax benefit, which are demand-led programmes, bear these costs rather than have them as a call on the grants we make available to local authorities to meet their obligations under the National Assistance and Childrens Act. However, this is very bad for expenditure control. It means that local authorities can accommodate asylum seekers with little regard to the costs because they can pass the bill straight back to Central Government.

4. I cannot go on financing £30 million a year of unplanned expenditure on asylum seekers housing and council tax benefit bills from the Reserve. I therefore very much hope that colleagues will withdraw their objections to Alistair's proposal and accept that the loophole should now be closed, in line with the decision made by the Prime Minister last year. I accept that this will add to local authorities burdens, although not necessarily by the current £30 million a year, and that this will need to be taken into account when deciding upon the appropriate level of Central Government support towards those costs. As you know, we have made provision for £90 million a year for childless adults in the CSR and have agreed, in principle, to contribute towards families, although we have yet to agree on amount. This seems to me a much better mechanism for supporting such costs than from a demand-led programme on which local authorities have little incentive to be economical.

5. I hope that colleagues will agree that this is the most sensible way to control expenditure on these costs, while providing reasonable protection to local authority budgets.

RESTRICTED - POLICY

6. Copies to the Prime Minister, Robin Cook, HS colleagues, Hilary Armstrong and Sir Richard Wilson.

Yours,

Stephen

STEPHEN BYERS

Ms Hallgarten

As submission

RESTRICTED - POLICY

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon John Prescott MP
Deputy Prime Minister
Secretary of State for the
Environment, Transport and Regions
Eland House
Bressenden Place
LONDON
SW1E 6JP

17 August 1998

Dear John,

HOUSING AND COUNCIL TAX BENEFIT AND ASYLUM SEEKERS

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RESTRICTED - POLICY

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RESTRICTED - POLICY

6. Copies to the Prime Minister, Robin Cook, HS colleagues, Hilary Armstrong and Sir Richard Wilson.

Yours,

Stephen

STEPHEN BYERS

Richmond House 79 Whitehall London SW1A 2NS Telephone 0171 210 3000
From the Secretary of State for Health

Restricted - Policy

The Rt Hon John Prescott MP
Deputy Prime Minister and
Secretary of State for the Environment,
Transport and the Regions
Department of the Environment, Transport and the Regions
6th Floor, Eland House
Bressenden Place
London SW1E 5DU

AL
C: JJH
PU

11 August 1998 (P)

WHITE PAPER ON IMMIGRATION AND ASYLUM

Housing and Council Tax Benefit and Asylum Seekers

I have seen a copy of Alistair Darling's letter of 30 July to you in which he says that the question of the housing benefit and council tax benefit loophole now needs to be resolved.

I thought that I should let you know that my position remains as set out in my minute of 15 December to the Prime Minister. That is, if the loophole was closed then local authorities would not be able to offset housing benefit against the costs they incur providing services for single adult asylum-seekers and for asylum-seeking families with children. Claims on the asylum-seekers accommodation grant and the persons from abroad with families grant (PFACG) would, therefore, increase as would the pressure on authorities' own community care resources to the extent that they must meet costs below the PFACG thresholds. Savings on the social security budget would, therefore, translate into increased costs of a similar magnitude for local authorities, mainly certain London boroughs. And my claim on the Reserve to fund these two grants for this year would also increase.

I, therefore, continue to believe that the loophole should not be closed.

I am copying this letter to the Prime Minister, Robin Cook, Alistair Darling, Hilary Armstrong, other HS colleagues and to Sir Richard Wilson.

FRANK DOBSON

ps05Aug.02

Top: HA/PS
cc EA/PS o/r
PL

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Frank Dobson MP
Secretary of State
Department of Health
Richmond House
79 Whitehall
London
SW1A 2NS

7 August 1998

(P)

Dear Frank,

ASYLUM AND IMMIGRATION

Thank you for your further letter received on 27 July about the welfare support arrangements for asylum seekers and their financing.

2. As Alistair said in his letter of 20 July, it had been made clear in his earlier letter of 18 June that the Home Office would concentrate upon setting up the new arrangements while your department and the Department of Social Security would continue administering the existing arrangements for one more year. I have no objections to changing this position, and the Home Office taking on responsibility for making payments in 1999-00, if your officials can agree this with Jack's.

SKP 7/8/98

3. You have said that it would be unworkable for responsibility to change mid-year. However, I see no difficulty in the new system coming into force next year, as opposed to April 2000, if the arrangements can be worked up in time. We should be much clearer on this over the next six months.

4. I entirely share your concern over the impending House of Lords case on whether the National Assistance Act can be relied upon for local authorities to provide services for single adults. I understand that our officials are meeting to discuss this and contingency plans will need to be developed.

5. I am aware that provision has yet to be made from the Reserve for the families grant in 1998-99. The Winter Supplementary Estimates would be the best time to put this into effect once your officials have the necessary information to provide a detailed costing. Provision has already been made in the Home Office settlement for families from 1999-2000 onwards.

6. I am copying this letter to the Prime Minister, Robin Cook, members of HS, Hilary Armstrong and Sir Richard Wilson.

Yours,

Stephen

STEPHEN BYERS

FROM HILARY ARMSTRONG MP
MINISTER FOR LOCAL GOVERNMENT AND HOUSING

DETR
ENVIRONMENT
TRANSPORT
REGIONS

DEPARTMENT OF THE ENVIRONMENT,
TRANSPORT AND THE REGIONS

ELAND HOUSE
BRESSENDEN PLACE
LONDON SW1E 5DU

TEL 0171 890 3000
FAX 0171 890 4489

file

Top ~~RR~~

JJH 9/8
CC PU

Dear Alistair

HOUSING AND COUNCIL TAX BENEFIT AND ASYLUM SEEKERS

Thank you for copying to me your letter of 30 July to John Prescott. I sympathise with your difficulty, which is one we inherited, but I do not agree that it would make sense to close the loophole you have identified in isolation from the comprehensive policy solutions on asylum seekers that Jack Straw will be taking forward.

Withdrawing council tax benefits from asylum seekers will result in greater burdens falling on local authorities as I pointed out in my letter of 9 July to John Prescott. Withdrawing housing benefit will result in the short term in increased burdens on local authorities which are partly being met by the Department of Health. In the longer term, of course, accommodation for asylum seekers will be provided through the new Home Office scheme. If you still wanted to go ahead, I would expect you to transfer resources to my programme to meet some of the costs to local authorities, and no doubt Frank Dobson will have similar concerns. I hope you will agree with me that, rather than shuffling funds around Whitehall twice over, it makes more sense to close the loophole as part of the introduction of Jack Straw's new regime.

I am copying this letter to the Prime Minister, John Prescott and other members of HS, Robin Cook, and Sir Richard Wilson.

Yours
Hilary

HILARY ARMSTRONG

The Right Honourable Alistair Darling MP

Top: HA/PS
cPU

FROM THE DEPUTY PRIME MINISTER

DETR
ENVIRONMENT
TRANSPORT
REGIONS

DEPARTMENT OF THE ENVIRONMENT,
TRANSPORT AND THE REGIONS

ELAND HOUSE
BRESSENDEN PLACE
LONDON SW1E 5DU

TEL: 0171 890 3011
FAX: 0171 890 4399

The Rt Hon Jack Straw
Secretary of State for Home Office
Queen Anne's Gate
LONDON
SW1H 9AT

- 6 AUG 1998

Dear Jack

FH.

MARRIAGES OF CONVENIENCE UNDER EC LAW

Thank you for your letter seeking colleagues agreement to the terms of a response to Article 169 Reasoned Opinion from the Commission concerning our handling of cases of marriages of convenience under EC Law.

You explained that the definition of the term spouse went beyond the provision in the relevant EC Directives and Regulation. The effect was to preclude a third country national spouse who was party to a marriage of convenience from benefiting from residence in the UK under EC law. Retaining the ability to tackle abuse of EC free movement rights was an essential to immigration control. There were good legal and practical arguments for resisting the Commission's central contention. It was also possible that a number of other EU Member States would support the UK's view that abuse of EC law in that area needed to be addressed.

Robin Cook commented and agreed that the Government should contest the Reasoned Opinion and was content with the term's of your response. However, if it transpired that the Home Office guidelines in Marriage of Convenience could play a significant part in swaying the commission's mind in the Government's favour he hoped that they might be passed to the Commission - subject to the necessary caveats. He also noted that a number of Member States might have some sympathy for the UK's position and said he would be happy to instruct Embassies to seek support in capitals if required.

No other colleague commented and you may take it, therefore, that you have agreement in your proposals subject to the points made by colleagues.

I am copying this letter to the Prime Minister, members of HS, and to Sir Richard Wilson.

Yours ever

JOHN PRESCOTT

SKP 6/8/98

Top: HA/PS
PU

THE SCOTTISH OFFICE

From the Minister for Home Affairs, Devolution and Local Government
Henry McLeish MP

St. Andrew's House
Regent Road
Edinburgh EH1 3DG

Telephone: 0131-244 4012
Fax: 0131-244 2756

Stephen Byers Esq
Chief Secretary to the Treasury
Treasury Chambers
Parliament Street
LONDON
SW1P 3AG

5 August 1998

Dear Stephen

ASYLUM AND IMMIGRATION

I have seen a copy of Alistair Darling's letter to Frank Dobson about the need to consider how the transitional arrangements for supporting asylum seekers will work in the period until responsibility for payments is taken over by the Home Office.

Now that it is likely that the new arrangements may not be put in place until April 2000, I agree that it is right to raise this issue. I am disappointed however that Alistair's letter only deals with the English dimension and overlooks the implications for Scotland.

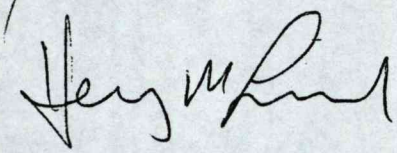
I agree that officials in the Department of Health deserve credit for operating the unsatisfactory system which we inherited last May. I am also very aware of the difficulties there have been in Scotland in trying to work within the confines of the legislative position here to produce a system broadly in line with that developed in England. This has only been done through the co-operation of Scottish local authorities and the Scottish Refugee Council who have worked closely with us to develop a workable solution to the problems which we have experienced. These problems have been increased by the uncertainty about funding and at times, this has stretched our relationship with these organisations unnecessarily because we have not been able to confirm administrative arrangements as quickly as we would have liked.

Donald Dewar wrote to Alistair on 3 July to make the case for access to the Reserve to cover the additional costs which will fall on Scotland in the present year. In his letter of 20 July, he set out that the Home Office should make PES transfers to the Department of Health. I would be grateful if Scotland could be included in these arrangements, or otherwise reimbursed in 1998-99 and 1999-2000, so that we can take forward arrangements for this year, and the following, if the introduction of the new system is delayed until the year 2000. A quick resolution of these issues will help us to secure the continuing co-operation of key agencies in Scotland.

SKP 6/8/98

I am copying this letter to the Prime Minister, Robin Cook, members of HS, Hilary Armstrong and Sir Richard Wilson.

Yours



HENRY McLEISH

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SW1H 9AT

05 AUG 1998

Rt Hon John Prescott MP
Deputy Prime Minister
and Secretary of State for the Environment, Transport and Regions
Eland House
Bressenden Place
London SW1 5DU

Top AL
PB
CC CH
PU
JEH °/R

Dear Mr Prescott

MARRIAGES OF CONVENIENCE UNDER EC LAW

I am writing to alert HS colleagues to a challenge to our ability to prevent immigration abuse through marriage to an EC national and to seek their agreement to the terms of a response to an Article 169 Reasoned Opinion from the Commission concerning our handling of cases of marriages of convenience under EC law. The Commission's Reasoned Opinion and proposed reply are at Annexes A and B respectively. The Law Officers have seen and agreed our proposed approach.

The background to this matter is the inclusion by the previous Government in the Immigration (European Economic Area) Order 1994 of a definition of "spouse" which goes beyond the provision in the relevant EC Directives and Regulation, which provide no such definition. The effect is to preclude a third country national spouse who is a party to a marriage of convenience from benefitting from residence in the UK under EC law.

Retention of our ability to tackle abuse of EC free movement rights is essential to our immigration control. In my view, there are good legal and practical arguments for resisting the Commission's central contention. It is also possible that a number of other EU Member States would support our view that abuse of EC law in this area needs to be addressed, should the case be referred to the European Court of Justice, as is likely.

The Commission's Reasoned Opinion also raises a number of related issues about interview and appeal procedures, on which we can respond more positively. The draft reply indicates our intended approach on these.

The deadline for a response to the Commission is **7 August**. Unless I hear to the contrary by **close on Tuesday 4 August**, I shall assume that I have your agreement to proceed.

WA
3/8

RESTRICTED - POLICY

I am copying this letter to members of HS, Robin Cook, John Morris, Sir Richard Wilson and Sir Stephen Wall.

Yours sincerely

Isobel Hopton

JACK STRAW

(Approved by the Home Secretary and signed in his absence)

ANNEXA

EUROPEAN COMMISSION

SECRETARIAT-GENERAL

Top Ar

JEV IR RS PJ

Brussels, 09 -06 1998

SG(98) D/ 4505
93/4738

OFFICE OF THE UNITED KINGDOM
PERMANENT REPRESENTATIVE
TO THE EUROPEAN UNION
Avenue d'Auderghem, 10

1040 Bruxelles

Subject : Reasoned Opinion of the Commission
– incompatibility of certain provisions of the Immigration (European Economic Area) Order 1994 and practice under national law with the law of free movement of persons provided under the Treaty establishing the EC

The Secretariat-General would be obliged if you would forward
to the Secretary of State for Foreign Affairs,
the enclosed letter from the Commission on the subject specified above.

For the Secretary-General

P. LAFILI

Encl. .Doc C(1998) 1414 final

EUROPEAN COMMISSION

Brussels, 09 -06- 1998

SG(98) D/ 4504

93/4738

Sir,

I have the honour to forward to you the text of a Reasoned Opinion of the Commission addressed to the United Kingdom, pursuant to Article 169 of the EC Treaty, regarding the incompatibility of certain provisions of the Immigration (European Economic Area) Order 1994 and practice under national law with the law of free movement of persons provided under the Treaty establishing the European Community, in particular, Article 48, Council Directive 68/360/EEC of 15 October 1968 and Council Directive 64/221/EEC of 25 February 1964 providing for the entry and residence of migrant workers and their families.

Yours faithfully,
For the Commission

Pádraig FLYNN
Member of the Commission

Encl.: Doc. C(1998) 1414 final

The Right Hon. Robin COOK, MP
Secretary of State for
Foreign and Commonwealth Affairs
Downing Street

GB - LONDON SW1A 2AL

Rue de la Loi 200, B-1049 Bruxelles/Wetstraat 200, B-1049 Brussel - Belgium - Office.
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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 09 -06- 1998
C(1998) 1414 final

REASONED OPINION

addressed to the United Kingdom, pursuant to Article 169 of the EC Treaty, regarding the incompatibility of certain provisions of the Immigration (European Economic Area) Order 1994 and practice under national law with the law of free movement of persons provided under the Treaty establishing the European Community, in particular, Article 48, Council Directive 68/360/EEC of 15 October 1968 and Council Directive 64/221/EEC of 25 February 1964 providing for the entry and residence of migrant workers and their families

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REASONED OPINION

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By letter of formal notice SG(95) D/6539, dated 18 May 1995, the Commission has commenced infringement proceedings under Article 169 of the EC Treaty against the United Kingdom regarding the incompatibility of certain domestic practices with the aforementioned legislation and principles of Community law set out in the jurisprudence of the Court of Justice.

The practices considered by the Commission to be in breach of Community law are practices under the Immigration (European Economic Area) Order 1994, but which also date back to 1992. They are the following. First, of failing to include within the definition of a spouse to whom Community rights of residence extend, those whom the United Kingdom authorities find to be a party to a "marriage of convenience"[1]. Second, of interviewing, without sufficient reasons, Community workers and their spouses, if the spouses are nationals of third countries, before issuing a residence permit, thereby not following the required procedure for granting residence to the spouses of migrant workers. Third, of failing, when requesting to interview certain applicants for residence, to give specific reasons for the request. Fourth, of denying an effective right of appeal to Community citizens and their spouses, if the application for a residence permit is refused. Fifth, of introducing measures that are more restrictive than those in force at the date of notification of Directive 64/221/EEC.

The Commission's attention has been drawn to these practices by a number of complaints submitted by workers nationals of other Member States, with spouses who are nationals of third countries. These complaints have given rise to an exchange of letters between the UK authorities and the competent departments of the Commission (cf. letters of the UK Permanent Representative of 21 February 1994 and of 19 September 1994 in reply, respectively, to Commission's letters of 11 October 1993 and of 7 April 1994.)

Considering these practices to be contrary to the aforementioned legislation and related principles of Community law, the Commission sent a letter of formal notice dated 18 May 1995 inviting the United Kingdom Government to submit its observations.

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[1] Section 2(2) of the Immigration (European Economic Area) Order 1994.

The United Kingdom responded to the letter of formal notice by their letter dated 27 July 1995 from their Permanent Representation to the European Union. The Commission considers that the said letter does not offer a satisfactory response to the matters raised. The Commission maintains its allegation regarding the non-compatibility of these practices with the legislation cited and related principles of Community law.

The relevant Community law

Definition of a "spouse" to whom Community law rights of residence extend

The term "spouse" has the same meaning throughout Community legislation concerning free movement of workers, including Regulation (EEC) No 1612/68 and Directive 68/360/EEC and refers to a marital relationship only[2]. The Court of Justice has ruled that Article 10 of Regulation (EEC) No 1612/68 giving rights to certain members of the family of a migrant worker, including a spouse, to install themselves with him "*cannot be interpreted restrictively ... Article 10 of the Regualtion does not require that the member of the family in question must live permanently with the worker. A requirement that the family must live under the same roof permanently cannot be implied*[3]". It also ruled that: "*the marital relationship cannot be regarded as dissolved so long as it has not been terminated by the competent authority*"[4].

Procedure for granting rights of residence

Directive 68/360/EEC, on the abolition of restrictions on movement and residence for workers of Member States and their families, provides rules for granting the right of entry and of residence in another Member State. Article 4 provides that before issuing a residence permit a host Member State may only require from the spouse of a Community worker documents listed in Article 4(3), which are: the document with which he entered the territory; and, the document proving the relationship with the worker. This list is exhaustive. The Court of Justice has repeatedly ruled that the host Member State is obliged to issue a residence permit subject only to the production of the documents mentioned in Article 4[5]. Member States may not introduce any other condition precendents to the granting of the right of residence. Hence, for example, persons entitled under Community law to reside in another Member State do not require leave to do so[6].

Exceptional circumstances justifying derogation from the procedure

It is only in specific cases and where the individual circumstances justify it, that the host Member State may, under the limitations to freedom of movement justified on grounds of public policy, place restrictions on the exercise of the right directly conferred by the Treaty[7], subject to the safeguards contained within Council Directive 64/221/EEC. Such limitations must not be construed as a condition precedent to the acquisition of the right of residence[8]. Measures taken on these grounds must be based exclusively on the

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2 C-59/85 *Reed* [1986] ECR 1283 at paragraph 15.

3 C-267/83 *Diatta* [1985] ECR 567, judgment of 13 February 1985, paragraphs 17-18

4 *Diatta*, paragraph 20.

5 C-48/75 *Royer* [1976] ECR 497, judgment of 8 March 1976, paragraph 57.

6 C-157/79 *Pieck* [1980] ECR 2171.

7 Article 48(3) of the Treaty

8 C-363/89 *Roux* [1991] ECR I-273, judgment of 5 February 1991, paragraph 30.

personal conduct of the individual concerned and may not be invoked to service economic ends[9]

Further, the facilities created by the Treaty cannot have the effect of allowing the persons who benefit from them to evade the application of national legislation. Only where there is clear evidence of such abuse in an individual case, may Member States take necessary and appropriate measures to prevent that abuse[10]. Any such measures are subject to procedural controls safeguarding the exercise of the fundamental right to free movement granted by the Treaty.

The duty to give reasons for a decision requesting an interview and/or refusing residence

As stated above, Community law requires that there must be specific reasons relevant to the individual case in which the authorities of the Member State decide to derogate from the procedure relating to the granting of residence. Once an applicant for residence has provided the documents required under Directive 68/360/EEC, the reasons for a Member State failing to grant residence and thus derogating from that procedure must be communicated to the persons concerned in order that the burden of proving their lack of entitlement remains with the Member State, and for the applicants to effectively be able to put their case or judicially challenge the decision if necessary.

Similarly, in the event of a decision refusing residence, following an interview or otherwise, full and particular reasons for that decision must be given to the applicant to allow for an effective exercise of the right to a judicial remedy. This is required in order to ensure the effective protection of such a fundamental right[11]. Failure to give reasons will result in the reversal of the burden of proof and the inability of applicants effectively to present their case

Right of Appeal

Any decision concerning the entry, or refusing the issue of residence permits is subject to the procedural requirements set out in Articles 8 and 9 of Directive 64/221/EEC[12]. The right to free movement of workers confers a Community law right on spouses of Community nationals. The Court of Justice has emphasized that the existence of a judicial remedy against any decision of a national authority refusing the benefit of a fundamental Community law right is essential in order to secure effective protection of the right for the individual[13]. This cannot depend on the national authority first finding that the Community law right is applicable.

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9 Council Directive 64/221/EEC Article 3(1) and 2(2).

10 C-370/90 *Singh* [1992] ECR 4265, paragraph 24; C-115/78 *Knoors v Secretary of State for Economic Affairs* [1979] ECR 399, paragraph 25; C-61/89 *Bouchoucha* [1990] ECR I-3551, paragraph 14.

11 C-222/86 *Heylens* [1987] ECR 4097

12 For the Court of Justice interpretation of the requirements of those Articles see *Shingara and Radiom*, Joined cases C-65/95 and C-111/95, judgment of 17 June 1997, not yet reported.

13 C-222/86 *Heylens* [1987] ECR 4097 and C-222/84 *Johnston* [1986] ECR 1651

Prohibition on the introduction of more restrictive measures

Directive 64/221/EEC governing derogations from Community law relating to free movement of persons, provides at Article 3(4):

"Member States shall not introduce new provisions or practices which are more restrictive than those in force of the date of notification of this Directive."

In their reply of 27 July 1995 to the letter of formal notice, the United Kingdom authorities submit the following observations.

First, the United Kingdom submits that it is implicit in the judgment of the Court of Justice in *Reed* that a marital relationship is to be defined not only by reference to its legality but also by its stability. On that basis, the United Kingdom considers that parties to a marriage not characterized by stability, "marriages of convenience", do not give rise to rights under Community law. The United Kingdom applies a test to determine whether or not the marriage is one of convenience: "the determining factor will be the intention of the couple to live permanently together as man and wife in a settled and genuine relationship"[14]. In cases dealt with under the 1994 Order the United Kingdom seeks to establish whether the marriage was entirely bogus, within the above terms, from the outset.

The Commission considers that this position is based on a misinterpretation of Community law. A spouse of a migrant worker to whom Community law rights extend is defined as such, by Community law, only by reference to the legal marital relationship. A marital relationship will commence once concluded by, and continue to exist until it is dissolved by, the competent authority. It is thus contrary to Community law to impose further requirements, in particular that the parties must intend to live permanently together in a genuine settled relationship, or did so at least at the outset of the marriage, before recognizing the relationship as one that gives rise to rights under Community law and granting residence to such applicants. The Court in *Diatta* held that there can be no requirement that the parties live together permanently under the same roof. In that case, the parties had lived together, but the Court placed no emphasis on that fact in its analysis. The Court in *Reed*, far from deciding that there was a requirement that the relationship should be marked by stability as well as legality, held that a stable relationship where the parties cohabited was insufficient to give rise to the rights as a spouse of a Community worker under Regulation (EEC) No 1612/68 in the absence of a legal marital relationship, but that the term spouse under Community law was to be defined by the marital relationship only. Contrary to the UK's contention, it cannot be implied into that judgment that the legal marital relationship would not give rise to a right of residence unless also marked by stability.

Second, the United Kingdom maintains that the practice in the United Kingdom is to grant residence permits in accordance with Directive 68/360/EEC. However the United Kingdom maintains that in certain circumstances their authorities are entitled to take appropriate measures to prevent Community rights to free movement from being abused. These measures include the practice of inviting to interview non-EEA nationals

[14] Reply by Secretary of State, Mr C Wardle, to a parliamentary question from Mr G. Allen, [Question No 118 of 25 May 1994]

married to EEA-nationals applying for residence where there are "reasonable grounds" for considering that an applicant has entered into a marriage solely for immigration purposes. Matters that constitute "reasonable grounds" are not specified. The United Kingdom further maintains that attendance at interview is not mandatory and the right to residence will not automatically be refused where an applicant fails to attend.

The Commission considers that to refuse the right of residence to the spouse of a Community worker, who has provided the documents as required by Directive 68/360/EEC, is contrary to Community law, unless there are exceptional circumstances particular to an individual case which justify a derogation from that procedure. The Commission recognizes the right of the United Kingdom to take necessary and appropriate measures to prevent abuse of the Community right to free movement. However, the Commission considers that the procedure of interviewing applicants simply on the basis of "reasonable grounds" is incompatible with Community law, which applies a far more stringent test. It allows authorities of Member States to require information further to that specified in Article 4(3) of Council Directive 68/360/EEC only in specific cases where the individual circumstances justify it. The Commission is of the opinion that there is no requirement under Community law that a spouse be living with the Community worker, or that the relationship be permanent in order for a right to residence to apply. It follows that the practice of interviewing applicants for residence, in so far as this is in order to establish that they intended at the outset to live together in a genuine and settled relationship, cannot be a necessary or appropriate measure to combat abuse of Community law rights, and is therefore incompatible with Community law. Indeed, Community law according to the Court in *Roux*, prohibits Member States from making the issue of a residence permit subject to any other conditions than those specified in Article 4 of Directive 68/360/EEC. Further, the Commission considers that failure to attend an interview is in practice likely to count against the applicant leading to a likely rejection of their application for residence. Hence, in practice, attendance at such an interview, itself unjustified under Community law, may be a further condition precedent to acquiring the right of residence, contrary to Community law.

Third, the United Kingdom authorities explain that, formerly, it was the practice that applicants were not informed of the reasons for interview in order to prevent applicants from giving misleading evidence. This practice has since changed and applicants are now informed that the purpose of the interview is to establish whether they are living together in a genuine relationship or whether the marriage was entered into solely for immigration purposes.

The Commission considers that the practice has not substantially changed and that formulaic reasons continue to be given. Community law, as clearly specified in the case of *Roux*, prohibits Member States from making the issue of a residence permit subject to any other conditions than those specified in Article 4 of Directive 68/360/EEC and therefore any derogation from that requirement must be justified on the basis of precise reasons, specific to each individual case. In every case where an interview is requested by the United Kingdom authorities, the individual circumstances specific to the case must justify this decision and be notified to the applicant for residence. The Commission considers that the failure to give reasons at all, and the current practice of giving of general and formulaic reasons are insufficient to satisfy Community law, in particular the standard established in the *Roux* case. Only if the reasons for the decision to interview are

given will the applicant for residence be able effectively to protect the fundamental right to free movement, and to exercise the right of access to a judicial remedy if necessary.

Fourth, as to the right to appeal[15] against a decision refusing to grant residence, the United Kingdom submits that it applies the same rules to the spouses of migrant workers as to spouses of United Kingdom workers. The United Kingdom maintains that Community law rights are not instantly attracted merely by claiming those rights. A right of appeal has not in the past been granted under Article 18 of the Immigration (EEA) Order 1994 where the United Kingdom authorities consider the applicant to be a party to a "marriage of convenience" under Article 2(2). A right of appeal will be granted under the Immigration Rules where an applicant has existing leave to remain in the United Kingdom under the Immigration Rules. Where an applicant has overstayed his leave or is an illegal entrant to the United Kingdom he only has a right of appeal against any decision to deport him, which may only be exercised from abroad. In the latter case, there is no right to appeal against the finding that he is a party to a marriage of convenience.

The Commission considers that the limited rights of appeal under national law must operate without prejudice to the wider rights to a judicial remedy conferred by Community law. Since Community workers and their families do not require leave to enter and remain in another Member State, they have not been granted rights of appeal under the national Immigration Rules. Where a decision to derogate from granting the right of residence is taken on grounds of public policy, public security or public health, the applicant for residence has rights to a remedy under Articles 8 and 9 of Directive 64/221/EEC. These rights are also subject to the Community law requirement that any remedy must be effective. Similarly, where the decision to derogate from the right to free movement is taken on the basis that the applicant is abusing Community law rights, and therefore Directive 64/221/EEC is not applicable, similar procedural safeguards apply in any event and require the applicant to have a non-discriminatory, adequate and effective right of appeal as demostrated in *Heylens*. The right of appeal granted by the *Heylens* jurisprudence is directly conferred by Community law and is not restricted to mere equality of treatment with nationals. A failure to recognize a right of judicial remedy for all those claiming rights of residence under Community law is contrary to Community law. Once granted, the right of appeal will only be effective if exercisable from the Member State in which residence is sought and is not limited to the legal validity of the decision alone.

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[15] The Commission is in receipt of a letter from the Immigration and Nationality Directorate dated 19 June 1996, stating that it has been decided that any Third country married to an EEA national may appeal against a decision that there is a marriage of convenience under section 18 of the Immigration (European Economic Area) Order 1994. The appellate body may then establish the nature of the marriage in question. The Commission considers that further information is necessary regarding the basis on which the right of appeal has been granted to assure the non-discriminatory, effective and adequate nature of this remedy. In any event, this does not answer the central concern that the wrong test of spouse is consistently being applied both at first instance and appellate level decision making.

Further, the Commission considers that the Immigration (EEA) Order 1994 not only consolidates the existing practice of the UK authorities but also incorporates the introduction of more restrictive measures since the notification of Directive 64/221/EEC. This is contrary to Article 3(4) of that Directive.

FOR THE ABOVE REASONS, THE COMMISSION

having, by letter of 18 May 1995, given the United Kingdom Government the opportunity to submit its observations and after having examined those observations of 27 July 1995,

HEREBY DECLARES AS ITS REASONED OPINION

delivered, pursuant to the first paragraph of Article 169 of the Treaty establishing the European Community, that, by

(a) failing to include within the definition of a spouse to whom Community rights extend, applicants for residence whom the United Kingdom authorities consider to be parties to a "marriage of convenience", notwithstanding the legal relationship;

(b) requiring additional information to that set out in Article 4(3) of Directive 68/360/EEC where the United Kingdom authorities consider they have only reasonable grounds to believe the applicant to be a party to a "marriage of convenience";

(c) failing to give precise reasons for inviting to interview applicants for residence under Community law;

(d) failing to grant an effective right of appeal to those claiming rights under Community law; and

(e) introducing more restrictive measures in the Immigration (EEA) Order 1994 than had been instituted by the date of notification of Directive 64/221/EEC,

the United Kingdom has failed to comply with its obligations under the Treaty establishing the European Community and the provisions of Article 4(3) of Council Directive 68/360/EEC, Article 10 of Regulation (EEC) No 1612/68 and Article 3(4) of Council Directive 64/221/EEC and the principles of Community law established by the jurisprudence of the Court of Justice establishing rights concerning the free movement of workers and their families.

Pursuant to the second paragraph of Article 169 of the Treaty, the Commission requests the United Kingdom to take the measures necessary to comply with this Reasoned Opinion within two months following notification thereof.

Done at Brussels, 09 -06- 1998

For the Commission

Pádraig FLYNN
Member of the Commission

ANNEX B

INFRACTION PROCEEDINGS UNDER ARTICLE 169: IMMIGRATION (EUROPEAN ECONOMIC AREA) ORDER 1994

RESPONSE FROM THE UK GOVERNMENT

Introduction

By letter of formal notice SG (95) D/6539, dated 18th May 1995, the Commission has commenced infringement proceedings under Article 169 of the EC Treaty against the United Kingdom regarding what it alleges to be the incompatibility of certain domestic practices with Community law.

The practices considered by the Commission to be in breach of Community law concern certain aspects of the Immigration (European Economic Area) Order 1994 (the "1994 Order"). The United Kingdom would like to respond to the five points raised by the Commission in the second paragraph of its Reasoned Opinion in the terms set out below in the order in which they are raised by the Commission.

However, before responding specifically to the five points raised by the Commission, the United Kingdom would draw the Commission's attention to the apparent agreement between the parties on a number of key points. First, it is common ground that, as the Court held in Surinder Singh[1], the facilities created by the Treaty cannot have the effect of allowing the persons who benefit from them to evade the application of national legislation. Where there is clear evidence of abuse of Community rights in an individual case Member States may take necessary and appropriate measures to prevent that abuse. Secondly, exceptional circumstances particular to an individual case may justify a derogation from the procedure for granting rights of entry and residence as set out in Directive 68/360/EEC. Thirdly, full and particular reasons should be given by the authorities of a Member State wherever they decide to derogate from the procedure relating to the grant of residence. Fourthly, a judicial remedy will generally be required against any decision refusing the benefit of a fundamental Community law right.

(1) Marriage of Convenience

The test of what constitutes a "marriage of convenience" for the purposes of the 1994 Order is a strict one, only applying where there is a clear intent to evade domestic immigration rules by an abusive exercise of Community free movement rights. Further, the application of such a strict test is entirely consistent with Community law and with the purposes of the Community provisions concerned.

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1 Case C-370/90 R v IAT ex parte Secretary of State for the Home Department [1992] ECR I-4265

More specifically, the UK Government would comment as follows:-

(a) The UK Government acknowledges that parties to a "marriage of convenience" are excluded from the definition of "spouse" for the purposes of the 1994 Order. However, the test for determining whether a marriage is a "marriage of convenience" for the purposes of the 1994 Order is not based purely upon whether the couple concerned live under the same roof, as implied by the Commission's Reasoned Opinion.

(b) Rather, the appropriate test is that set out in correspondence by the relevant Minister of the time, Charles Wardle, dated 24th May 1994 and addressed to Mr Allen MP in response to a question raised in Parliament as follows:

> "We regard a marriage of convenience as a sham marriage which is entered into solely for immigration purposes where neither partner has the intention of living with the other as man and wife in a settled and genuine relationship".

Therefore, to be regarded as a marriage of convenience, the marriage must have been entered into "solely" for immigration purposes and there must be no intention to live as man and wife in a settled and genuine relationship. For these purposes, the UK Government would accept that a genuine relationship as man and wife can exist irrespective of cohabitation. Only if a marriage possesses all of the disqualifying characteristics under the test set out above will a residence permit be refused. This approach has been adopted by the Immigration Appeal Tribunal in the United Kingdom, which has held that marriages of convenience fall outside the protection of Community law and that, therefore, the parties to such marriages are not entitled to benefit from the free movement rights by virtue of that marriage. Thus, in the case of Lau (10859 - unreported), the Tribunal recognised that the purpose of granting family residence rights was to prevent workers from being deterred from moving to another Member State through the absence of such rights. A marriage of convenience, which did not involve cohabitation or family life at all, was unlikely to be relevant for the purposes of Regulation 1612/68. Similarly, in Kwong (10661 - unreported) the Tribunal held that "the Community law concern cannot in our view extend to a party to a marriage which exists only as a shell ... it is a fundamental tenet of Community law that Community rights depend on substance and purpose rather than any outward manifestation which may or may not of itself reflect that substance or purpose".

(c) This strict test is not inconsistent with the decision of the Court of Justice in Diatta[2]. That case simply established that the fact that a man and wife do not live together is insufficient to take them outside Community free movement rights. Indeed, in that case the Court stated that Regulation

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2 Case C-267/83 Diatta v Land Berlin [1986] 2 CMLR 164

1612/68 "is one of various measures intended to facilitate the achievement of the objectives of Article 48 of the Treaty. It must therefore enable a worker to move freely in the territory of the other Member States and to reside in their territory in order to work there ... To that end, Article 10 of the Regulation provides that certain members of the migrant worker's family may also enter the territory of the Member State in which he is established and install themselves with him" (paragraphs 15 and 16). It is the UK Government's submission that the application of the strict "marriage of convenience" test falls outside this principle in not prejudicing the "end" concerned in any way. That is because the fact that a worker has a spouse pursuant to a pure marriage of convenience will mean that any barrier to his/her installing herself with him in another Member State will not prevent him from being able to move freely within the Community in order to work as there is in reality no intimate and current relationship of a marital kind.

(d) The UK Government refutes any suggestion that the "marriage of convenience" test is designed for economic ends and is of the belief that there is no evidence whatsoever that this is the case.

(e) Rather, the test is designed to address individual cases involving a clear abuse of Community rights in line with the general legal principle that rights may not be exercised if to do so would constitute an abuse, as applied by the Court in Surinder Singh As the Court held in that case, "the facilities created by the Treaty cannot have the effect of allowing persons who benefit from them to evade the application of national legislation and of prohibiting Member States from taking the measures necessary to prevent such abuse" (paragraph 24). This principle is re-affirmed at the top of page 4 of the Commission's Reasoned Opinion. In that case, Advocate General Tesauro stated that the continued ability of the national authorities to take measures to prevent abuses was attested by the fact that the Immigration Appeal Tribunal had expressly reserved the possibility of examining any factual issue of evasion of national law.

(f) The Court, in support of the test so laid out, cited two earlier cases as examples of the Court's development of the test. First, in Knoors[3], the Court held that "it is not possible to disregard the legitimate interest which a Member State may have in preventing certain of its nationals, by means of facilities created under the Treaty, from attempting wrongly to evade the application of their national legislation as regards training for a trade" (paragraph 25). Secondly in Bouchoucha[4], the Court applied Knoors to a situation where a national of a Member State had obtained in another Member State a diploma whose scope and value were not recognised by any Community provision and, as a result, sought to place his Member State of origin under an obligation to allow him to exercise the activities covered by that diploma within its territory

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3 Case C-115/78 Knoors v Secretary of State for Economic Affairs [1979] ECR 399

4 Case C-61/89 Re: Bouchoucha [1990] ECR I-3551

even though access to those activities was restricted there to the holders of a higher qualification which did enjoy mutual recognition at Community level.

(g) UK practice reflects the principle that only where there is clear evidence of abuse in an individual case may Member States take necessary and appropriate measures to prevent that abuse. The "marriage of convenience" test is designed to deal with such cases of abuse but only where there is clear evidence in individual cases that they meet the strict requirements of the test outlined at paragraph (b) above will action be taken. It is submitted that where cases fall within this strict category they will clearly constitute abuse for the purposes of the principle outlined in Surinder Singh and other cases.

(h) This approach would seem to be justified by analogy to the operation of the EEC-Turkey Association Agreement as a result of the Court's decision in Gunaydin v Freistat Bayern[5]. In that case it was held that "it is only if the national court establishes that the Turkish worker made the statement that he wished to leave the host Member State after a specified period with the *sole intention* of inducing the competent authorities to issue the requisite permits on false premises that he can be deprived of the rights flowing from Article 6(1) of Decision No. 1/80" (paragraph 60 - emphasis added). In requiring that, in order to be a marriage of convenience, a marriage must, inter alia, have been entered into "solely for immigration purposes", the UK Government would submit that it is applying a similarly strict test of "abuse" of EC law rights as that employed by the Court in Gunaydin in response to the second question referred to it relating to whether a particular course of behaviour could amount to an "abuse of law" so as to negate rights under the Association Agreement. In paragraph 61 of its judgment in that case the Court, in holding that the answer to the second question should be in the negative, accepts nevertheless the existence of a general doctrine of "abuse of rights" by stating that such abuse had not been shown in the present case on the facts as established (paragraph 18).

(i) Finally, a similar approach can be seen to have been adopted by the Court in the TV10 SA[6] case, where it was held that the provisions of Articles 59 and 60 of the Treaty on freedom to provide services are to be interpreted as not precluding a Member State from treating as a domestic broadcaster a broadcasting body constituted under the law of another Member State and established in that State whose activities are "wholly or principally directed towards the territory of the first Member State, if that broadcasting body was established there in order to enable it to avoid the rules which would be applicable to it if it were established within the first State" (paragraph 26). By analogy, marriages of convenience which are "wholly or principally directed" towards avoidance of domestic immigration law will be precluded by the UK from the exercise of free movement rights under the Treaty. The Court, in

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5 Case C-36/96 Gunaydin v Freistat Bayern [1997] ECR 1543

6 Case C-23/93 TV10 SA [1993] ECR I-4795

TV10 SA, referred to a previous decision in Van Binsbergen[7] , where it was held that "a Member State cannot be denied the right to take measures to prevent the exercise by a person providing services whose activity is entirely or principally directed towards its territory of the freedom guaranteed by Article 59 for the purposes of avoiding the professional rules of conduct which could be applicable to him if he were established within that State" (paragraph 13). This line of authority was relied upon by the Court in Brennet AG v Vittorio Paletta[8] I, a case concerning application of Community social security schemes to employed persons and their families moving within the Community, as being evidence that the Court has consistently held that Community law cannot be relied on for the purposes of abuse or fraud (paragraph 24). At paragraph 25 of its judgment the Court stated that "although the national courts may, therefore, take account on the basis of objective evidence of abuse or fraudulent conduct on the part of the worker concerned in order, where appropriate, to deny him the benefit of the provisions of Community law on which he seeks to rely, they must nevertheless assess such conduct in the light of the objectives pursuit [sic] by those provisions". At paragraph 28, the Court concluded that its interpretation of the relevant provision "...does not imply that employers are barred from adducing evidence to support, where appropriate, a finding by the national court of abuse or fraudulent conduct on the part of the worker concerned, in that, although he may claim to have become incapacitated for work, such incapacity having been certified in accordance with Article 18 of that Regulation, he was not sick at all".

(j) The Reed[9] case establishes that, in order to qualify as a "spouse" for the purposes of Community law, a person must be in a "marital relationship" with a national of a Member State. It is submitted that in cases where the "marriage of convenience" test is satisfied there will be no real such relationship in existence. This is not inconsistent with the decision in Reed as that case was concerned with the situation where a couple were not in fact married. Indeed, in that case the Court sought to narrow the definition of "spouse" for Community law purposes. The UK Government believes that the "marriage of convenience" test similarly clarifies the definition of "spouse" for these purposes in that the draftsman of the relevant Community instruments cannot have intended that the term "spouse" should include a partner pursuant to a mere marriage of convenience. Rather, the clear intention behind Community rights of free movement in relation to family members, as discussed by the Court in Diatta, was to prevent barriers being erected to free movement of workers and others by reason of an inability of family members to move freely with such workers within the Community. In order for such a barrier to exist, there must clearly be a true "marital relationship" such that, if the spouse of a worker is prohibited from moving freely within the

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7 Case 33/74 Van Binsbergen [1974] ECR 1299

8 Case C-206/94 Brennet AG v Vittorio Paletta [1996] ECR I-2357

9 Case C-59/85 Reed [1986] ECR 1283

Community, free movement rights of workers will be prejudiced. This would not be the case in relation to parties to a marriage of convenience as no such relationship exists.

(k) It is the UK Government's submission that Article 4 of Directive 68/360 must be read subject to the "measures necessary to prevent abuse" of Community rights in accordance with the principle outlined in Surinder Singh and other cases. This submission is not affected by the Court's decision in Diatta, where the "marital relationship" was held not to be capable of being regarded as dissolved so long as it had not been terminated by the competent authority, because in cases concerning mere marriages of convenience, no such "marital relationship" ever existed and so the question of dissolution does not arise. As the partner pursuant to a marriage of convenience does not therefore come within the definition of "spouse" for the purposes of Community free movement rights, the UK Government would submit that its practices are not inconsistent with Article 4(3) of Directive 68/360 (and, therefore, the ruling of the Court in Royer[10]) because, under Article 4(1) of that Directive, the right of residence only extends to those persons referred to in Article 1, namely nationals of Member States and "members of their families".

(l) In the alternative, the UK Government would submit that its exclusion of marriages of convenience from the definition of "spouse" in the EEA Order is justified upon grounds of public policy as permitted under Community law. Any spouse in a marriage of convenience satisfying the test set out above would, in seeking to enter or reside in the UK, constitute a "genuine and sufficiently serious threat to the requirements of public policy affecting one of the fundamental interests of society" for the purposes of the test laid down by the Court in Bouchereau[11]. As set out in sub-paragraph (e) above, because any application of the marriage of convenience exclusion is based upon the individual conduct of the applicant concerned, the UK Government would submit that its conduct is in compliance with Article 3(1) of Directive 64/221. In Bouchereau, the Court recognised, in the context of drug offenders, that it is possible that past conduct alone may show a sufficient threat to the requirements of public policy for these purposes. Furthermore, it is clear that the activities concerned need not be illegal in order for the public policy proviso to apply, as established by the Court in Van Duyn[12] The intention of refusing free movement rights to spouses pursuant to marriages of convenience is not to deter other aliens from entering into such marriages. Rather than being designed to address "general preventative" or "deterrent" reasons for the purposes of the Court's ruling in Bonsignore[13] , the test is geared towards genuine public policy concerns flowing on from the sanctity of marriage and the interest which the State has in ensuring that the institution of marriage is not abused.

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10 Case C-48/75 Royer [1976] ECR 497

11 Case C-30/77 R v Bouchereau [1977] ECR 1999

12 Case 41/74 Van Duyn v Home Office (No. 2) [1974] ECR 1337

13 Case 67/74 Bonsignore [1975] ECR 297

contracted by third party nationals in order to evade immigration control

(m) The UK Government's approach accords with Resolution 12337/97 of the Council of the European Union adopted on 18th November 1997 on measures to be adopted on the combating of marriages of convenience. ~~Although~~ The Resolution ~~does not have the force of law in the Community, it does~~ illustrates a recognition by Member States of the problems posed by marriages of convenience and indicates the stance to be taken against them by Member States throughout the ~~Community~~ Union. It would also, upon the assumption that a concept of abuse of Community law rights as set out by the Court in Surinder Singh does exist, illustrate clearly exactly what type of behaviour may constitute such abuse in the present context. It is noted from background papers to the Resolution that ~~the Commission attended an initial meeting of the Council relating to its subject matter and also attended a later meeting of the Migration Working Group and that on neither occasion did the Commission voice any dissenting opinion as to the provisions of the Resolution so discussed~~. In the Resolution, the Council notes that marriages of convenience constitute a means of circumventing the Rules on entry and residence of third-country nationals and encourages Member States to adopt or continue to adopt measures equivalent to the Resolution in order to combat the phenomenon. Article 1 of the Resolution defines "marriage of convenience" as "a marriage concluded between a national of a Member State or a third-country national legally resident in a Member State and a third-country national, with the sole aim of circumventing the Rules on entry and residence of third-country nationals and obtaining for the third-country national a residence permit or authority to reside in a Member State". It is submitted that the definition adopted by the United Kingdom is, if anything, stricter than, and certainly not materially different from, that adopted by the Council.

at no time did the Commission challenge the existence of such a problem for Member States.

(n) Article 2 of the Resolution outlines a number of factors which may provide grounds for believing that a marriage is one of convenience. These include the fact that matrimonial cohabitation is not maintained, the fact that spouses have never met before their marriage, a sum of money has been handed over in order for the marriage to be contracted (with the exception of money given in the form of dowry) and a past history of one or both spouses containing evidence of previous marriages of convenience or residence anomalies. This is illustrative of the abuse of marriage for immigration purposes.

The Resolution sets out procedures which Member States might follow in order to identify cases of abuse of immigration control.

(o) Article 3 of the Resolution permits Member States to issue residence permits to third-country nationals on the basis of marriage "only after the authorities competent under national law have checked that the marriage is not one of convenience and that the other conditions relating to entry and residence have been fulfilled." Article 4 allows residence permits to be withdrawn, revoked or not renewed in cases where marriages are found to be ones of convenience. The UK Government's approach to marriages of convenience is entirely consistent with this Resolution.

(p) In civil law systems it would appear that marriages of convenience are regarded as a nullity and, if brought before a court of competent jurisdiction,

will be declared void so as not to benefit from any applicable Community free movement rights. Thus, under French law, a Government Procurator may suspend solemnisation of a marriage for one month and lodge a formal objection in any case where he doubts the sincerity of the marriage concerned. In such cases he may go on to refuse a residence permit to the non-EEA national spouse on the basis of evidence that the marriage was a sham so long as the applicant is given a hearing first. Furthermore, it would seem that the Procurator has powers to withdraw a residence permit if evidence of such a marriage later emerges. It is therefore clear that the French authorities effectively restrict the application of Community free movement rights in cases where there is evidence that a marriage between an EEA national and a non-EEA national is a sham.

(2) **Interviewing before issuing residence permit**

(a) If, as set out in section (1) above, the pursuit of Community free movement rights pursuant to a marriage of convenience constitutes an abuse of Community law which the United Kingdom is entitled to seek to take action to prevent, then there must be an ability to interview applicants in appropriate cases to determine whether such abuse is occurring.

(b) The UK Government submits that if the immigration authorities have "reasonable grounds" to suspect such abuse then they will have "sufficient reason" to interview applicants for these purposes. The requirement for "reasonable grounds" is a relatively strict one, such grounds only being capable of existing once a case has been considered on its individual merits. Any "reasonable grounds" will be based entirely upon the individual circumstances of the case concerned. There is no blanket policy to interview applicants. Indeed, interviews are only required where, once "reasonable grounds" have been established, no further evidence could be gathered of the existence of a marriage of convenience without such interviews. This is demonstrated by figures illustrating the percentage of cases referred for interview in the period January-April 1998 which show that, for that period, only approximately 3.5% of residence document applications by spouses of EEA nationals were so referred.

(c) Furthermore, the UK Government believes that its practice is entirely consistent with the Court of Justice's judgment in Roux[14]. This case was concerned with an attempt by a Member State to impose conditions upon those clearly exercising economic activity for the purposes of free movement rights, thus requiring an applicant to register with a social security scheme in the host State before rights of residence could be exercised there. Cases of marriages of convenience are different in that such a practice constitutes an abuse of Community law. Unlike in the Roux case where the applicant clearly fell within the ambit of those intended to be covered by free movement rights, it is submitted that parties to a marriage of convenience are not entitled to exercise

14 Case C-363/89 Roux [1991] ECR I-273

such rights. As the Court stated in Roux "the only condition imposed on a national of a Member State of the Community for issue of a residence permit is that he proves that he comes within one of the classes of person entitled to freedom of movement" (paragraph 20). It is the UK Government's submission that a "spouse" to a marriage of convenience with a national of a Member State does not come within "the class of persons entitled to freedom of movement" for these purposes. Therefore, as stated at paragraph (1)(k) above, such persons fall outside the provisions of Directive 68/360, making it entirely appropriate for the UK Government to require more than simply the documents listed in Article 4(3) of that Directive in cases where there is evidence of an abuse of the Community law rights concerned.

(d) In the absence of clear evidence of such abuse, applications based upon marriage are dealt with within the terms of Article 4 of Directive 68/360, as confirmed by Article 5(2) of the 1994 Order. It is the UK Government's submission that in cases where reasonable grounds exist for suspecting the existence of a marriage of convenience, an interview is a "necessary or appropriate measure to combat abuse of Community law rights" as referred to on page 6 of the Reasoned Opinion.

(e) The exceptional nature of the practice of interviewing applicants and the strict requirements of the "reasonable grounds" test are illustrated by guidelines relating to marriages of convenience which were circulated to caseworkers in November 1997. These state that the number of cases to be pursued on marriage of convenience grounds "will be very few" and will meet various criteria set out therein. In particular, it is stated that it will not be appropriate to consider as a marriage of convenience one where there is a child of the relationship, or any other evidence that the marriage did genuinely subsist, even for a short time. A number of "core criteria" which must be satisfied before caseworkers may be satisfied that a marriage may possibly be one of convenience so as to merit reference of the case for interview, are set out in the guidelines. To consider a marriage as potentially one of convenience, three of these criteria must be present and at least one of a number of subsidiary criteria must also be present. None of the core criteria concerned relate to the question of cohabitation, thus illustrating the degree of evidence that a marriage is a sham that will be required before an interview will be conducted. Where it is doubtful that a case fully meets these criteria the application will be granted without further enquiry. Due to the ~~extremely~~ operationally sensitive nature of the guidelines, it is UK Government policy not to disclose them ~~to any person~~. The frequency of abusive claims to Community law rights ~~w~~ would increase dramatically were the guidelines to be published.

(f) The UK Government confirms that a failure to attend an interview will not necessarily count against an applicant, especially if he or she returns for interview at a later date. However, the UK Government reserves its rights to determine whether an abuse of Community law exists in each individual case by virtue of a marriage of convenience.

(g) The Resolution of the Council of the European Union referred to at paragraph (1)(h) above specifically contemplates, at Article 3, a practice of interviewing each of the two spouses in cases where there are "factors which support suspicions for believing that a marriage is one of convenience". The UK Government submits that its practice of interviewing applicants accords entirely with the practice advocated by the Council.

(3) **Specific reasons for interview**

(a) The UK's immigration authorities do give reasons both (i) for the need for an interview with an applicant and (ii) for any subsequent refusal of a residence document.

(b) However, the UK Government accepts the need to give more specific and tailored reasons in circumstances falling within (i) above. Therefore in future, prior to interviewing applicants, the UK immigration authorities will ensure that specific reasons are given as to why an interview is required in the individual case concerned, such reasons being based upon the individual circumstances of that case.

(c) The Commission has not declared that the UK Government's practices with regard to reasons in circumstances falling within (ii) above fail to comply with the requirements of Community law referred to on page 4 of the Reasoned Opinion, but the UK Government does nevertheless note the requirements concerned.

(4) **Effective right of appeal upon refusal**

(a) The UK Government, as indicated by foot-note 15 on page 7 of the Reasoned Opinion, submits that there is now an effective right of appeal in the form of a preliminary issue hearing under Article 18 of the 1994 Order. Thus, in the cases of Wong (Case 12602), Lo (12603) and Wan (12604) (all unreported), the Immigration Appeal Tribunal held that the right of appeal exists by means of preliminary issue under Article 18 of the EEA Order as to the question of whether a marriage is one of convenience. If the appellate authority found that the marriage was one of convenience then the Tribunal held that the right of appeal would be excluded by virtue of Article 2 of the EEA Order. However, if, at the preliminary issue hearing, it was found that the marriage was not one of convenience then a right of appeal would exist under Article 18 in the usual way. The preliminary issue is considered by the appellate authority in exactly the same forum and under the same conditions as issues arising out of ordinary appeals under Article 18 of the EEA Order, and therefore does not differ in substance to such an appeal. This determination has therefore effectively provided a right of appeal to applicants refused on marriage of convenience grounds in all cases. The right of appeal thus granted complies with the requirements set out in Heylens[15] in that it is not

15 Case C-222/86 UNECTEF v Heylens [1987] ECR 4097

discriminatory, and is effective and adequate in the same way as all other appeals made under the 1994 Order. The right of appeal is exerciseable within the UK and enables the appellate authority to look at the facts of each individual case as well as the legal validity of the decision concerned. If the exercise of the "marriage of convenience" test is, justifiable on public policy grounds (as opposed to being justified on separate grounds set out above), then it is the UK Government's submission that the right of appeal set out above satisfies the requirements of Directive 64/221, in particular Article 8 thereof.

(b) Under Article 5 of the European Union Council's Resolution referred to at paragraph 1(h) above, third-country nationals are to be given an opportunity to contest or to have reviewed, either before a Court or before a competent administrative authority, a decision to refuse, withdraw, revoke or not renew a residence permit or authority to reside. It is submitted that the right of appeal granted by way of preliminary issue under Article 18 of the 1994 Order accords fully with this provision.

(c) Notwithstanding the fact that, in practice, an effective right of appeal does exist in cases deemed to involve marriages of convenience by virtue of the preliminary issue procedure under Article 18, the UK Government undertakes to consider amending the wording of Article 18 so as to make clear that parties to a marriage of convenience effectively have the same rights as EEA nationals and family members who are entitled to appeal under that Article.

(5) **Introduction of more restrictive measures**

(a) The Commission refers, once on page 5 and twice on page 8 of its Reasoned Opinion, to "Article 3(4)" of Directive 64/221/EEC. It would appear that these references should be to Article 4(3) thereof, as that is the provision set out at the top of page 5 following the first such reference. Article 4(3) of that Directive applies, as with the remainder of Article 4, to matters of public health only and so is not relevant for present purposes.

(b) The UK Government submits that, as a result of its submissions in relation to the first, second and fourth points raised within the Reasoned Opinion then it will not have introduced more restrictive measures for these purposes.

(c) In addition, for the reasons given above the UK Government's primary position is that its policy and practice are justified in the light of the entitlement of Member States to take measures necessary to combat clear abuses of Community rights in line with the principles laid out in Surinder Singh. Therefore, as the public policy proviso is not being invoked, Directive 64/221 (and in particular Article 4(3) thereof) will not apply (Article 2(1)).

SF98A

Top: AL
cc: JSH
RR
PJ

DEPARTMENT OF SOCIAL SECURITY

Richmond House, 79 Whitehall, London SW1A 2NS
Telephone 0171 - 238 0800

From the Secretary of State for Social Security

RESTRICTED - POLICY

The Rt Hon John Prescott MP
Deputy Prime Minister and
Secretary of State for the Environment,
Transport and the Regions
6th Floor Eland House
Bressenden Place
London SW1E 6JP

30 July 1998

Dear John

WHITE PAPER ON IMMIGRATION AND ASYLUM

Housing and Council Tax Benefit and Asylum Seekers

I have seen a copy of the correspondence of 20 July to Jack Straw on the arrangements for further work following the publication of the Asylum and Immigration White Paper.

You will recall that last year Harriet Harman wrote outlining a flaw in the Housing Benefit and Council Tax Benefit regulations which allows asylum seekers granted temporary admission access to Housing Benefit and Council Tax Benefit. This was not the intention of the previous administration and therefore

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RESTRICTED - POLICY

leads to unplanned expenditure in my department. As you will remember, she argued that we had no choice but to act, rather than have to consider cuts in benefits to other groups who would almost certainly be perceived as being more deserving than this group of asylum seekers. At the time, some colleagues could not agree with this approach and, in the light of this, the Prime Minister took the view that we should delay closing the loophole in Housing Benefit and Council Tax Benefit until the review on asylum seekers was completed.

A new approach for asylum seekers has now been set out in Jack Straw's Immigration and Asylum White Paper. My department continues to incur additional expenditure for which, without access to the Reserve, I do not have the funds. Given the outcome of the review it is important that we resolve the issue of the loophole as soon as possible.

A copy of this letter has been sent to the Prime Minister, Robin Cook, HS colleagues, Hilary Armstrong and Sir Richard Wilson.

Yours sincerely

ALISTAIR DARLING

Top: AL
CO: JSH
RR
PJ

DEPARTMENT OF SOCIAL SECURITY

Richmond House, 79 Whitehall, London SW1A 2NS
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From the Secretary of State for Social Security

RESTRICTED - POLICY

Agree. Ha ha the tables are turned.

KL
SW

The Rt Hon John Prescott MP
Deputy Prime Minister and
Secretary of State for the Environment,
Transport and the Regions
6th Floor Eland House
Bressenden Place
London SW1E 6JP

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Yours sincerely

ALISTAIR DARLING

TOP- AL
C. JEH
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PJ.

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SW1H 9AT

29 JUL 1998

The Rt Hon John Prescott MP
Deputy Prime Minister and Secretary of State
for the Environment, Transport and the Regions
Eland House
Bressenden Place
London
SW1E 5DU

Dear John,

ILLEGAL IMMIGRATION BY EUROSTAR

I am grateful to the responses to my letter of 6 July in which I set out the urgent need to reach political agreement with the French authorities about setting up juxtaposed immigration controls at Waterloo and the Gare du Nord. Gavin Strang in his reply drew attention to the need not to affect the commercial viability of the Eurostar services, nor to create an adverse impact on the check-in times at Waterloo and Ashford. I recognise the importance of these points, and my officials discussed them with their DETR colleagues on 24 July. Agreement was reached at official level on the way forward.

I was grateful for the message from Robin Cook's office that he was content for these discussions to be continued with the French on the basis outlined in my earlier letter.

It is vitally important that we conclude this deal with the French now. Otherwise, we risk the whole position unravelling. They have made clear that a deal on juxtaposed controls is important to them and that otherwise they will feel compelled to withdraw the temporary checks which they have put in place at the Gare du Nord. If that were to happen, we should face severe criticism for re-opening the loophole temporarily closed, just at the time when with our White Paper on immigration and asylum we are emphasising the need to curb illegal migration. The presentational downside of allowing the opportunity to slip through our fingers would be most severe.

NM
29/7

With these arguments in mind, I have therefore written to M Chevènement on the lines I proposed. If his response is positive, as I expect it will be, we can now proceed towards the detailed work. I shall of course fully involve John Reid in this so that we take account of all the concerns which have been mentioned in correspondence. I welcome the suggestion that we should keep Eurostar fully informed. As I have said before, they will find this option greatly preferable to the alternative of Carriers Liability sanctions.

I am copying this letter to the Prime Minister, Robin Cook, Members of HS Committee and Sir Richard Wilson.

Yours ever,

Jack.

JACK STRAW

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SW1H 9AT

27 JUL 1998

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28 JUL 1998

Dear Colleague

IMMIGRATION AND ASYLUM WHITE PAPER

I am writing to you following my statement in the House this afternoon about the Government's White Paper, "Fairer, faster and firmer - A Modern Approach to Immigration and Asylum" to set out the main themes of our proposals.

The White Paper is a milestone for the operation of immigration control in this country. It takes a comprehensive approach to a system which must become a modern and integrated one if it is properly to tackle current and future challenges.

One of the key themes of the White Paper is the need for an integrated immigration control right through from pre-entry to settlement, citizenship or, for those not entitled to stay, removal. Better co-ordination of the control, supported by new technology and more flexible legislation, should produce a better service to genuine travellers and help target resources on those who are not entitled to enter or remain. There will be a new single management structure in the United Kingdom to manage the overseas entry clearance operation. We will consider combining the issue of a visa or entry clearance with grant of leave to enter. This would be of practical benefit to the millions of genuine visitors who come here. We are reorganising the casework system to streamline the process and to remove wasteful duplication in the handling of cases, while strengthening quality control mechanisms.

The Government is also reforming the budgeting and planning arrangements. From April 1999, there will be a new single budget for support of asylum seekers which will be a Home Office responsibility. The single budget will enable resources to be targeted more flexibly at key points and so help to reduce the overall costs of the system to the taxpayer. The White Paper sets out proposals for new asylum support arrangements separate from the main benefits system.

Where needed, accommodation will be provided directly with no choice about the location. Support for other needs will be provided as far as possible by non-cash means. There will be new national machinery to co-ordinate provision and relieve the current burden which has fallen on local authority social service departments, particularly those in London.

A fundamental objective of the whole strategy is to speed up the system. Nowhere is this more important than in dealing with asylum claims. This country was one of the first to sign the 1951 UN Convention on Refugees and has a proud tradition of giving shelter to those fleeing persecution in other parts of the world. We are determined to uphold that tradition, consistent with our commitment to strengthen human rights. However, the Government inherited a system in which huge backlogs of asylum applications and appeals have been allowed to develop. On 31 May 1998, there was a backlog of 52,000 asylum applications awaiting a decision, of which 10,000 were over five years old. These delays are unfair to genuine refugees who have had to wait years for a decision. They also make our system vulnerable to abuse by economic migrants who know that they have no right to asylum but can manipulate the system to stay here. They are often encouraged to do so by unscrupulous immigration advisers who charge hefty fees for giving bad advice. It is ultimately the taxpayer who has to pay the costs of dealing with asylum claims for which there is no foundation.

So we need a new approach.

The Government will allocate additional resources to speed up the system and deal with the current backlogs. There will be no amnesty, either now or in the future, for any applicant. The exercise of clearing the backlog of asylum applications will be conducted entirely by post. Those who have outstanding claims will be considered automatically. They should not re-apply as that would only delay matters further.

New asylum claims will be considered quickly. As part of that process, I can announce today that we are reducing from 28 days to 5 days the period allowed for asylum seekers arriving at our ports to submit further representations after interview. It is already 5 days for in-country applicants. We shall seek the early removal, with use of detention if necessary, of those whose claims are refused. We are appointing more Airline Liaison Officers to help reduce the number of inadequately documented passengers arriving here.

The strategy set out in the White Paper will deliver a modern and efficient system which is fairer, faster and firmer. The Government will introduce legislation to implement it as soon as Parliamentary time allows. This legislation may be a good candidate for consideration by a Special Standing Committee of this House, consistent with our commitment to an open and informed approach.

Yours sincerely,

Jack Straw

JACK STRAW

Treasury Chambers, Parliament Street, SW1P 3AG

AL
c: JJH
JEH
AB
PU
PressO

The Rt Hon Jack Straw MP
Home Secretary
Home Office
50 Queen Anne's Gate
London
SW1H 9AT

27 July 1998

Dear Home Secretary

INADEQUATELY DOCUMENTED PASSENGERS ARRIVING AT WATERLOO

I have seen your letter of 6 July reporting progress on this issue.

2. I welcome the progress you have made in your discussions with the French and am encouraged by your view that there is a basis for agreement with them. Solving the problem of inadequately documented passengers arriving at Waterloo is an important element in the list of measures for handling the asylum seeker problem. Clearly there will be need for discussion between departments, keeping Eurostar (UK) Ltd involved, before agreement is reached with the French to ensure that your preferred option does not impact elsewhere.

PA 27/7

3. I understand that no costings have yet been carried out of your preferred option. I would welcome your assurance that agreement will be reached on how to meet any costs and that they will be contained within departments' post CSR provision.

4. I am copying this letter to the Prime Minister, Robin Cook, members of HS Committee and Sir Richard Wilson

Yours sincerely

Peter Schofield

pp ALISTAIR DARLING

(approved by the Chief Secretary and signed in his absence)

DEPARTMENT OF HEALTH

Richmond House 79 Whitehall London SW1A 2NS Telephone 0171 210 3000
From the Secretary of State for Health

TOP-AL
C: JJH
✓ PJ.

The Rt Hon Alistair Darling MP
Chief Secretary
HM Treasury
Parliament Street
London SW1P 3AG

27 July 1998

Dear Alistair

ASYLUM AND IMMIGRATION

Thank you for your letter of 20 July in which you reiterate your view that the Home Office should transfer funds to my Department to enable me to make available grants to local authorities for the support of asylum-seekers next year; and that we should continue to rely on the National Assistance Act for the provision of services for single adults.

I must say that it seems to me to be a complete nonsense, a week or so after publication of the White Paper which sets out departments' expenditure limits for the next three years, and which explicitly details the transfer of responsibility and funding for asylum seekers to the Home Office, to be talking about transferring funds back again!

We have agreed, and announced, that the Home Office will take over-arching responsibility for the asylum system, and consequently that it should be responsible for a single budget for that system, from April 1999. Jack's CSR settlement, and my own, reflect that fact. Of course, Jack will be developing a new regime for implementation (hopefully) in April 2000, but I hardly think he will be significantly distracted from that task by delivering interim support to local authorities. And your suggestion that the Home Office might take back the responsibility in mid-year seems unworkable. Local authorities and the public will perceive the suggested shuttling of money to and fro as a bureaucratic muddle, distracting all of us from the task in hand.

The background material on the existing grant arrangements is modest and well-organised - I have never had any administrative resources for this task, so there is no bureaucracy to be mastered. My officials will quickly bring Jack's up to speed on the subject, and will provide every assistance. I must insist that this is the only sensible way forward.

NM
27/7

I should also repeat my concern that you assume that the National Assistance Act can be relied upon for the powers local authorities need to provide services for single adults next year. As you know, Westminster are appealing to the House of Lords on this question, and the case has now been listed, at Westminster's request, for 16 November. If the House of Lords overturns the Appeal Court decision, which is a possibility (and one to be welcomed as far as clarification of community care law is concerned) then local authorities will have no powers under the National Assistance Act to accommodate asylum seekers. This is an issue, as I have indicated earlier, that must be urgently addressed, and I hope our officials can do so.

Finally, as you know, we have yet to make provision from the Reserve for the families grant in 1998/99, as we did last year. Our officials are taking that forward, modelling the projected demand in the current year. Corresponding future provision for families will also need to be made in Jack's programme, based upon further modelling of likely trends in 1999/00.

I am copying this letter to the Prime Minister, Robin Cook, members of HS, Hilary Armstrong and Sir Richard Wilson.

FRANK DOBSON

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HOME SECRETARY'S STATEMENT
IMMIGRATION AND ASYLUM WHITE PAPER
MONDAY, 27 JULY 1998

With permission, Madam Speaker, I should like to make a statement on immigration and asylum.

2 I am today publishing a White Paper entitled "Fairer, faster and firmer - A Modern Approach to Immigration and Asylum". This follows a wide-ranging examination undertaken as part of the Comprehensive Spending Review. The White Paper sets out a new integrated strategy to deliver the Government's commitment to a fairer, faster and firmer system of immigration control.

3 There are few more complex and sensitive responsibilities of Government than this. But the system has been subject to piecemeal and ill-considered changes which have failed to tackle the real problems. Indeed the changes often made the problems worse. The arrangements for supporting asylum seekers are a shambles. Huge backlogs have been allowed to develop. Additional complexity and regulation have made the system unwieldy to operate. Despite the dedication and professionalism of immigration staff at all levels, genuine applicants have suffered while abusive claimants and racketeers have exploited delays in the system. It is time for a new approach.

4 The Government are determined to maintain firm control over immigration, but to do so in a way which meets our international obligations and reflects our commitment to strengthen human rights.

5 The volume of passenger traffic arriving at our ports of entry has grown very fast in recent years - from 55 million arrivals in 1992/93 to 80 million in 1997/98 - and is projected to reach nearly 100 million passengers in two years' time. We wish to welcome genuine visitors to our shores, and provide them, and British citizens who travel abroad, with a fast and efficient service.

PA 27/7

6 Our immigration policy will continue to support family life by admitting the spouses and minor dependent children of those already settled in the United Kingdom. It must also sustain and promote race equality. It is particularly important for us to acknowledge the enormous contribution which immigrants and their descendants have made to our society in all walks of life.

7 The Government have already begun to put in place a system which is fairer and more efficient. As promised in our manifesto, last June we abolished the primary purpose rule. But fairness is not well served by a system of decision making which labours under huge backlogs and out-dated methods of working.

8 The White Paper therefore sets out our plans for an integrated approach to the modernisation of immigration control. We are making organisational changes in the Immigration and Nationality Directorate, backed by new technology, which will result in a new Integrated Casework Directorate.

9 We also intend to integrate the overseas entry clearance operation with the other elements of the control. A core feature of this new approach will be a single management structure, drawn from the Foreign and Commonwealth Office and the Home Office, to manage the overseas operation. We will use new technology and more flexible legislation to the best advantage.

Visitor Appeals

10 Many people resident in this country want their relatives to visit them for important family and other occasions. The previous Government was wrong to remove the right of appeal to those refused a visit visa in such circumstances. It provided an element of independent oversight of what are bound to be very difficult and emotive decisions. Honouring our manifesto commitment, we therefore propose to introduce a streamlined right of appeal for those refused a visa to visit a family member in this country. We shall also be testing a financial bond scheme for visitors.

11 Many problems and much confusion is caused by passengers arriving in the UK without required visas, or in some cases without any passport at all. We shall adopt a tough approach to deterring and preventing the arrival of inadequately documented passengers. One of the best ways of achieving this is through the use of Airline Liaison Officers. We already have five officers placed overseas working with carriers and the relevant authorities to combat document and other frauds. We intend to increase this network to about 20 officers in total.

Appeals

12 Fundamental to our overall strategy is the need to speed up the system. There are too many avenues of appeal.

13 In future there will be a single right of appeal for those lawfully present in the United Kingdom at the time of their application. We recently published a consultation document on this. The aim is to create an appeals system which will provide a fair opportunity to review decisions, but do so quickly, and to minimise the scope for manipulation of the system.

Unscrupulous Advisers

14 In our manifesto, we said we would "control unscrupulous immigration advisers". As many Hon Members know from their constituency casework, there is a significant minority of them who abuse the system and exploit their clients. We have consulted widely about this and we will introduce a statutory scheme to regulate immigration advisers, which may include those who are legally qualified.

Asylum

15 The United Kingdom has traditionally given shelter to those fleeing persecution from other parts of the world. We will continue scrupulously to observe our international obligations to protect genuine refugees. Those who are accepted as refugees or given exceptional leave to remain should be helped to integrate into local communities. To aid integration we will reduce

to four years the qualifying period for settlement for asylum applicants granted exceptional leave to remain, and give immediate settlement to those recognised as refugees.

16 The numbers seeking asylum has increased eightfold in the last ten years from 4,000 to 34,000. The reasons for that are many, including political instability, but there is no doubt that the asylum system is being abused. Around three-quarters of asylum applications are refused outright because they do not meet the requirements for refugee status or exceptional leave to remain. The vast majority of such failed applicants appeal, but only 6% of these appeals are successful. Of course a failed asylum application does not necessarily mean that the applicant has abused the system. But many claims for asylum are made by those seeking to migrate for purely economic reasons, or as a means of prolonging a stay in the United Kingdom without legitimate reason.

17 This places substantial pressure on a system which is already under severe strain. It is unfair to genuine refugees who have to wait long periods in the system for a decision on their claim to refugee status. At the end of May this year there was a backlog of 52,000 asylum applications on which not even an initial decision had been taken. Of these applications, 10,000 were over five years old. On the same date there was a backlog of 32,000 immigration appeals waiting to be heard, of which over 70% were asylum cases.

Backlog

18 Modernising the controls and simplifying and speeding up the procedures will help to tackle these problems but we cannot create the faster system without clearing existing backlogs. We are strengthening immigration control and there will be no amnesty, either now, or in the future, for any applicant. We will instead allocate additional resources to deal with this inheritance. We will also adopt a practical approach in respect of the application backlog where an initial decision has been outstanding for some years, and ensure that the effect of long delays is properly taken into account, but in ways which will not outweigh other factors such as serious abuse.

Speeding up initial decisions

19 The package of measures I am announcing today will ensure that new applications can be dealt with more quickly. As part of that process of strengthening our control I am announcing that from today the period allowed for asylum seekers to submit further representations after interview will be reduced from 25 days to 5 days in port cases. It is already 5 days for in-country applicants. No one intent on exploiting the system should be under any illusion that these measures to clear the backlog will benefit them.

20 We shall also be taking further enforcement measures to ensure that asylum seekers who are refused leave to enter or remain are returned quickly to their country of origin. We have previously undertaken special exercises to tackle sudden increases in applications, and we will not hesitate to do so again.

21 All told we are aiming by 2001 for average process times for initial asylum decisions of two weeks and of appeals a further four months.

22 We shall not hesitate to use detention where necessary to ensure the integrity of immigration control. We have however, decided that detainees should be given written reasons for their detention and that subject to legislation there will be judicial oversight of the process.

Support for asylum seekers

23 The current support arrangements for asylum seekers are a shambles. They are the product of ill-considered legislation which then required the intervention of the courts. The 1996 Act imposed a burden on local authority social services departments which was unplanned for, is inappropriate and cannot be allowed to continue. Action must be taken to contain costs and relieve the burden which has fallen heavily on London authorities in particular and more recently on the local authorities of Dover in Kent.

24 In opposition, I said that, in a civilised society, genuine asylum seekers could not be left destitute. I am honouring that commitment today. We need a system which reduces the

incentive to economic migration and which recognises that what the genuine asylum seeker needs is food and shelter, not a giro cheque. Support will, therefore, be separated from the main social security benefits system and will principally be provided in kind, and not in cash. Where accommodation is needed, it will normally be provided directly, with no choice about location. We will also considering the extent to which support for food and other basic needs can be provided by vouchers or other non-cash means. In general, support will not extend beyond the point at which the application has been decided and all appeal rights have been exhausted.

Single budget

25 Support on this basis will require new national machinery to plan and co-ordinate provision. There will be a single budget for asylum seeker support costs. This will be managed by the Home Office alongside the costs of the process for considering asylum cases, thus enabling a more flexible use of resources to reduce costs overall. New central machinery will be created, also under Home Office management, to contract with a range of providers to obtain accommodation; these will include the private sector, voluntary bodies, housing associations and local authorities. The intention will be to develop a national approach making use of support from existing communities and voluntary groups to relieve the current over-concentration on London and one or two other areas which is creating some severe problems there. The Government will consult widely on the detailed arrangements. In taking this work forward, we will ensure that the needs of children, whether unaccompanied or members of families, are fully protected.

Citizenship

26 The Government are committed to promoting a more positive view of citizenship which both reflects and celebrates the multi-cultural, multi-racial society we have become. We will take action to reduce the waiting times for processing applications for British citizenship in order to give a more welcoming signal to prospective citizens.

27 The measures described in this White Paper provide a much clearer framework for what our immigration control should be. They should also provide the staff of the Immigration and

Nationality Directorate with a workable system. Bureaucracy, over-complexity, delays and backlogs often frustrate the best efforts of staff to give effect to the law and the policies of Ministers. Despite those difficulties, staff throughout IND have consistently achieved impressive results. I take this opportunity to thank them for their hard work. A clear framework and better tools for the job will enable everyone to take a fresh and more purposeful view of what they can and should achieve.

28 Madam Speaker, the White Paper sets out a comprehensive and integrated strategy for immigration control. It tackles the failings of the current system and addresses the challenges we will face in the future. The Government will introduce legislation to implement the White Paper as soon as Parliamentary time allows. This legislation may be a good candidate for consideration by a Special Standing Committee of this House. Britain requires an immigration and asylum system appropriate to the demands of the 21st Century. The system in place today is simply not up to the job. We need radical change to deliver a modern and efficient system which is fairer, faster and firmer. I commend the White Paper to the House.

Top AK

cc JCH
PB
PJ

FH

Foreign Secretary

CZECH AND SLOVAK ASYLUM SEEKERS

You will recall my past concerns about the problems arising from the numbers of Czech and Slovak nationals claiming asylum in the United Kingdom. The problem has recently worsened with 112 Czechs and 250 Slovaks and their dependants claiming asylum on arrival here since 1 June.

2. In the absence of visa regimes on either of these countries, our options are limited. Recent pressures could not have come at a worse time. I am announcing the Immigration and Asylum White Paper on 24 July and any problems at our ports will give rise to immediate adverse publicity. More arrivals are imminent and the operational impact - and presentational downside - at the start of the busy holiday season could be very bad.

3. I would therefore be grateful if you could as a matter of high priority instruct our Embassies in Prague and Bratislava to call on the Governments of both countries to express our urgent concern. The media campaigns discouraging nationals of these two countries from travelling to the United Kingdom in search of benefits need to be reinvigorated urgently.

4. We will be seeing representatives from the Czech and Slovak Embassies here at our White Paper briefings next week and will make these points forcefully.

5. I am copying this to the Prime Minister, the Deputy Prime Minister, Harriet Harman, Alistair Darling, Gavin Strang, Peter Mandelson and Sir Richard Wilson.

Jack Straw

25th July 1998

CJA 28/1

FCS/98/110

HOME SECRETARY

12/7. Top JEH

cc PB

JB/MC

Slovak Roma

1. Thank you for your minute of 25 June about the situation of the Slovak Roma.

2. I understand your wish to include NGOs on any fact-finding visit to the Czech and Slovak Republics, and recognise that it would be difficult to arrange this in the short time available before the next asylum appeal cases are heard. Nevertheless, I hope that you will not rule out the possibility of a future joint Home office/NGO mission to both countries to look at the conditions and treatment of Roma ethnic minorities.

3. In the meantime, I welcome the suggestion that your officials should meet officials in the Slovak Republic to discuss asylum issues, community relations and policing. Our Embassy in Bratislava is ready to offer whatever help they can.

4. You stress the urgent need for information on the actual situation in the Czech and Slovak Republics. It is clear that individual Roma in both the Czech and Slovak Republics suffer serious discrimination, and that the authorities have been slow to prosecute the perpetrators of racial assaults (usually neo-Nazi skinhead groups). In the Czech Republic, there is some evidence that this is changing. Prompted by a couple of high-profile racist murders, senior politicians have loudly condemned racism and called for urgent police action to be taken against offenders. In contrast, Slovak politicians have been largely silent on the matter.

5. In recent weeks both the Czech and Slovak Ambassadors have written with full details of their Governments' activities to address the problem (copies of their letters have been passed to your Country Intelligence Policy Unit). We have also provided your officials with reports from our Posts, press reports and transcripts of radio and TV broadcasts. Taken together with reports by the UNHCR, the European Commission, the US State Department and the Canadian Department of Immigration, this material should make it possible for your officials to build up an accurate picture of the situation in both countries. We shall continue to supplement it with reporting from our Embassies in the two countries concerned.

6. I agree with you that the Slovaks have been less effective in publicizing the measures which they are taking to address the problem. We continue to encourage them (and the Czechs) to keep us fully informed, and to remind both governments of the link between their handling of problems with minorities and their prospects of EU membership.

7. Our posts continue to give the widest possible circulation to Home Office statements discouraging potential asylum-seekers from travelling to the UK. They also ensure that their host governments are kept abreast of any developments in the UK. It would be helpful if your officials could ensure that our Embassies are kept fully informed, in advance, about forthcoming appeal hearings. It would also help us and them to have timely, full and precise details of the numbers of Czech and Slovak asylum-seekers entering the UK, and the outcome of their applications. Statistics demonstrating that the majority of claims have been unsuccessful should encourage potential travellers to think again.

8. I am copying this to the Prime Minister, the Deputy Prime Minister, Members of HS and Sir Richard Wilson.

Robin Cook

ROBIN COOK

Foreign and Commonwealth Office
22 July 1998

Top: JEH
cc: PB
AF
RL
PL
PRESS
VSP

Fife 23/7.

FCS/98/111

HOME SECRETARY

UK/Irish Ad Hoc Group on the Common Travel Area

1. Thank you for your minute of 3 July about the proposed UK/Irish ad hoc Group on immigration related issues to do with the Common Travel Area.

2. I warmly welcome this proposal. We are trying hard to build up areas of policy development and cooperation with the Irish on subjects other than Northern Ireland which are of real value to both sides. Your proposal is a good example.

3. Your minute suggests that the Group's formation will need to take account of the Northern Ireland Assembly institutions. The Northern Ireland Assembly will not deal with immigration, which is an excepted matter under the Northern Ireland Bill. But the proposed Group might well form a useful part of the new bilateral discussions, about which I am writing separately to the Prime Minister, you and members of DOP. It might make sense in due course for the Group to come under the overall structure of the new British Irish Intergovernmental Conference. The Belfast Agreement envisaged that this would "bring together the British and Irish Governments to promote bilateral cooperation at all levels on all matters of mutual interest within the competence of both Governments".

4. I am copying this minute to the recipients of yours.

Robin Cook

ROBIN COOK

Foreign and Commonwealth Office
23 July 1998

Top: HAPS
PO

FROM THE RIGHT HONOURABLE THE LORD IRVINE OF LAIRG

HOUSE OF LORDS,
LONDON SW1A 0PW

The Rt Hon Jack Straw MP
Home Secretary
50 Queen Anne's Gate
London SW1H 9AT

23 July, 1998.

P

Dear Jack,

ASYLUM AND IMMIGRATION

Thank you for your letters of 27 May and 25 June to John Prescott, seeking agreement to your proposals on Asylum and Immigration. A draft White Paper was attached to your letter of 25 June. I have also seen your letter of 14 July to Alistair Darling. I am responding on John's behalf while he is away.

In your letter of 25 June, you explained that you had concluded that providing cash payments for documented passengers would not provide a sufficient incentive for them to retain documents and would be too complex to operate. Quick decision-making was important. The best way forward was to provide a single tier of safety-net support, with a new national body to co-ordinate provision across the country and allocate applicants to places. This would avoid the complexities of a two-tier system, which you had also considered, and enable a partnership approach to be developed with local authorities. While there might be a need for some small cash payments for limited purposes, your aim was to minimise the use of cash.

Robin Cook, David Blunkett, Donald Dewar, Frank Dobson, Harriet Harman, David Clark, Alistair Darling, Hilary Armstrong and I commented.

Harriet agreed with you that a much faster decision making process would be essential. While there was still work to be done to flesh out the detail of the scheme, and her officials would contact yours with detailed comments on the White Paper, she was content to proceed on the basis you proposed. Frank was also keen that officials discuss the detail of your proposals, and the transitional arrangements which would need to be put in place.

Donald welcomed your proposals, particularly the return to a UK based system, and drew attention to the unco-ordinated and inefficient system we had inherited. While he recognised that the number of asylum seekers was much smaller in Scotland than in England, he suggested that the message for local authorities would be more positive if

we were to make it clear from the outset that the new system would be based on partnership with them. Hilary said, however, that we should not overplay the role of local authorities; they did not control access to the greater part of the rented housing market. Donald and Hilary agreed that there should be a reserve power to direct a recalcitrant local authority to co-operate in the provision of accommodation, although Hilary said that she would wish to agree with you the principles on which it should operate before any legislation was drafted. She would also wish to be consulted on proposals for the distribution of asylum seekers. Donald noted a number of legislative changes that would be required in Scotland, if an Asylum Bill were to be brought forward in the 1998/99 Session.

Hilary also noted the possibility of the House of Lords ruling, before your new arrangements were in place, that social services did not owe a duty to asylum seekers under the National Assistance Act 1948; she said that she would welcome information about your contingency plans for such a ruling.

Robin said that he was content with the general thrust of the chapter on pre-entry controls overseas, subject to the inclusion of a reference to the intention to take powers which would allow you to operate a pilot scheme involving financial bonds, and to your taking on board some more detailed drafting points taken forward at official level. It would also be essential for your officials to work closely with his on the resource implications and operational impact of the proposed changes on the entry clearance service.

I said that I would wish my officials to be included in discussions aimed at ensuring that there was sufficient flexibility to transfer resources between different parts of the asylum and immigration systems. David Blunkett said that he would wish his officials to be involved in resolving an outstanding issue on education costs and suggested that the favourable decision on the entitlement of refugees to the education and training elements of the New Deal 25+ could be included in the White Paper.

Alistair raised a number of questions on resource questions, to which you responded in your letter of 14 July. Alistair replied that, while it was important to have a clear strategy to keep the total cost of the safety net provision down, he was content for the White Paper to be published before the recess, subject to a paper being produced which would set out how the support scheme would work in practice; an implementation and outline evaluation plan covering the transitional arrangements; and costings which were agreed by all departments. I understand that you were able to accept this. Alistair also noted that some redrafting would also be required on the text of the White Paper as it dealt with the netting off fees for nationality visas.

No other colleague commented. You may take it, therefore, that you have agreement to your proposals set out in your letter of 25 June, subject to the points made by colleagues.

I am copying this letter to the Prime Minister, members of HS and to Sir Richard Wilson.

Yours ever,
Derry

FROM THE RIGHT HONOURABLE THE LORD IRVINE OF LAIRG

RESTRICTED - POLICY

HOUSE OF LORDS,
LONDON SW1A 0PW

Top AL
cc PU

The Rt Hon Jack Straw MP
Home Secretary
50 Queen Anne's Gate
London SW1H 9AT

23 July 1998

(P)

Dear Jack,

ASYLUM SAFE COUNTRIES OF DESTINATION: THE "WHITE LIST"

Thank you for your letter to John Prescott of 2 July, about the future of the so-called 'White List' procedure, established under the Asylum Act 1996, whereby certain countries are designated as being ones where there is in general no serious risk of persecution. I am responding on John's behalf while he is away.

You explained that we had objected to the List when in Opposition on the basis that it caused asylum applications to be dealt with on the basis of a general assessment of conditions in the country of destination. This objection remained valid. A better approach would be to consider claims on their merits and, wherever appropriate, certify them as manifestly unfounded or, where applicable, put them into an accelerated appeal procedure on the basis of one of the other case-specific categories of the 1996 Act. Only a small minority of cases, 5 to 10%, could not be dealt with in this way. The implications for the business of the Tribunal were expected to be manageable within planned resources. The White List would continue until the relevant power was abolished by primary legislation. The proposed abolition of the List should not be seen as a reflection on the general safety of the countries currently on it.

Robin Cook, Harriet Harman, Alistair Darling and Hilary Armstrong commented.

Robin agreed with your view that the proposal would need careful presentation lest it be interpreted as an adverse reflection on those countries formerly on the White List. He said that his officials and yours would need to agree the terms of guidance for Posts in the countries concerned to draw on, in explaining the change to the host governments.

RESTRICTED - POLICY

Alistair noted that you expected that the implications for the Tribunal of the 5 to 10% of cases which could not be dealt with under other accelerated procedures in the 1996 Act would be manageable. He also said that the support costs for these cases would also need to be contained within your settlement. Hilary was content, on the basis that the timing of the abolition of the White List would mesh in with the timing of the new support provisions for asylum seekers in general.

No other colleague commented. You may take it, therefore, that you have agreement to your proposal, subject to the points made by colleagues.

I am copying this letter to the Prime Minister, members of HS, Hilary Armstrong, and to Sir Richard Wilson.

Yours ever,

Derry

Top: HA/PS
cc EA/APS
PU

FROM THE DEPUTY PRIME MINISTER

DETR
ENVIRONMENT
TRANSPORT
REGIONS

DEPARTMENT OF THE ENVIRONMENT,
TRANSPORT AND THE REGIONS

ELAND HOUSE
BRESSENDEN PLACE
LONDON SW1E 5DU

TEL 0171 890 3011
FAX 0171 890 4399

The Rt Hon Jack Straw MP
Home Secretary
Home Office
50 Queen Anne's Gate
London SW1H 9AT

20 JUL 1998

REGULATION OF IMMIGRATION ADVISERS

Thank you for your letter of 30 June to the Lord Chancellor seeking colleagues agreement to develop a scheme to regulate immigration advisers. I am responding as Chairman of HS.

You explained that responses to the consultation document on the control of unscrupulous immigration advisers had been analysed and outlined a scheme for regulating advisers and, in particular, the creation of a regulatory body.

Robin Cook, Donald Dewar, Ann Taylor and Alistair Darling commented and were content. Robin welcomed the initiative and offered to make literature available at Embassies and High Commissions. He assumed that your Department would provide the relevant literature and said his officials would be in touch. He also assumed that the scheme would not include individuals/organisations based overseas and that applications for registrations from them would be declined. If that were not the case, the issue would need to be discussed in detail by officials.

Donald and Alistair also agreed that there was a need to control unscrupulous immigration advisers. Donald said that he was content for the White Paper to announce initial proposals for a statutory regulatory body for immigrations advisers with powers to exempt unpaid volunteers. However, care would need to be taken over the way it was presented to the legal professional bodies. He asked that his officials be kept informed of developments so that the position of the Law Society of Scotland and the Faculty of Advocates was not overlooked. Alistair said that the scheme had to be financing and the costs met from within the post CSR provision.

Ann appreciated your concerns about totally excluding unpaid advisers but, pointed out that as an MP, she regularly gave advice to constituents on that matter. She asked whether MPs would be required to register or apply for an exemption from registration. I understand you are intending to write to reassure Ann on that point.

No other colleague commented, and you may take it that you have agreement to proceed as you proposed.

I am copying this letter to the Prime Minister, Robin Cook, members of HS and to Sir Richard Wilson.

JOHN PRESCOTT

Top: HA/PS
CPO

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SW1H 9AT

20 JUL 1998

The Rt Hon Ann Taylor MP
President of the Council
Privy Council Office
68 Whitehall
LONDON
SW1A 2AT

Fil

Dear Ann,

Thank you for your letter of 13 July about the control of unscrupulous immigration advisers.

I should make it clear that my proposal to regulate unpaid advisers would not mean that you, me or the other MPs who offer advice on immigration matters will have to register or apply for exemption from registration. Although we have not considered the fine detail of the registration scheme, I envisage the legislation containing either a provision exempting specific groups from registration or a more general power which would enable me to exempt certain groups by means of statutory instrument.

I hope that this meets your concern.

Yours ever

Jack.

JACK STRAW

Top: HA/PS
cc: JSH
PU
PRESS

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Jack Straw MP
Home Secretary
50 Queen Anne's Gate
London
SW1H 9AT

20 July 1998

Dear Jack

IMMIGRATION AND NATIONALITY ISSUES

Thank you for copying to me your letter of 8 July to Robin Cook recording the outcome of your discussion with him on the same day. I have also seen Robin's letter of 14 July. I am writing separately on the White Paper on asylum and immigration.

2. I can agree to British citizenship for all the remaining Dependant Territories on the understanding that the Foreign and Commonwealth Office will meet the costs of this measure, or persuade other departments to do so, from within their post CSR provision. I can also agree to the introduction of a system of financial bonds for visitors on the understanding that the costs of the system will be met from within the Home Office's post CSR provision.

3. Our officials are discussing the arrangement for visa appeal fees. Until these discussion have been concluded, and agreement reached, no commitment should be given to the visa fee bearing some of the cost of the visa appeal.

4. I note that your officials are continuing to discuss DATVs with officials from FCO and DETR and look forward to seeing the outcome of these discussions at HS.

5. I am copying this letter to the Prime Minister, Deputy Prime Minister members of HS, Hilary Armstrong and Sir Richard Wilson.

ALISTAIR DARLING

Top - AL
cc JCM
VPB
PJ

Foreign &
Commonwealth
Office

122932

17 July 1998

London SW1A 2AH

Dear Ken,

Inadequately Documented Passengers Arriving at Waterloo

Please refer to the Home Secretary's letter of 6 July to the Deputy Prime Minister on the above subject.

We agree that you should continue discussions with the French on the basis of the Home Secretary's proposals. The third option outlined in the letter appears to provide a solution that should be both workable for the UK and acceptable to the French. The first option, extending Carriers' Liability Act to cover SNCF, will not be welcome to the French; and we believe that we should try to avoid this - for the time being at least.

As well as investigating a solution to the problem of passengers travelling on Paris-Calais tickets, you will no doubt also have to consider how passengers boarding at Lille and Calais can be adequately screened.

If discussions with the French lead to juxtaposed controls on the Eurostar services to France, this may also impact on controls on the services to Brussels. You may need to consider what controls take place at Waterloo for the London-Lille-Brussels service where there will be a mix of passengers travelling to France and Belgium. The Belgians may also raise the question of controls at the Gare du Midi in Brussels. If there are UK immigration officials operating in Paris, the Belgians may want to see similar UK immigration controls in Brussels; they may view this as a way out of their problems over SNCB having to operate document checks and provide a long term solution to the current gendarme operation.

I am copying this letter to the Private Secretaries of the Prime Minister, the Deputy Prime Minister, members of HS Committee and Sir Richard Wilson.

Yours ever.

Tim

(Tim Barrow)
Private Secretary

Ken Sutton Esq
PS/Secretary of State for Home Affairs

FROM THE RT HON GAVIN STRANG
MINISTER FOR TRANSPORT

→ AL

Top ~~cc~~ cc: PU

DETR
ENVIRONMENT
TRANSPORT
REGIONS

DEPARTMENT OF THE ENVIRONMENT,
TRANSPORT AND THE REGIONS

ELAND HOUSE
BRESSENDEN PLACE
LONDON SW1E 5DU

TEL: 0171 890 3000

My Ref:

Your Ref:

The Rt Hon Jack Straw MP
Home Secretary
Home Office
Queen Anne's Gate
LONDON
SW1H 9AT

17.7.98

HZ

Dear Jack,

Thank you for your letter of 6 July to the Deputy Prime Minister about inadequately documented passengers arriving on Eurostar trains at Waterloo.

I am pleased that the French are now taking a more sensible line in your discussions about juxtaposed controls. I do however have some concerns about the practical and commercial implications that such a move could have on Eurostar (UK) Ltd.

As you know, on 3 June John announced the outline of a rescue package for the Channel Tunnel Rail Link and Eurostar (UK) Ltd. This deal is currently being worked up and we expect the necessary contracts to be signed late this year. You will no doubt appreciate that the future success of the Eurostar service and the CTRL is very much dependant on the commercial viability of the Eurostar service. One of the issues with juxtaposed controls is the possible adverse impact on the check in time at Waterloo and Ashford. As you will know, one of the main selling points of this service is the short check in times. Eurostar and the new Train operator will no doubt argue with some justification that we are prejudicing their commercial position if these have to be lengthened. Another more practical issue which you mentioned in your letter is one of space for booths at the terminals in order to carry out these checks. There will also be implications for the

£3 million expansion of the arrivals hall at Waterloo which I understand is being planned in order to increase the size of the Immigration Service facility.

Before reaching any agreement with the French, I think that it is important that we look at the practical issues that this proposal raises. Therefore I suggest that our officials to take these issues forward as a matter of urgency and that we keep Eurostar (UK) Ltd fully involved.

I am copying this letter to the Prime Minister, the Deputy Prime Minister as chairman of HS, Robin Cook, members of HS Committee and Sir Richard Wilson.

Yours sincerely,

Gavin

GAVIN STRANG

FCS/98/107
HOME SECRETARY

TOP - AL
cc JEH
PB
PJ
AL

This (*) strikes me as a piece of sleight of hand following my complaints to the FCO this morning. Was it mentioned in the minutes of 25 June and 8 July? 14/7.

White Paper on Immigration and Asylum

1. Thank you for sending me a copy of your minute of 25 June in which you seek colleagues' agreement to the broad terms of the draft White Paper on Immigration and Asylum, a copy of which you enclosed with your minute. Thank you also for your minute of 8 July. I am pleased that we have been able to agree on the grant of non-reciprocal citizenship for the remaining Overseas Territories.

2. The most relevant Chapter of the Immigration White Paper from our point of view is Chapter 5 which deals with pre-entry controls overseas. I am broadly content with the general thrust of this Chapter. We have now had the chance to discuss the question of a scheme involving financial bonds. As you record in your minute of 8 July immediately after our meeting, we agreed that you will include a reference to the intention to take powers to operate such a scheme, on the basis of which you could operate a pilot scheme. There will clearly now be detailed work to be done between our officials on the operation of such a system. I assume that the reference in your minute to a right of appeal is to appeal against refusal of entry at port to anyone who had lodged a bond? Officials can pursue this point at a later stage if necessary.

3. I have written separately about the proposal to change the status of visas to enable these to constitute leave to enter the UK.

4. My officials have written to yours with some suggestions on the drafting of Chapter 5. Subject to a satisfactory outcome of these exchanges, I can agree to

publication of the paper.

5. As regards the overall thrust of the Paper I note the increasing reliance on the pre-entry controls in the proposed new strategy, as part of the process of diverting Immigration Service resources to the handling of asylum claims. I accept the logic of this but you will understand that I would not wish to see your staffing difficulties simply transferred overseas. For this reason, it is essential that our officials should work closely together on the resource implications and the operational impact the proposed changes will have on the entry clearance service, to ensure that this does not happen.

6. I hope it will be possible to agree quickly on an effective mechanism for detailed coordination between our officials as work on the Immigration Bill develops. We would gladly consider any ideas on how this could best be achieved.

7. Your minute of 8 July following our meeting also records that we discussed DATVs for a number of nationalities. We did not reach agreement on the specific cases. However, I understand that officials from our Departments and the DETR are working on the specifics of each case, to prepare for further discussion in HS.

8. I am copying this minute to the Prime Minister, the Deputy Prime Minister, members of HS, Hilary Armstrong and Sir Richard Wilson.

Robin Cook

ROBIN COOK

Foreign and Commonwealth Office
14 July 1998

QUEEN ANNE'S GATE LONDON SW1H 9AT

14 JUL 1998

The Rt Hon Alistair Darling MP
Chief Secretary to the Treasury
Treasury Chambers
Parliament Street
London SW1P 3AG

Top AL

cc PJ

Dear Alistair,

IMMIGRATION AND ASYLUM WHITE PAPER

Thank you for your letter of 10 July responding to mine of 25 June. I am grateful for your support and that of other colleagues for the issue of my proposed White Paper.

You raise a number of issues and I thought it would be helpful to reply quickly. I agree that any significant gap between publishing proposals and legislating on them would be difficult to manage. It is for this reason that I have previously argued strongly for legislation next session to implement the strategy set out on the White Paper. A number of colleagues have again confirmed their support for early legislation. This is very welcome and I hope QFL will be able to recommend allocating a place for an immigration and asylum Bill in the coming session. In the meantime, I am also planning a range of measures to try to reduce the risk of a fresh tide of asylum applicants seeking to get into the system before the "firmer" parts of the package come into play.

You raise a number of detailed questions on costs, including take-up rates of "safety net" support for asylum seekers, support for asylum-seeking families and children after the end of any appeal, and assumptions about the numbers of removals. My officials have now written to yours about these detailed points. In particular, I should make clear that the "removals backlog" in the asylum costs model is essentially a statistical construct and almost certainly does not reflect a real body of individuals illegitimately in the United Kingdom, not least because among those not compulsorily removed will be a proportion who leave voluntarily without being recorded and others who have obtained permission to stay on grounds unrelated to their asylum claim.

Turning to your comments on the White Paper, I agree that it should include some target waiting times for initial asylum decisions and for appeals to be heard by adjudicators. My officials will be in touch with yours about this and how further work on objectives and targets might best be taken forward over the summer as you suggest. Finally, you commented on what is now paragraph 1.8 of the White Paper referring to the requirement in the 1951 Convention to give recognised refugees the same access to social welfare as our own citizens. The key point here is that this requirement applies to those who have been granted

refugee status, as opposed to those applying for asylum who are the subject of the proposals in chapter 8.

In your letter you make a number of references to safety net assistance being provided by local authorities. I hope it is clear that what I am proposing is a scheme in which central government is responsible for obtaining accommodation for asylum seekers, contracting with a variety of providers which include not only local authorities but others such as housing associations and private landlords. There would be a reserve power to direct local authorities to provide accommodation as a last resort. I agree that the legislation will need to formulate very carefully the circumstances in which safety net support will be provided, though I should make clear that I do not favour expressing this as an entitlement but rather as a power of the Secretary of State to make provision.

I am copying this letter to the Prime Minister and Deputy Prime Minister, Robin Cook, members of HS, Hilary Armstrong and Sir Richard Wilson.

Yours ever,

Jack.

JACK STRAW

From: THE PRIVATE SECRETARY

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

14 JUL 1998

Andrew Patrick Esq
Foreign and Commonwealth Office
London SW1A 2AH

Top AL
cc PJ

Dear Andrew (P)

Thank you for your letter of 9 July to Ken Sutton.

I can confirm that we do not intend to include individuals/organisations based overseas in any regulatory scheme for immigration advisers. Nor would we accept applications for registration from them.

I am copying this letter as in the Home Secretary's letter of 30 June.

Yours,

Isobel

ISOBEL HOPTON

DEPARTMENT OF HEALTH

Richmond House 79 Whitehall London SW1A 2NS Telephone 0171 210 3000
From the Secretary of State for Health

Top AL
cc PO
CH

The Rt Hon Alistair Darling MP
Chief Secretary to the Treasury
Treasury Chambers
Parliament Street
London SW1P 3AG

13 July 1998

Dear Alistair FH

ASYLUM AND IMMIGRATION

I have seen the letters dated 18 June from yourself to Jack Straw; Jack's response dated 29 June; and your subsequent one of 1 July about the costings of and finance for Jack's new proposals on asylum and immigration. In my short letter of 8 July supporting publication of Jack's White Paper, I mentioned some concerns on the details of the welfare support arrangements and their financing. This letter follows up those points.

I strongly support your decision to create a single budget to include both the claims processing and the support costs. This will give the correct mechanisms for the Home Office to drive the whole asylum process and supports the principle of a unified response to asylum.

I am puzzled, however, by the reference in your 18 June letter to a transfer back to my Department in respect of the local authority support costs. I can see no reason why the Department of Health needs to act as a broker between the Home Office and the local authorities. This goes against the unified response approach. The grants which my Department currently make to local authorities are made under the provisions of Section 88B of the Local Government Finance Act 1988. This provision confers powers on "one of Her Majesty's Principle Secretaries of State". There is, therefore, no reason why Jack could not make grants direct to the local authorities concerned. Under the new arrangements the Home Office will be entering into direct contracts with local authorities to provide accommodation. It would seem sensible to start as we mean to go on, and for the Home Office to deal direct with local authorities from the outset of the single budget.

While this Department is the custodian of both the National Assistance Act and the Children Act it was never the intention that the provisions of either Act should be used to support asylum seekers. The proposed new arrangements confirm this position and it would be a nonsense to transfer back to us a financial responsibility which the CSR White Paper plainly says has been removed.

As you say, local authorities must of course receive full and proper reimbursement for their support costs. If, as is suggested, authorities are to be compelled to co-operate in the partnership then it is right that they are fully reimbursed. I should point out that, through the current special grants, local authorities are only having around 70 per cent of their costs met for families with children. And of course we have not yet announced this grant for 1998-99 - I shall write to you separately on this, since a further year's provision will be required from the Reserve. There will be a difficulty if it is announced that authorities will be reimbursed in full under the new arrangements while the they continue to be reimbursed at a lesser level through the current arrangements. While I am fully supportive of the need to keep costs down wherever possible, Jack would need to bear in mind the ability of local authorities to seek Judicial Review. As you know this has happened already where local authorities are unhappy with the current special grant arrangements.

I have said in previous correspondence that I feel that there is still a lot of work that officials need to do to agree the necessary transitional arrangements for support. There seems also to be work need on these budgetary arrangements. These discussions need to bear in mind the possibility of Westminster City Council pursuing the appeal to the House of Lords against the use of the National Assistance Act which could result in local authorities having no duty - and no power - to support the adult asylum seekers.

I am copying this letter to Jack Straw and all other recipients of the correspondence which has passed between the two of you.

FRANK DOBSON

ps10july.04

cc
1. ✓ MB (I will draft a note)
2. back to me. fth

From: **Liz Lloyd**
Date: **13 July 1998**

Prime Minister AC. MF

cc: **MwP**
David Miliband
Angus Lapsley
Peter Hyman
Alastair Campbell

Citizenship Ceremony for new citizens (eg immigrants and asylum seekers)

Jack Straw mentioned this to you when he came in to talk about his asylum White Paper.

He proposes that we should pay more attention to the notion of citizenship for "new" citizens, i.e. those naturalising.

He wants to float the idea of a voluntary Citizenship Ceremony for those granted UK citizenship, along the lines of those in the US and Australia to mark the award.

The proposal is rather vague at the moment, but I am sure it will attract attention and a number of complications spring to mind:

- It could well highlight a prior immigrant status rather than highlight "integration" and become a focus for racists.
- It is not clear what the ceremony will *do*. Jack suggests "reinforcing the rights and responsibilities of being a British Citizen", which could mean anything.
- It is not clear that either the US or Australia are the best models for integration and harmonious race relations
- What about children reaching 18?

However, there could well be more positive outcomes if he is able to create a genuinely civic ceremony representing the whole community.

Are you content for this to be included in the White Paper or would you like further work to be done before it is floated publicly?

liz

I am quite in favour of it but obviously only after we have started our immigration policy in earnest

10.7 Another positive step would be to attach more importance to the process in which successful candidates receive news of the approval of their application. When British citizenship is granted, a certificate of naturalisation or registration is sent to the successful applicant by post. This is hardly an auspicious way to mark what should be a significant change in an immigrant's relationship with this country. In some countries, such as Australia and the United States, where citizenship is used as a positive tool to help integrate immigrants into their new country, civic ceremonies are held to mark the award of Australian or American citizenship. The Government is considering whether, for those immigrants who would like one, there should be civic ceremonies for our new citizens to enhance the award of citizenship, reinforce the rights and responsibilities of being a British citizen, and lay greater emphasis on us being a multi-cultural society.

10.8 Changes in the operation of the immigration control, in particular to introduce greater flexibility in the form and manner in which leave to enter is granted, may require changes in current residence requirements for citizenship under the British Nationality Act 1981. In addition, many of those who at present cannot satisfy the requirements are those who travel abroad on behalf of firms in this country to drum up business, and thereby contribute to the economic well-being of the country and help create jobs. The Government will consider the scope for a more flexible approach to the residence requirements based upon whether an individual was ordinarily resident in the United Kingdom and paying his or her taxes here, the overall length of their residence and connections with this country, and the reasons for their absences.

Ceremony ticket.

→ belong to city - civic leader / one a year USA - employer

→ Pledge allegiance to flag.

What will ya have to do?

If don't

→ Highlight important stats. focus to BNP

RESTRICTED - POLICY

Treasury Chambers, Parliament Street, SW1P 3AG

Top AL
cc PJ
Pren

The Rt Hon Jack Straw MP
Home Secretary
50 Queen Anne's Gate
London
SW1H 9AT

10 July 1998

FTL

Dear Jack

WHITE PAPER ON IMMIGRATION AND ASYLUM

Thank you for your letter of 25 June enclosing your draft White Paper.

2. We have corresponded again about the single budget and have now agreed that your settlement, following the Comprehensive Spending Review, will include provision for asylum support costs.

3. You propose to publish the White Paper before the summer. I share your wish not to lose any momentum in taking forward your asylum strategy but I have some concerns about publishing the White Paper in its present form before the summer recess unless we can be reasonably sure that there will be legislation in the next session. I recognise that the position will remain uncertain for some time, but if there was a delay there would be some difficulty. As you will be aware, previous experience shows that a sizeable increase in numbers of asylum seekers can be expected in the run-up to any change which limits the availability of cash benefit.

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The time between the announcement of your proposals and their implementation must therefore be kept to a minimum. Otherwise, costs will rise and the new system could be overwhelmed before it has started. You might want to reflect on that before we go ahead.

4. I believe that I have been able to reassure you that the new public expenditure framework should provide sufficient flexibilities to allow you to manage both the process and support costs.

5. The main change to your strategy since you wrote on 27 May is the replacement of cash payments with a single tier of a safety-net support for all asylum seekers. I strongly agree that providing cash benefits to all asylum seekers would be a major attraction for economic migrants. However, before I can fully support a single tier safety net provision, the new system will need to be properly costed with a supporting sensitivity analysis. I understand that our officials have discussed some initial costings but these costings will need to be firmed up by the end of the week. The higher cost of the safety net provision will need to be more than offset by a lower growth rate in the number of asylum seekers applying if support costs are to be controlled.

6. I understand that one cause for concern is that the take-up rates for help from local authorities has risen markedly over the last year. Also, I believe that no costings have been made for meal vouchers which you propose to provide as a practical alternative to support in kind. This will need to be built into the costings.

7. It will also be necessary to work out more fully the practicalities of providing the safety net provision before the White Paper is published. I would be grateful for reassurance that the local authorities will be able to manage the increased number

RESTRICTED - POLICY

of asylum seekers requiring support in kind and I would like to have a clearer idea of how asylum seekers will be directed to those local authorities with the capacity to provide support.

8. I would welcome your view on whether the number of removals will be affected by the removal of the incentive to bring travel documents. I would also be grateful for your estimate of how many extra removals there will be from the other measures planned to improve inter-agency co-operation and reduce barriers to removal, and for this to be fed into the statistical model. At present, the asylum model is forecasting over 160,000 unsuccessful asylum seekers on the removals list in five years. There is a risk that the change of policy suggested in the White Paper (para 8.21) to include measures to safeguard the welfare of children and other vulnerable groups, defined to cover families as well as unaccompanied children, may have a substantial impact on the costings. I would be grateful if you could clarify your proposals in this area and, again, costings will be needed by the end of the week. It will be difficult to frame new legislation that defines who should not be eligible for assistance from local authorities and it will obviously be necessary to clear your legal advice with other departments on this before publishing the White Paper.

9. Turning to the White Paper itself, I have a number of comments. First, I notice that there are a number of references to resources. Clearly resources have to come from the totals we agreed. Our officials should discuss any remaining uncertainties. Second, the White Paper should set clear objectives for asylum and immigration, supported by targets. In particular, the report quite rightly criticises current waiting times - but does not yet make it clear that firm targets will be set as a result of the measures in the White Paper. These can be agreed over the summer as part of the running cost settlement. Third, I agree that the Paper should

RESTRICTED - POLICY

include proposals on legal aid as action in this area should help to speed up the appeals process. I would be particularly interested in any proposals which helped to control legal aid to those seeking judicial review. Fourth, in the summary of proposals, it should be made clear that the new support arrangements are designed to provide a sufficient level of assistance to meet the essential needs of asylum seekers. The report might also explain why the Government believes that asylum seekers should not receive the same level of support as UK nationals (para 8.13). At present, this reads inconsistently with paragraph 1.1 which says that, under international obligations, we need to provide support at the same level as to UK residents. Finally there are a number of proposals you are still consulting on, such as unscrupulous immigration advisers, to which I will respond separately.

10. I am copying this letter to the Prime Minister, Robin Cook, HS colleagues, Hilary Armstrong and to Sir Richard Wilson.

I would be keen to talk to you about this. As you know I am anxious to be helpful!

Yours

ALISTAIR DARLING

FROM THE RIGHT HONOURABLE THE LORD IRVINE OF LAIRG

Top: [illegible]AL
cc: [illegible]CH
JSH
PJ

HOUSE OF LORDS,
LONDON SW1A 0PW

RESTRICTED - POLICY

The Right Honourable John Prescott MP
Deputy Prime Minister and Secretary of
State for the Environment, Transport
and the Regions
6th Floor, Eland House
Bressenden Place
London SW1E 5DU

10 July, 1998

(P)

Dear John,

WHITE PAPER ON IMMIGRATION AND ASYLUM

Jack Straw sent me a copy of his letter to you of 25 June, enclosing a revised draft of his proposed White Paper.

As I said in earlier correspondence, I warmly support the proposal to issue the White Paper, setting out a coherent and comprehensive strategy for dealing with these very difficult issues. I was glad to have the opportunity to discuss some of the problems with Jack earlier this week, when we were able to clarify the way ahead as it affects our mutual interests.

On welfare arrangements, it is plainly vital to strike the right balance between meeting our responsibilities to asylum seekers and reducing as far as possible the "pull-factors". The approach to that problem is best worked out between the departments directly concerned. Jack and Alistair are discussing arrangements for managing the budget for welfare support, in respect of Jack's wish to ensure that there is sufficient flexibility to transfer resources between different parts of the asylum and immigration systems. I would be grateful if my officials could be included in any official-level discussions on this, in so far as the resourcing of the Immigration Appellate Authority might be affected.

Finally, Jack and I agreed on some further work to be done on our proposals for controlling unscrupulous immigration advisers, which may require a minor adjustment to the paragraphs on that in the draft White Paper. I am sure that officials can resolve the detail here.

I am copying this letter to the Prime Minister, Robin Cook, HS colleagues, Hilary Armstrong and to Sir Richard Wilson.

Yours ever,
Derry

RESTRICTED - POLICY

Top AL
cc RR
PJ

FROM HILARY ARMSTRONG MP
MINISTER FOR LOCAL GOVERNMENT AND HOUSING

DETR
ENVIRONMENT
TRANSPORT
REGIONS

DEPARTMENT OF THE ENVIRONMENT,
TRANSPORT AND THE REGIONS

ELAND HOUSE
BRESSENDEN PLACE
LONDON SW1E 5DU

TEL 0171 890 3000
FAX 0171 890 4489

OUR REF: AG/PSO/12709/98

(P)

Dear John

9 - JUL 1998

ASYLUM AND IMMIGRATION WHITE PAPER

I have seen Jack Straw's letter to you of 25 June, and his draft White Paper. It makes a convincing case for the policy he is proposing, and I hope these measures can be given early effect. I have a number of comments on details of particular interest to this Department.

While I defer to Jack's view that there should be no general system of cash support for asylum seekers - which means that all destitute asylum seekers will need to be provided with accommodation and subsistence by the new agency that he proposes to establish - we need to be careful not to overplay the role of local authorities. Collectively they do control access to the greater part of the rented housing market, and they clearly can be expected to assist in the provision of accommodation, especially where demand is low. But other forms of accommodation, including bed and breakfast hotels, may also play an important role in meeting the needs of some asylum seekers. I think the paper might better reflect this balance, and attach an alternative formulation of the relevant paragraph, which our officials have agreed.

I accept Jack's proposal that there should be a reserve power to direct a recalcitrant authority to co-operate in the provision of accommodation, but I am clear that this should only be brought into play as a last resort. I would expect he and I to agree the principles on which it should operate before any legislation is drawn up.

Sending asylum seekers to different parts of the country where there is a surplus of accommodation could potentially create a new burden on the services of the local authorities concerned; again I would ask to be consulted at an early stage on his proposals for the distribution of asylum seekers. Existing provision does not fully meet the costs of local authorities in providing services to asylum seekers. And withdrawing benefit from those asylum seekers still entitled to it will result in some council tax becoming effectively uncollectable. So before Jack's plans are implemented, and benefit withdrawn, I would also want to be consulted on the costs to local authorities. If these amount to a new burden, it will be for Jack's programmes to meet the costs in full. We have not included such a provision in our CSR bid.

RESTRICTED - POLICY

The White Paper does not touch on contingency arrangements in the event of the House of Lords ruling that social services do not owe a duty to asylum seekers under the National Assistance Act 1948. However, I gather there is a real risk that this could happen before Jack's new arrangements are in place. This could put several thousand destitute asylum seekers out on the streets just around the time we are starting to implement the Social Exclusion Unit's proposals for reducing rough sleeping. I should be interested to hear what contingency plans Jack and Frank Dobson have in case of such a ruling.

The White Paper also touches on a number of transport issues. On the Immigration (Carriers' Liability) Act 1987, although in favour of closer co-operation between the carriers and the Immigration Service - particularly through training, we would be against any additional burdens being placed on the shipping companies. Indeed, there have been recent cases which have raised the question of whether it is reasonable for the Government to expect the transport industry to bear the costs of implementing British immigration policy and whether this policy position might be reviewed on the grounds of equity. Gavin Strang recently wrote to Jack regarding ferry operators who were forced to repatriate a number of asylum seekers who had travelled with valid passports and tickets from countries where no entry visa was required. The operators were therefore not able to determine in advance who was likely to be refused admission.

DETR officials are already in touch with the Home Office with concerns about proposals for reserve powers for accommodation for immigration staff at ports of entry; I hope officials can meet to discuss these particular problems and concerns at an early stage.

I have also seen Jack's letter to you of 2 July concerning the abolition of the "White List" for asylum case. One effect of this proposal could be slower processing of certain cases, with a corresponding increase in the demand for accommodation and support. However I understand that primary legislation would be required to abolish the White List, and this would therefore mesh in with the timing of the new support provisions. On this basis I would be happy with the proposal.

I am copying this letter to the Prime Minister, Robin Cook, HS Colleagues, and to Sir Richard Wilson.

Yours
Hilary

HILARY ARMSTRONG

The Rt Hon John Prescott MP
Deputy Prime Minister

Foreign &
Commonwealth
Office

London SW1A 2AH

122291

9 July 1998

Top AC

Dear Ken

The Home Secretary copied his letter of 30 June to the Lord Chancellor to the Foreign Secretary. It discussed the response to the joint consultation document on the control of unscrupulous immigration advisers.

We welcome this initiative aimed at meeting our manifesto commitment to frustrate the activities of unprincipled practitioners. As the responses to the consultation document show, an effective way of doing this would be by widely disseminating clear and accurate information about reputable sources of immigration advice. We are happy to play our part in this by making such literature readily available in the relevant local languages at our Embassies and High Commissions overseas. We assume that the Home Office will produce suitable material for us to distribute. We will ask our officials, in consultation with yours, to arrange this as soon as possible.

We assume that the intention is not to include individuals/organisations based overseas in any scheme - and that applications for registration from them would be declined. If that is not so, there could be implications for our Posts, and we would need to have that discussed in detail by officials.

I am copying this letter to Philip Barton at No 10, the Lord Chancellor's office and the offices of the other recipients of the Home Secretary's letter.

Yours ever

Andrew Patrick

(Andrew Patrick)
Private Secretary

Ken Sutton Esq
PS/Home Secretary

AL

JE-RL (PU)

Foreign Secretary

IMMIGRATION AND NATIONALITY ISSUES

We agreed at today's meeting to reflect an outcome of our discussion on the following broad lines:

1. Dependent Territories: citizenship

I am prepared to accept British citizenship for all the remaining DTs without reciprocity on the basis that you yourself will either bear the costs or persuade colleagues to do so, and that you will defend robustly a decision not to extend citizenship to British Overseas Citizens.

I would expect you to handle the necessary legislation and its overall handling. My preference is that the grant of citizenship would be done in the legislation, but there will need to be safeguards in the form of strict immigration controls within the DTs themselves, with grants confined to those currently eligible, to prevent an open-door route of primary immigration through the acquisition of British Citizenship in a DT. Liz Symons and Mike O'Brien will discuss the details further.

2. Immigration White Paper

You are prepared to accept the inclusion in my forthcoming White Paper on immigration and asylum of a reference to our intention to take powers in legislation to operate a system of financial bonds for visitors, on the basis of which I could operate a pilot scheme. We should make clear in the White Paper that this would not convey an automatic right to a visa, nor would it otherwise affect the basis on which the ECO makes his or her decision. There would be a right of appeal against refusal.

You accept that part of the cost of the right of appeal for visitors denied a visa, which is a manifesto commitment, should be borne by the visa fee. We will want some of the cost to be borne by the applicant, to deter frivolous appeals, but we can settle the precise balance in due course.

3. Visa questions

I mentioned to you that I was prepared to make concessions on DATVs for Chinese diplomatic and service passport holders and that the air services talks with the Chinese had been unblocked. I mentioned to you that we shall have to reach a decision, probably this autumn, on an Austrian Presidency proposal to add Bangladesh and Pakistan to the EU joint action on DATVs. On DATvs generally, I saw a case for detatching Romania and Bulgaria

from consideration but noted that I might need to move quickly on Algeria, Kenya, Colombia and Ecuador if the situation deteriorated.

I shall assume that you are content with an outcome on these lines unless I hear soon to the contrary.

I am copying this to the Prime Minister, the Deputy Prime Minister, the Chief Secretary and Sir Richard Wilson.

Jack Straw

8th July 1998

RESTRICTED - POLICY

THE SCOTTISH OFFICE
DOVER HOUSE
WHITEHALL
LONDON SW1A 2AU

The Rt Hon Jack Straw MP
Secretary of State
Home Office
50 Queen Anne's Gate
LONDON
SW1H 9AT

8 July 1998

Dear Jack,

WHITE PAPER ON IMMIGRATION AND ASYLUM

Thank you for sending me a copy of your letter of 25 June to John Prescott. You asked if colleagues were content with the broad terms of the new system proposed in the draft White Paper on Immigration and Asylum. I am pleased to confirm that I am content.

I would also congratulate you on the position which you have reached. The proposals represent a sound approach to a complex problem made worse by the uncoordinated and inefficient system which we inherited. It is a measure of the success of the review which has been carried out that it has resulted in proposals for an integrated system which can be seen to be both fair and firm. It is, of course, also important in a firm regime to ensure that decisions on asylum are taken quickly, so I very much welcome the emphasis which has been placed on the need to speed up the present system for reaching decisions on asylum applications. This will be a crucial test of the effectiveness of new system.

I am sure that the proposed changes will be welcomed by local authorities, and we should aim to ensure that we do not dilute the message needlessly. Whilst the numbers of asylum seekers in Scotland is much smaller than in England, I know that the message for local authorities here will be more positive if we make clear from the outset that the new system will be based on a partnership with local government Whilst it may be necessary to resort to direction as a last resort in securing accommodation for asylum seekers, it will be more productive to emphasise that our approach will be co-operative. It will after all be necessary to negotiate with local authorities and other public agencies not only on the allocation of accommodation across the country but also on the additional costs which may fall on services such as education and health as a result of the decisions which are taken.

In particular, I welcome the proposal to return to a UK based system. I have always maintained that there should be one consistent system across the country which ensures equity of treatment for all asylum seekers. This has been difficult to achieve when some of the key legislative powers are different in Scotland. At present, the White Paper is written in terms of English legislation. I therefore attach a note of the additions which are required to cover the Scottish legislative position. One important difference in Scotland has been that Scottish legislation empowers Scottish local authorities to provide cash payments to destitute healthy adult asylum seekers. You recognise that this is administratively simpler and it has been adopted by local authorities here for that reason. Since local authorities will no longer have the central role in providing support, I do not think that a decision to minimise the use of cash payments will represent a significant obstacle in Scotland. Local authorities may however want to register that the use of payments in kind will increase the administrative burden which will fall on them.

There is one further complication. In view of the different legislative position in Scotland, we must not lose sight of the fact that separate amendments will be needed to Scottish legislation and that these may be different in substance from those in England and Wales. If legislation is not brought forward in the 1998-99 session, presumably as part of a GB Bill sponsored by the Home Office, then it will be for the Scottish Parliament to approve changes to Scottish legislation which involve devolved powers.

This is another reason for moving matters forward quickly which I know is, in any case, your intention.

I am copying this letter to the Prime Minister, Robin Cook, His colleagues, Hilary Armstrong and to Sir Richard Wilson.

Yours sincerely,

DONALD DEWAR

WHITE PAPER ON IMMIGRATION AND ASYLUM

NOTE FROM SCOTTISH OFFICE OF ADDITIONS TO COVER THE SCOTTISH LEGISLATIVE POSITION

From Social Work Services Group
Contact Marion Goldsmith **Phone**: 0131 244 5462

Para. 8.9 insert at end: "In Scotland, a similar system of support has been provided by local authorities under Section 12 of the Social Work (Scotland) Act 1968 and Statutory Instrument No 11997/245."

Para. 8.20 on Families and Children after Children's Act 1989 insert in line 3: "and the Children's (Scotland) Act 1995."

From Housing Division
Contact: Alastair Wallace **Phone** 0131 244 5522

Para. 3.5 Clarify whether costs apply to Scotland, and whether they include housing and other accommodation costs. The same point arises on **para. 5.5**, lines 6-7.

Para. 7.12(ii) While the concession for domestic violence is welcome, and I can see why HO is looking for an official document like a court order, in practice such documents are unlikely to be available unless the woman has already left home and/or is prepared to give evidence against the abuser. This is difficult enough for UK citizens not liable to deportation, and intimidation may also be a problem (including a threat to inform the immigration authorities). The concession is therefore likely to be ineffective as it stands. Read in line 10 "caution, or other relevant [written] evidence". This could include, for instance, evidence from a Womens' Aid worker or relative or friend, and would bridge the gap until formal proceedings could be taken. Also in line 3 read "domestic violence by a member of the household", it is not necessarily her partner who is involved.

Para. 8.6, third bullet Be specific about which Departments and services are involved. Is this simply services like the police directly involved in immigration control, or (as we would hope) does it involve Departments and services involved in the provision of support and accommodation for asylum seekers (including consultations on the use of the central HO fund).

Paras 8.9-8.12, 8.16 I am sceptical about whether all support can be converted into support in kind, surely there would need to be at least general pocket money support (and see general comments on finance at paragraph 2 above). The more flexible s.12 approach, which I see is used in Germany, seems better for such small sums (paras. 8.9, 8.11).

Para. 8.16 Insert (I hope) at the end of line 7 something like:-

"Local authorities and other local agencies will be consulted on the local availability of accommodation and support".

Para. 8.17 Again I hope we can add at the end:-

"Local authorities will be compensated for the administrative costs of co-operation, and the central Home Office fund will cover extra cost to local agencies for other services, eg education and health costs".

There could be an expenditure threshold which had to be reached before costs were met.

Para. 8.21 Does "support" includes "accommodation"?

If provision of accommodation for asylum seekers is to be centralised, then it may also be necessary to remove the entitlement of certain asylum seekers, mainly those seeking asylum at the port of entry, to assistance under the homelessness legislation; and if so this should be mentioned in the White Paper. This is separate from provision under social services legislation, and I understand you have been discussing the position for England with DETR. For Scotland, this provision is made under section 9(2) of the Asylum and Immigration Act 1996 and the Housing Accommodation and Homelessness (Persons subject to Immigration Control) Order 1996 as amended (SI 1996/1982 - a negative resolution SI). Provision in England and Wales is made under the Housing Act 1996. [At present asylum seekers eligible for accommodation under the homelessness legislation can be given council housing on a temporary basis in England and Wales but not Scotland, due to differences in the primary legislation.] Separate legislative action will therefore be required in Scotland, we hope by negative SI.

From Civil Law Division
Contact: Ian Allen **Phone** 013 244 2202

Paragraph 7.22 insert after "at present," the words "in England and Wales". This should ensure that the procedure set out in the following paragraphs of the White Paper clearly relate to England and Wales and not Scotland.

New paragraph be inserted 7.25A as follows:
In Scotland, legal aid for appeals follows the same general principles. However responsibility for legal aid in Scotland will devolve upon the Scottish Parliament under the Scotland Bill and it will be necessary to consult the Scottish Parliament if the Government wishes to make adjustments to the availability of legal aid there.

DEPARTMENT OF SOCIAL SECURITY

Richmond House, 79 Whitehall, London SW1A 2NS
Telephone 0171 - 238 0800

From the Secretary of State for Social Security

Top AL
cc: JJH
CH
PU
Imm

The Rt Hon John Prescott MP
Deputy Prime Minister and
Secretary of State for the Environment, Transport and the Regions
Eland House
Bressenden Place
London
SW1E 5DU

8 July 1998

Dear Deputy Prime Minister (P)

ASYLUM SAFE COUNTRIES OF DESTINATION: THE "WHITE LIST"

I have seen Jack Straw's letter of 2 July seeking agreement to the proposal in the draft Immigration and Asylum White Paper for the abolition of the "White List" procedure and I am content for him to proceed.

I am copying this to the Prime Minister, members of HS Committee, Jack Straw, Robin Cook, Hilary Armstrong and Sir Richard Wilson.

Yours sincerely
Sarah Turner

RP **HARRIET HARMAN**
(Approved by the Secretary of State and signed in her absence)

DEPARTMENT OF SOCIAL SECURITY

Richmond House, 79 Whitehall, London SW1A 2NS
Telephone 0171 - 238 0800

From the Secretary of State for Social Security

Restricted - Policy

The Rt Hon John Prescott MP
Deputy Prime Minister and Secretary of State
for the Environment, Transport and the Regions
Eland House
Bressenden Place
London
SW1E 5DU

8 July 1998

Dear John,

WHITE PAPER ON ASYLUM AND IMMIGRATION

I have seen Jack Straw's letter to you of 25 June, accompanying his draft White Paper on Immigration and Asylum.

I note he has responded to my concerns about the complexity and mixed incentives inherent in the two tier support system and he now proposes to apply the safety net scheme to all asylum seekers. I am content that we should proceed on this basis. I believe that a scheme of this sort can work if properly handled as part of an overhauled immigration and asylum system.

A much faster decision making process will be essential. We will need to be able to identify the genuine asylum seeker quickly and, where necessary, bring them within the social security scheme and give them access to other help that is available to refugees to help with their settlement into the United Kingdom.

There is clearly a great deal of work still to be done to flesh out the detail of the scheme and how it will work in practice. My officials are working with Jack's and others on the new arrangements and they will be sending detailed comments on the draft White Paper. We need a clearer understanding of what test will be applied for admission to the scheme. Officials also need to clarify what the transitional arrangements will be.

I am content with the proposed Immigration and Asylum White Paper and I support the aim for early legislation subject to agreement on the detail of the support arrangements.

E.R.

Restricted - Policy

I have seen the correspondence between Jack and Alistair on the proposed arrangements for a single budget. These will have consequences for my programmes and my officials are talking to colleagues in both Departments about numbers and arrangements to ensure that we can all agree the final outcome.

I am copying this letter to the Prime Minister, Robin Cook, HS colleagues, Hilary Armstrong and Sir Richard Wilson.

Yours
Harriet

HARRIET HARMAN

Top - AL
cc PJ
Pres
SCU

DEPARTMENT OF HEALTH

Richmond House 79 Whitehall London SW1A 2NS Telephone 0171 210 3000
From the Secretary of State for Health

The Rt Hon Jack Straw MP
Secretary of State
Home Office
Queen Anne's Gate
London
SW1H 9AT

8 July 1998

WHITE PAPER ON IMMIGRATION AND ASYLUM

Thank you for copying to me your letter of 25 June to John Prescott in which you seek support for the publication of the White Paper on immigration and asylum.

As I said in my previous letter, I am satisfied with the general direction taken in the paper and am content to give my support for publication.

There are still some matters of concern in the detail of the welfare support arrangements and I am particularly anxious that officials should discuss the transitional arrangements which will need to be put in place. These transitional arrangements are particularly important in the light of the impact the new arrangements may have on the provisions under the National Assistance Act, and the fact that Westminster City Council are keen to have the House of Lords Appeal re-instated.

I am copying this letter to the Prime Minister, Robin Cook, HS colleagues, Hilary Armstrong and Sir Richard Wilson.

FRANK DOBSON

ps06july.01

DETR
ENVIRONMENT
TRANSPORT
REGIONS

DEPARTMENT OF THE ENVIRONMENT
TRANSPORT AND THE REGIONS
ELAND HOUSE
BRESSENDEN PLACE
LONDON SW1E 5DU

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AL
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OUR REF: IDC/138

7 JULY 1998

Ken Sutton Esq
Private Secretary to the Home Secretary
Home Office
50 Queen Anne's Gate
London
SW1H 9AT

Dear Ken

IMMIGRATION AND ASYLUM WHITE PAPER

The Home Secretary wrote to the Lord Chancellor on 30 June concerning the control of unscrupulous immigration advisers. The letter was copied to members of HS Committee.

The letter should have also been copied to the Prime Minister. I should be grateful if you would arrange for this to be done, and if other recipients of this letter would note the need to add the Prime Minister to the copy list of any letters on this subject .

I should be grateful if you would ensure that replies, or nil returns, are received from all the members of the Committee. Recipients of this letter should note that, if their Ministers wish to respond, they should do so by 10 July.

Once all comments or nil returns have been received, you should inform the secretariat (on 270 0242 or 0135), which will then prepare the reply from the Deputy Prime Minister, as Chairman of HS Committee. The aim is to issue a letter summing up the correspondence by the following working day. A decision should not, however, be assumed until the Deputy Prime Minister has replied.

I am sending a copy of this letter to the Private Secretaries of the Prime Minister, Foreign Secretary, members of HS Committee and Sir Richard Wilson.

Yours sincerely

GARY CHISHOLM
Ministerial Support Unit

Top - AL
SC RR
PU

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SW1H 9AT

06 JUL 1998

The Rt Hon John Prescott MP
Deputy Prime Minister and Secretary of State
for the Environment, Transport and the Regions
6th Floor, Eland House
Bressenden Place
LONDON
SW1E 5DU

1. GW
2. Agree - fine if it is not too costly - we should get an assessment of cost - LJ

If the French buy it, this gives best to the best option. Any views?

Agree.
6/7

Yours John,

INADEQUATELY DOCUMENTED PASSENGERS ARRIVING AT WATERLOO

You will recall our discussions just before Easter which led to our imposing carriers' liability sanctions on Eurostar's trains from Belgium. I am pleased to say that this has had a marked effect. Asylum applicants on this route have dropped from around 600 per month to about 100.

We do however still face problems on Eurostar routes from France, where the numbers of inadequately documented arrivals at Waterloo are still running in excess of 250 per month, even though the French border police (DICCILEC) are running a full passport check at Gare du Nord as a temporary measure. The French have made it very clear they cannot continue these indefinitely. If the French were to stop, and with the Belgian route closed, we could soon see numbers soar to the levels of last summer. That is a huge potential liability in social benefit costs for support of asylum seekers.

We have therefore been exploring options with the French. I have discussed the matter several times with the French Minister of Interior, M Chevenement and our officials have followed these up. We have identified three options to resolve the problem: 1) extension of the Carriers' Liability Act to cover SNCF; 2) maintenance of exit controls at Paris run by the DICCILEC (with a French demand for reciprocal arrangements run by the United Kingdom immigration service at Waterloo) and 3) juxtaposed controls on a flexible basis, under which our respective immigration services would run pre-entry controls in designated zones on each other's territory, modelled on the arrangements at Coquelles and Cheriton. My officials met their French counterparts last week to explore these French proposals further.

The French do not favour the carriers' liability option, largely because there is no existing power in French law to impose such a duty on SNCF and it would be politically difficult to introduce a new law.

If the CLA option was to be followed we would need to act unilaterally and impose liability through our own (probably primary) legislation. There would be a risk of legal challenge (even if the legislation was primary) and the certainty of a diplomatic row with the French who would not like us acting unilaterally to force their hand when they had offered what they considered as credible alternatives. The carriers would, of course, protest at the additional financial burden this would place on them.

While, for these reasons, CLA is not my preferred option, I do not believe we can rule it out. It may be that we simply have no alternative but to invoke it if we are faced with an explosion of numbers or the other options founder.

The second option (static exit controls run by the national immigration services) has been in place only at the Gare du Nord since early June as part of the French World Cup measures. These are of some value and I have urged the French to maintain them for the present. But they are really only a short term solution. The French regard them as a distraction in resource terms from running the Schengen entry controls and if they were to be made permanent, have made clear they would have to insist on them being reciprocal and we should be expected to mount a largely valueless exit check at Waterloo. Such checks are no substitute for long term solutions.

This brings us to the third option - juxtaposed immigration controls, by which we would exercise controls at Gare du Nord and the French at Waterloo alongside any exit controls which either side sought to maintain. The French had until recently flatly ruled this out on the grounds that it involves United Kingdom immigration services operating at the Gare du Nord. But under pressure from Chevenement they are now much more favourably disposed. The advantages to us are clear. We would be able to examine passengers at the Gare du Nord and refuse entry to those who did not qualify thereby ensuring that they did not leave France for the United Kingdom. What happened to them after that would be a matter for the French. The controls would operate in a static designated zone at the Gare du Nord. The arrangements for control zones at Cheriton and Coquelle would provide something of a model, although of course the position is not entirely comparable. Nevertheless, it provides a basis with which both the French Interior and Transport Ministers are familiar.

There are two points which are of specific interest to you in this proposal. The first is that the French would need to be given reciprocal facilities at Waterloo. Here, as at the Gare du Nord, space is limited but the problems are not insurmountable. The controls would need to be re-configured so as to cause minimum inconvenience to passengers but my operational staff are confident that suitable arrangements could be made. Then there is the effect on the carrier, who would also be concerned about the possibility of delays in embarkation, but will be equally concerned about costs. But Eurostar (UK) already pay for additional services for the on-board immigration control which they might feel could, as a result, reduce and might lead to some offset saving for them. Moreover, the potential for Eurostar not to incur costs of the detention and removal of people refused entry in future might provide an incentive for them to co-operate. Similarly, the prospect of reciprocation by the French on CLA charges, if that

option were pursued against SNCF would have resource implications which Eurostar might wish to avoid.

One issue which could still cause concern from an immigration point of view would be the local traffic from Paris to Calais. It would still be possible for passengers to buy a ticket in Paris for Calais, and thus ostensibly make a domestic journey, but stay on the train at Calais and claim asylum on arrival at Waterloo. I have registered this concern with the French authorities.

Despite the anxiety on the Paris-Calais ticketing route, I believe that the recent change of position on the part of the French offers a basis for agreement with them. It will be very important to us. It would show clear action on a long running problem, which we inherited but which has the capacity to do much damage to our credibility in the media and which has been the subject of discussion between the Prime Minister and President Chirac and Prime Minister Jospin. My judgement is that it might be broadly acceptable to Eurostar and is very much better for them than rising detention and removal costs and the consequences of CLA imposition. It is the option favoured by the French who realise, in the aftermath of the Treaty of Amsterdam and with the experience of operating open borders during the World Cup, the extent of loopholes on the Channel Tunnel. This works both ways: the French remain concerned about terrorism and we can use their anxieties in this respect to our benefit.

I should therefore like to reach political agreement with Chevenement that this is the right option to pursue as soon as possible so that detailed planning can start. This needs to be done soon, both to capitalise on current French thinking and also to prevent the French from withdrawing their temporary controls, which would make us immensely vulnerable. I need to be able to conclude an agreement on this with Chevenement before the end of July.

I would therefore be grateful to have your agreement to my continuing urgent discussions with the French, with a view to an outcome of this kind. My officials will contact yours to brief them on the full details of what is proposed and to involve them in the further work. I think it would also be desirable to have confidential talks with Eurostar. It would be helpful to have any comments from you and colleagues **by 13 July.**

I am copying this letter to the Prime Minister, Robin Cook, members of HS Committee and Sir Richard Wilson.

Yours ever,

Jack

JACK STRAW

Top JEH

cc JPO
PB.

AL

+ fyi

7/7.

Foreign Secretary

FORMATION OF AN AD HOC GROUP ON THE COMMON TRAVEL AREA

Recently officials from my Department and yours met officials from the Republic of Ireland Department of Justice to discuss the formation of an ad hoc Group to examine immigration - related issues concerning the operation of the Common Travel Area (CTA).

2. The purpose of such a Group would be to provide a more formal, strategic-level, focus to the CTA arrangements. It is not envisaged it would look at customs or policing (including counter-terrorism matters). In the Republic, however, the Gardai are employed to carry out much of the front-line immigration control which in the United Kingdom falls to the civilian Immigration Service. We are also, of course, aware of the wider context in which these immigration related arrangements operate. There has been a growing awareness of a need for close cooperation and the sharing of expertise to ensure the CTA's integrity as a zone which provides both free movement, and security to its members. There is already an Operational Liaison Group, which brings together representatives of both countries dealing with the operation of the immigration control. The need for close relations will intensify after the ratification of the Treaty of Amsterdam, when any divergence in the decisions by each Government relating to the exercise of the opt-ins in the Schengen acquis and Title IV TEC, and in the application of external frontier controls, might have a knock-on effect on the equilibrium of the CTA arrangements. The suggestion, which came from the Irish, is that there should be a strategic level ad hoc Group.

3. The ad hoc Group would meet twice yearly, with a flexible agenda and membership. It would submit short reports to Ministers after meetings. It would work alongside and liaise with the Operational Liaison Group. It is envisaged that the ad hoc Group would facilitate the sharing of information - both operational and strategic. Although in the short term the main burden is

likely to be on the United Kingdom - providing advice and expertise to the Irish (who are experiencing illegal immigration and bogus asylum seekers for the first time) this should be compensated for in the longer term by improved Irish immigration control arrangements and the good relations necessary to ensure the CTA continues to work smoothly.

4. I realise, however, that such a Group will in due course, need to take account of the developments in Northern Ireland, and perhaps feature on the agenda of a future North-South Council. For this reason, I am writing to you to seek your agreement to the formation of the ad hoc Group, subject to the understanding that in the future the Group's existence will need to take account of the Northern Ireland Assembly institutions. In this context, I am copying this minute to the Secretary of State for Northern Ireland, other members of the Northern Ireland Committee, Sir Richard Wilson and Sir Stephen Wall.

Jack Straw

3rd July 1998

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SW1H 9AT

02 JUL 1998

Top An
~~SCT~~ PU
cct

(P)

Angus.
I think it is heading in the wrong direction; and my sense is looking into that. But if only 5-10% ... fall outside ... remaining scope then I suppose it's ok.
consequences on the front. Giles Dickson
LJ

✓ cc: JEH (to note)

✓ AB.

Any problems with this? JS mentioned it briefly to the PM last week. I think it is fine, providing that it is announced alongside the other White Paper measures.

Angus. 4/7

The Rt Hon John Prescott MP
Deputy Prime Minister and
Secretary of State for the
Environment, Transport
and the Regions
Eland House
Bressenden Place
London
SW1E 5DU

Dear John,

ASYLUM SAFE COUNTRIES OF DESTINATION : THE "WHITE LIST"

The draft White Paper I have circulated to colleagues includes a reference to abolishing the so-called "White List" procedure, whereby certain countries are designated by Order (subject to negative resolution) as being ones where there is in general no serious risk of persecution. The effect of this provision is that refused asylum claims, when individually certified, go into an accelerated appeal procedure with no right of appeal from an adjudicator to the second tier, the Immigration Appeal Tribunal.

I have been reviewing the White List. We objected to the principle of it while in Opposition, on the basis that it caused asylum applications to be dealt with not on their individual circumstances as they should be but on the basis of a general, sometimes contentious, assessment of conditions in the country of destination. I consider that this objection of principle remains valid. The designation procedure is also a cumbersome one in the sense that it involves countries being added to and subtracted from a list with the prospect of a full-scale, contentious Parliamentary debate on each occasion.

I am satisfied that the countries currently designated under this provision - Bulgaria, Cyprus, Ghana, India, Pakistan, Poland and Romania - are indeed ones in which there is in general no serious risk of persecution, that the overwhelming majority of asylum claims from these countries are unfounded, and that no actual unfairness has resulted from putting cases into the accelerated appeal procedure. The White List, however, is a crude concept and there is a real <u>perceived</u> unfairness in it. A better approach would be to consider these claims on their merits and, wherever appropriate, certify them as manifestly unfounded or, where

applicable, under one of the other case-specific categories in the 1996 Act, and put them into the accelerated appeal procedure on this basis instead.

I believe this will be seen as a welcome "fairer" measure in our asylum package, while the individual cases concerned will continue to be dealt with quickly and firmly. We estimate that a small minority, perhaps 5 to 10 per cent, of cases currently certified under the White List would not be suitable for certification under one of the alternative provisions in the 1996 Act. My officials have discussed this with Derry Irvine's and I understand that the implications for the business of the Tribunal are seen as manageable within planned resources.

We shall need to take care in presenting the proposal that it is not seen as a reflection on the general safety of the countries currently in the White List, or as indicating any relaxation of the firm approach to abusive claims. Until the power is abolished by primary legislation, I propose to continue operating the current White List, subject of course to any unforeseen change in the assessment of the safety of any of the countries on it.

Unless any colleague sees any difficulty with this, I would propose to go ahead with it in the timescale I indicated when circulating the draft White Paper. I would be grateful for any comments by 8 July.

I am copying this letter to the Prime Minister, Robin Cook, HS colleagues, Hilary Armstrong and Sir Richard Wilson.

Yours ever

Jack.

JACK STRAW

CABINET OFFICE
70 Whitehall, London SW1A 2AS
***Telephone:* 0171-270 0400**

Chancellor of the Duchy of Lancaster
Cabinet Minister for Public Service

CCPO

KbO 11742

The Rt Hon John Prescott MP
Deputy Prime Minister & Secretary of State
for the Environment Transport and the Regions
Eland House
Bressenden Place
London SW1E 5DU

(P)

6 July 1998

Dear John,

WHITE PAPER ON ASYLUM AND IMMIGRATION

I have seen Jack Straw's letter to you of 25 June, copied to HS colleagues, in response to comments received on his letter of 27 May.

I am pleased that Jack has taken on board comments which a number of us made about his earlier plans for welfare support for asylum applicants, and that these points are reflected in the system which he now proposes. I believe that the draft White Paper he enclosed with his letter offers a much improved system. I am additionally grateful to Jack for answering my point about the commitment to visitor appeals.

Although I think it is disappointing that Jack estimates his proposals will deliver only a low level of removals, I think the policy responsibility must be for him. I am therefore content now to approve his revised proposals.

I am copying this letter to the Prime Minister, Robin Cook, Jack Straw, HS colleagues, Hilary Armstrong, and to Sir Richard Wilson.

Yours,
David

DAVID CLARK

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CC AL
PU

CHIEF SECRETARY TO THE TREASURY

RESTRICTED - POLICY

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Jack Straw MP
Home Secretary
Home Office
50 Queen Anne's Gate
LONDON
SW1H 9AT

1 July 1998

Dear Home Secretary —

ASYLUM AND IMMIGRATION BUDGET ARRANGEMENTS

Thank you for your letter of 29 June.

2. I see that you do not yet consider that the proposals set out in my letter of 18 June offer a satisfactory basis for transferring budgetary responsibility for asylum seeker support to the Home Office. When you first wrote to me on 9 April setting out your strategy for asylum, it was immediately clear how important the new budgetary arrangements were to ensuring the success of the strategy as a whole. The biggest problem of the current system which we inherited has been the lack of co-ordination between departments, and poor incentives to focus our total spending on asylum seekers effectively. If we take on your proposal to transfer budgetary responsibility for support arrangements to the Home Office we would be cutting through this and creating the right incentives for handling asylum seekers in the most cost effective way. That is why I have supported you from the outset on this issue.

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3. My real concern is that if we do not take action now to transfer budgetary responsibility, the whole reform package could be threatened. I do not see how we could continue to leave budgetary responsibility with the individual departments for 1999-2000 and transfer thereafter. Nor do I see how we could sensibly manage the trade-off between the cost of support and the increased throughput of casework which you are bidding to implement from next year when the budget for support costs rests with other departments. The asylum single budget is one of the key reforms coming out of the CSR process which I want very much to include in the CSR White Paper. We can hardly do so convincingly if we have no agreement on a single budget to back this up. Delay in this area could also weaken the case for legislation.

4. As I said in my letter of 18 June, I believe we can offer the necessary flexibilities you desire while ensuring that the incentives are in place from the start to improve the system as a whole. I cannot agree however, to treat the support costs as Annually Managed Expenditure (AME). AME is, as the name suggests, only for expenditure that can only be sensibly managed on an annual basis. As your proposals make clear there is a trade off between support costs and processing costs both in-year and between years. It is also not true that other benefit costs would be in AME. For example, the costs that local authorities incur in supporting asylum seekers under the National Assistance Act and the Children Act are currently within the Control Total, and under the new arrangements they would be within the Department of Health's Departmental Expenditure Limit (DEL).

5. There are a number of flexibilities available when support costs are left within DEL - which are excluded for AME - which are available on agreement to targets

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to improve the efficiency of the various processes within the system. There are real benefits to be had from cash limiting, in terms of scope for EYF and for a comprehensive deal on running costs, which I believe you will find facilitate proper and responsive financial planning.

6. I remain convinced we will be able to agree the necessary flexibilities which will allow you to manage a budget including support costs in a cost effective way. I believe that we should therefore proceed on the basis that the support costs will be included in the Home Office provision. I am happy for my officials to get in touch with yours to try and reach agreement on the necessary flexibilities - but I do not want this essential work to hold up our agreement on making the changes in the CSR.

7. I accept that it is difficult to settle the cash figures before we agree what arrangements we will make to support asylum seekers. However, the problem of calculating future support costs remains whether the support costs are in your department's provision or in Harriet's or Frank's. I think you are in the best position to produce the estimates because you are in the best position to know your plans for asylum, for instance on the speed of case processing, and to assess their likely effect. I would be grateful if your officials could provide revised costings to take account of your latest proposal not to provide any cash benefit urgently. We really need this information by this Friday at the latest.

8. I am copying this letter to the Prime Minister, Derry Irvine, Robin Cook, Frank Dobson, and Harriet Harman.

Yours sincerely, Jane Nell

p.p. **ALISTAIR DARLING**

(approved by the Chief Secretary and signed in his absence)

Top: HA/PS
cc COS
AC
PU
SCU

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SW1H 9AT

30 JUN 1998

~~The Rt Hon The Lord Irvine of Lairg QC~~
Lord Chancellor
House of Lords
London
SW1A 0PW

Dear Lord Chancellor

1. I am writing to you about the response to the joint consultation document on the control of unscrupulous immigration advisers which we published on 22 January. This is a manifesto commitment on which we must announce the way ahead in the forthcoming White Paper on immigration and asylum. There is a considerable expectation of tough, effective action on this front among Members of Parliament, community groups and honest practitioners.

2. Over 300 copies of the consultation documents were distributed. Responses were received from 53 individuals and organisations, the only major exception was the Legal Aid Board. I understand that my officials have provided yours with copies of the comments and their analysis of them. There was general agreement that the activities of unscrupulous immigration advisers described in Chapter 1 of the consultation document were those which needed to be controlled.

3. A majority considered that information provided in a number of different languages about sources of reliable immigration advice, cases of solicitors and the complaints procedure should be available at ports of entry, in country via the Home Office and community based organisations and at British High Commissions and Embassies abroad. There was also support for the churches to be involved and a scheme involving duty solicitors at ports and paralegal advisers was also suggested.

4. I support the view that information about sources of legal advice should be widely available. However, a scheme involving duty solicitors and paralegal advisers could have significant resource implications. Although I should be happy for us to look into this further, it is a rather wider point and for the purposes of supporting a regulatory scheme my view is that information on immigration advisers should be confined to leaflets which would be widely available both in the United Kingdom and abroad.

5. There was unanimous support for the control of immigration advisers offering advice for reward and who were not members of a regulated body. Opinion was equally divided as to whether members of the legal profession should be regulated under the scheme but of those who opposed regulation half expressed some reservations about not controlling the legal profession. Among the reservations expressed were doubt as to whether the Law Society's disciplinary procedures were sufficiently robust to deal with unscrupulous advisers, the complaints procedure against members of the legal profession should be more accessible and a belief that the history of self regulating bodies was not encouraging.

6. It is my clear view that any scheme for controlling advisers, if it is to be both effective and credible with Parliamentary colleagues and the wider public, must extend to legally qualified as well as unqualified advisers. I recognise that the legal profession operates under a scheme of self-regulation, but there are many general criticisms for its effectiveness and in any event for this purpose something more pro-active and specifically focused is needed. There is no reason why this should be seen as undermining the general principle of self-regulation in the legal profession. Rather, it is a particular response to a situation of unique concern, in which people are vulnerable to exploitation and may often have neither the means nor the confidence to use the sort of complaints procedures on which self-regulation relies. This is quite apart from the problems to do with confidence in self-regulation which the response to our consultation exercise have highlighted. From what I have seen of cases referred to the OSS (both from a Home Office perspective, and separately from my constituency experience) the pace of their response and the robustness of their conclusions is, frankly, inadequate.

7. We have discussed regulation with the Law Society and they have pointed to their work towards a scheme for the accreditation of immigration advisers. I understand that as this proposal stands, solicitors offering immigration advice would not actually be required to become accredited. It seems unlikely that unscrupulous advisers will opt to join the scheme; yet there would appear to be no sanction against them other than withdrawal of accreditation and no independent monitoring of work.

8. I am sure that this accreditation process will be helpful in developing standards. We should ensure that any regulation scheme takes account of it. But neither this nor the proposals on franchising in legal aid work get to the nub of the matter, which is that whether competent or otherwise there are a number of advisers exploiting vulnerable clients and these include some legally qualified as well as unqualified practitioners.

9. On the method of regulation more generally, the vast majority of responses to the consultation document supported the introduction of a statutory regulatory scheme. The main reasons for this were that self regulation was ineffective and public confidence in self regulation is low. About 20 per cent of those in favour of a statutory scheme felt that it should operate independently of the Home Office. I can see the force of this argument in that, were the Home Office to have the

responsibility for a regulatory body, it could be construed as a conflict of interest. Equally, I can appreciate that there might be arguments against the Department which administers the asylum and immigration appeals system also regulating immigration advisers. The key to this is that, whoever is the sponsor, the regulatory body should in its day-to-day operations be demonstrably independent of Government. There is no reason however why this should not be achievable as it is, for example, with the Criminal Cases Review Commission and the Police Complaints Authority. I would be content to take on overall responsibility for this body subject to the usual arrangements about consulting you on relevant appointments.

10. Just over eighty per cent of respondents expressed doubts as to whether any statutory scheme could be self financing because they considered that considerably less than 3,000 advisers would register. Some respondents thought the registration fee of £600 was too high. We have no reliable guide as to how many advisers would register but if the number was less than 3,000 it would be necessary to reduce administrative costs so as to keep the scheme self financing.

11. There is an issue about the regulation of unpaid advisers. My view is that to exclude them could create a very large loophole. In practice, at present, those who give unpaid advice in any organised way are few and far between, save for those who work through long established voluntary bodies like the CAB. So instead I think it much safer to make to make it a general offence for anyone to offer and give advice in this field unless registered, but then give the regulatory body a power to exempt unpaid volunteers working for particular voluntary organisations/charities like CAB, against clear criteria.

12. I should be grateful to know if you and other colleagues are content for a scheme to be developed on these lines and for the White Paper to be the vehicle for announcing it. I should also be grateful for your view on the specific question of Departmental responsibility. In view of our tight timetable for the White Paper, I would be grateful for comments by 10 July.

13. I am copying this letter to the Foreign Secretary, other members of HS Committee and Sir Richard Wilson.

Yours sincerely

Isobel Hopton

JACK STRAW

(Approved by the Home Secretary and signed in his absence)

THE NATIONAL ARCHIVES

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10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

15 July 1998

Dear Isobel,

A POSITIVE APPROACH TO CITIZENSHIP

The Prime Minister was grateful for the Home Secretary's minute of 5 June, which proposed the idea of establishing awards ceremonies for people granted citizenship.

In principle, the Prime Minister is sympathetic to this idea. However, he feels that it would better to launch it when the proposed reforms of the asylum system have bedded down. The Home Secretary may therefore want to return to the idea at a later date.

I am copying this letter to Liz Lloyd (Policy Unit) and Jan Polley (Cabinet Office).

Yours,

Angus

ANGUS LAPSLEY

Ms Isobel Hopton,
The Home Office.