PREM 19/1800

Immigration Rules.

Part 2

IMMIGRATION

Part 1: September 1979

Part 2: September 1982

PREM 19/1800

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
~~2-9-82~~		~~26.6.85~~					
~~4.9.82~~		~~23.7.85~~					
~~15-9-82~~		~~30.10.85~~					
~~29-9-82~~		~~5.11.85~~					
~~1.10.82~~		~~NOV 85~~					
~~6.10.82~~		~~14.11.85~~					
~~11.10.82~~		~~20.11.85~~					
~~13.10.82~~		~~2.12.85~~					
~~25.10.82~~		~~16.12.85~~					
~~28.10.82~~		15.1.86					
~~4.11.82~~		~~7.2.86~~					
~~26.11.82~~		~~10.2.86~~					
~~2.12.82.~~		~~7.3.86~~					
~~6.12.82~~		~~12.3.86~~					
~~7.12.82~~		~~13.3.86~~					
~~7.12.82.~~		~~14.3.86~~					
~~16.12.82~~		19.3.86					
~~3.1.83~~		~~21.3.86~~					
~~20.1.83~~		25.3.86					
27.1.83		~~26.3.86~~					
~~9.2.83~~		27.3.86					
~~16.2.83~~							
~~17.2.83~~		Part Ends					
~~16.11.84~~							
~~28.11.84~~							

PART 2 ends:-

FCS to Home Sec 27/3/86

PART 3 begins:-

CDL to Home Sec. 7/4/86

TO BE RETAINED AS TOP ENCLOSURE

Cabinet / Cabinet Committee Documents

Reference	Date
CC(83) 2nd Meeting, item 1	27/01/1983
CC(82) 53rd Meeting, item 1	16/12/1982
CC(82) 52nd Meeting, item 1	09/12/1982
CC(82) 47th Meeting, item 1	04/11/1982
CC(82) 45th Meeting, item 1	28/10/1982
H(82) 16th Meeting, item 2	11/10/1982
H(82) 42	01/10/1982

The documents listed above, which were enclosed on this file, have been removed and destroyed. Such documents are the responsibility of the Cabinet Office. When released they are available in the appropriate **CAB** (CABINET OFFICE) CLASSES

Signed J. Gray Date 30/9/2014

PREM Records Team

Published Papers

The following published paper(s) enclosed on this file have been removed and destroyed. Copies may be found elsewhere in The National Archives.

House of Commons HANSARD, 29 October 1985, columns 827 to 841: Immigration

House of Commons HANSARD, 23 July 1983, columns 891 to 964: Immigration

Cmnd. 8683 – PROPOSALS FOR REVISION OF IMMIGRATION RULES. Presented to Parliament by the Secretary of State for the Home Department by Command of Her Majesty October 1982. Published by HMSO. ISBN 0 10 186830 8

STATEMENT OF CHANGES IN IMMIGRATION RULES. Laid before Parliament on 6 December 1982 under section 3(2) of the Immigration Act 1971. Published by HMSO. ISBN 0 10 206683 3

STATEMENT OF CHANGES IN IMMIGRATION RULES. Laid before Parliament on 9 February 1983 under section 3(2) of the Immigration Act 1971. Published by HMSO. ISBN 0 10 216983 7

Cmnd. 8725. The Government Reply to the Fifth Report from the Home Affairs Committee Session 1981-82 HC 90-I. IMMIGRATION FROM THE INDIAN AUB-CONTINENT. Presented to Parliament by the Secretary of State for the Home Department by Command of Her Majesty November 1982. Published by HMSO. ISBN 0 10 187250 X

Signed J. Gray Date 30/9/2014

PREM Records Team

CDP 5/14

FCS/86/088

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Admission of Polygamous Wives

1. I have seen your letter to the Lord Chancellor of 24 March with revised proposals for dealing with the question of the admission of polygamous wives. I have some sympathy with your objectives in this difficult field.

2. As I understand it, you now propose that we should amend our domestic law so that with effect from the date of that amendment we shall no longer recognise a polygamous marriage as valid except where the second wife is already resident in this country. I presume you intend that this amendment will apply to all marriages where a polygamous wife is overseas and has not come to this country whether or not the man is settled here. That is to say that in addition to polygamous marriages contracted in Bangladesh and Pakistan by men settled here we shall also withdraw recognition from, for example, polygamous marriages entered into in the Middle East by persons who may come only as visitors.

3. This proposal needs to be carefully examined. It would involve a marriage being recognised as valid until a certain date and then considered invalid thereafter. This could cause difficulties in terms of the principles which underlie the law on the validity of marriages, for example, over the position of children. It is of course a serious matter to withdraw recognition from a marriage, and we could be criticised for determining that something as fundamental as the validity or nullity of a marriage should depend on whether the wife had lived in this country with the husband.

/4.

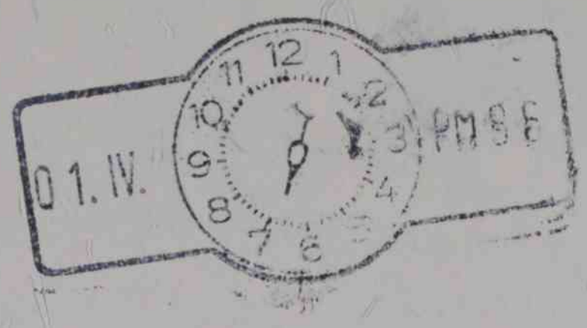
4. I do not wish here to go into all the potential problems. But I am sure it would be wise, as suggested in the Lord President of the Council's letter to you of 19 March, that your proposals should be set out carefully in a Paper for consideration by 'H' Committee, where we should also have the benefit of advice from the Attorney General.

5. I am sending copies of this minute to the Prime Minister, Members of 'H' Committee and 'L' Committee and to Sir Robert Armstrong.

(GEOFFREY HOWE)

Foreign and Commonwealth Office
27 March 1986

IMMIGRATION RULES PT2



FCS/86/080

CDP 263

SECRETARY OF STATE FOR THE HOME DEPARTMENT

The Admission of Child Spouses

1. I am grateful to you for extending the deadline for replies to your letter of 18 March, to allow me to consider this on my return from Greece and Yugoslavia.

2. As I mentioned after Cabinet, the international legal position on child spouses is complicated. Quite apart from the Islamic countries, Belgium, Luxembourg, the Bahamas, Mexico, the Philippines, some Latin American countries and a number of states in the USA (including New York and New Jersey) all allow marriage under 16 years of age. Further research may reveal additions to this list. It is therefore clear that any change to the Rules might have consequences which have not been considered so far in correspondence on this subject. We shall also have to think harder about the possibility of a challenge under the European Convention on Human Rights.

3. I also have doubts about the enforceability of a change in the Rules along the lines which you have proposed, particularly in relation to those who come as visitors and therefore do not need prior entry clearance.

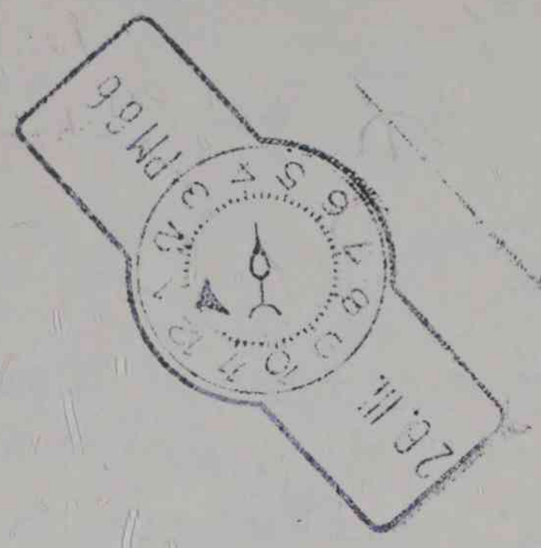
/4.

4. Against this background I am sure that we should not rush to introduce changes before Easter, but should take care to study the problem in all its aspects. Given that there is some linkage, at least in the popular imagination, between this issue and the problem of polygamy, I hope you will agree that both should be examined in H Committee.

5. I am sending copies of this minute to the Prime Minister, members of H and L Committees, and to Sir Robert Armstrong.

(GEOFFREY HOWE)

Foreign and Commonwealth Office
26 March 1986



IMMIGRATION
RULES
PT 2

CC BG.

Chancellor of the Duchy of Lancaster

CABINET OFFICE,
WHITEHALL, LONDON SW1A 2AS

Tel No: 233 3299
7471

26 March 1986

CJD
26/3

Steven Boys-Smith Esq
Principal Private Secretary
to the Home Secretary
Home Office
Queen Anne's Gate
LONDON
SW1H 9AT

Dear Steven.

ADMISSION OF SECOND WIVES

The Chancellor of the Duchy of Lancaster has seen a copy of your Secretary of State's letter of 24 March to the Lord Chancellor. Mr Tebbit agrees that the problem should be dealt with on the basis set out in that letter.

I am sending a copy of this letter to Tim Flesher (No 10), Robert Culshaw (FCO), the private secretaries to members of H committee and L committee, and to Michael Stark (Cabinet Office).

Yours sincerely,

Andrew Lansley

ANDREW LANSLEY
Private Secretary

Immigration : Rules Pt 2.

Ltr 91 ECL
CCPC

10 DOWNING STREET

From the Private Secretary

25 March 1986

Dear Stephen,

ADMISSION OF SECOND WIVES

The Prime Minister has seen a copy of the Home Secretary's letter of 24 March to the Lord Chancellor. She has commented, in relation to the Home Secretary's proposal at the top of page 2 that since we do not recognise polygamy at all, the phrase "unless the wife had lived with the man in this country" should be omitted. I should be grateful if this point could be taken into consideration.

I am sending copies of this letter to the Private Secretaries to members of H Committee and L Committee, and to Len Appleyard (Foreign and Commonwealth Office) and Michael Stark (Cabinet Office).

yours sincerely,

(Charles Powell)

Stephen Boys Smith, Esq.,
Home Office.

CC 3G

(1)

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SWIH 9AT

24 March 1986

Prime Minister
Content with the proposed policy line?
CDP 24/3

Dear Quintin,

ADMISSION OF SECOND WIVES

In my letters of 13 March to you and 21 March to Willie Whitelaw, I reiterated the need to make an early change in the law to deal with the problem of polygamous wives. Our officials have now been looking at the details.

It may be helpful if I restate the objective. Under present law polygamous wives may - and do - come to live with a husband who has settled here who has already brought in one wife. I have now seen details of more than a dozen cases where second wives were in the last year or so granted entry clearance in Bangladesh and Pakistan. All but one of the husbands was admitted to the United Kingdom before 1970. In every case, the second marriage took place some years after the sponsor became settled here. Our objective must be to prevent more such polygamous households being established. For a man to live with two or more wives is clearly at odds with our own customs to the extent that it is a criminal offence under British law to marry more than one person at a time.

I accept that we cannot go so far as to invalidate polygamous marriages where the parties are alredy resident in this country. On the other hand a provision which only withheld recognition from future polygamous marriages would demonstrably not suffice. Our problem concerns applications from wives of existing marriages. It is therefore essential that we take action which affects marriages which have already been contracted.

I have explained in earlier correspondence why action through the immigration law will not suffice and I think that officials of the Departments concerned are agreed on that point. We must tackle the recognition of polygamous marriages as such. I have proposed that such marriages should be rendered void. I accept that legislation to make polygamous marriages void ab initio would both be very controversial and have repercussions for example on family and on nationality legislation which could require complex consequential amendment. Happily, we do not need to go that far. What we need to do is to remove recognition from existing and future marriages from now on. We do not need to affect the past validity of such marriages with all that that would imply for such matters as the legitimacy of children and rights of succession.

/Accordingly

The Rt Hon Lord Hailsham of St Marylebone, CH, FRS, DL

Accordingly what I propose is a provision under which a polygamous marriage is rendered invalid from the commencement date of the legislation if the man was already validly married under our law at the time of the marriage unless the wife had lived with the man in this country. Any future such marriages would not be recognised. If this approach is agreed officials will need to work up the details; but I would hope that it would be possible in this way to minimise the complexity of the consequential amendments. Equally important this approach would minimise the degree of retrospective effect of the legislation.

I am very conscious of the possibility of challenge under the European Convention on Human Rights. A reasonable defence of legislation on these lines could however be presented against any complaint under the ECHR. It seems to me that there is a good argument that a family unit comprising a man with two or more wives is so contrary to the principle of monogamy on which our way of life is based that any complaint that legislation invalidating such marriages is contrary to the respect for family life enjoined by Article 8 of the European Convention could be countered by, for example, relying on the defence in Article 8(2) that it is necessary in a democratic society for the protection of morals.

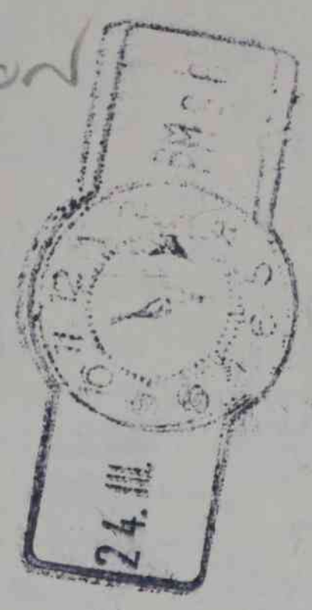
I would be grateful for your agreement, and that of H Committee colleagues to dealing with the problem on this basis. Our officials can then jointly work up detailed proposals. If of course you or colleagues would prefer the issues to be discussed first in Committee I hope that an early date can be set for that. In any event I am anxious for agreement to the broad policy so that I can announce our intentions for tackling this problem as soon as possible, before some particular scandal breaks.

I am sending copies of this letter to the Prime Minister, Members of H Committee and L Committee, the Foreign Secretary and to Sir Robert Armstrong.

Yours,

Doyle.

IMMIGRATION
RULES
PT2



D

MR WICKS 21 March 1986

IMMIGRATION

This subject may be raised by the Home Secretary on Monday. There are several relevant points.

Firstly, last year's Government concession, which was reluctantly granted to allow the immigration of fiancées of settled non-national women into the country, might be reviewed. Our High Commission in Islamabad reports that there are a huge number of extra applications by fiancées. Officials are under pressure to provide more staff to cope. However, the immigration figures published this week do not yet reflect this new surge of applications. Applications by fiancées in the Indian sub-continent as a whole rose by only 10% during 1985, but the Regulation in question (HC503) only came into force in the latter part of last year.

Secondly, the question of polygamous marriages. Home Office and the Lord Chancellor's Department are waging hostilities. The Home Office are keen that the Family Law Bill be extended to include a ban on the admission of second and further wives of polygamous marriages. Under the Matrimonial Causes Act 1973, this is possible. Though the numbers are small, the problem is vexed and Home Office are exposed to public pressure. The Lord Chancellor and the Lord Advocate, together with the business managers, say this will unnecessarily delay the progress of the Bill and are discussing the matter in H shortly. While the point is important, we believe that it should not delay the present Bill and, if it is not included, might be taken up by a private Member in the Autumn.

HARTLEY BOOTH HB.

cc BG

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SW1H 9AT

21 March 1986

MEA n see
CDO
21/3

Dear Willie,

FAMILY LAW BILL AND SECOND WIVES

You wrote to me on 19 March and John Biffen wrote to Quintin Hailsham on the same day.

I recognise that there are questions of policy as well as legislation to be considered; and as I said in my letter of 13 March to Quintin I have no wish to lose Part II of the Family Law Bill. Accordingly I agree with the approach you and John propose for the Family Law Bill, including Part II amended as Quintin has proposed, to be taken in L Committee next week, with the question of how to deal with second wives being considered separately by H Committee. I would only reiterate that it is important that we reach early decisions on how to resolve the problem of second wives. I accordingly welcome your comment that we are not closing any options in letting the Family Law Bill proceed. I intend to write to H Committee colleagues as soon as possible to seek agreement to the approach I propose for dealing with this problem.

I am sending copies of this letter to the recipients of yours.

Yours ever,

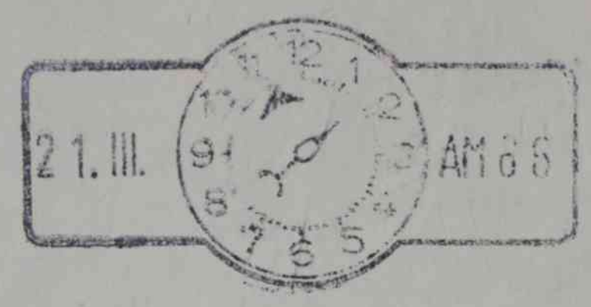
Douglas.

The Rt Hon Viscount Whitelaw, CH, MC

IMMIGRATION

RULES

PTZ



NB - 2 letters

cc BG

PRIVY COUNCIL OFFICE

WHITEHALL, LONDON SW1A 2AT

19 March 1986

PEA to me

12/3

Dear Quintin,

FAMILY LAW BILL

Thank you for your letter of 14 March suggesting that L Committee might consider proceeding simply with Parts I and III of this Bill. I understand, however, that your Department has agreed with the Home Office the amendments that would be needed to Part II to deal with the points about Talaq divorce that were raised at the meeting in January. I understand, too, that Willie Whitelaw is writing separately to ask that policy proposals on preventing polygamous settlement should be brought to H Committee as soon as they are ready, and that we consider all the options for early implementation of the policy as soon as we have got to that point. I, too, believe that this would be the right way to proceed and I suggest that you should bring all three parts of the Bill to L Committee next week with a short memorandum explaining how you have resolved the points that previously concerned the Committee on Part II.

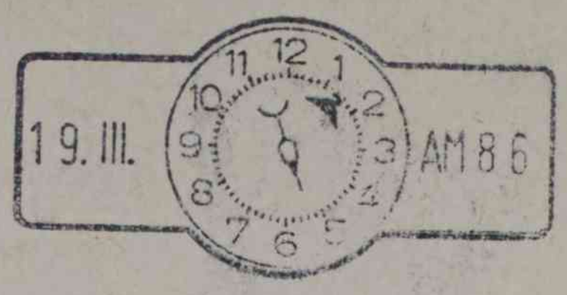
I am sending copies of this letter to the Prime Minister, members of H and L Committees, Sir George Engle and Sir Robert Armstrong.

John Biffen

JOHN BIFFEN

Rt Hon Lord Hailsham of St Marylebone CH FRS DL
Lord Chancellor

IMMIGRATION: Rules : Pt 2



JEBG

PRIVY COUNCIL OFFICE
WHITEHALL. LONDON SW1A 2AT

19 March 1986

Dear Secretary of State,

CDP 19/3

FAMILY LAW BILL AND SECOND WIVES

I think it might be useful if I intervene in your correspondence with Quintin Hailsham, since there are issues here that involve both outstanding policy and future legislation.

While I am sure we all agree with the aim of legislating to stop the possibility of polygamous settlement as soon as possible, I understand there are some problems here involving retrospection and other issues likely to raise questions in the context of the European Convention on Human Rights. Geoffrey Howe mentioned some of this in his minute to Quintin on 14 February. I believe that questions of this kind ought to be discussed in H Committee, and I should therefore be grateful if you and Quintin could bring your proposals to H as soon as they have been worked up.

In the meantime, however, we have to decide what to do about the Family Law Bill, bearing in mind that we are now getting deeper into the session and all the business managers must be desperately keen for legislation in the pipeline to be produced as soon as possible. I understand that John Biffen is writing to Quintin to ask him to bring the Family Law Bill to L Committee next week and I would like to suggest that we should not make the progress of that Bill conditional on the policy proposals that you put to us on polygamy. Letting the Family Law Bill proceed does not close any options, since amendments on polygamous marriages could be incorporated later. But I think we have now got to the point when it is unreasonable to hold up the Bill any longer while attention is given to the new policy issues to which you have drawn attention.

I am sending a copy of this letter to the Prime Minister, the Secretary of State for Foreign and Commonwealth Affairs, the members of H and L Committees, First Parliamentary Counsel and Sir Robert Armstrong.

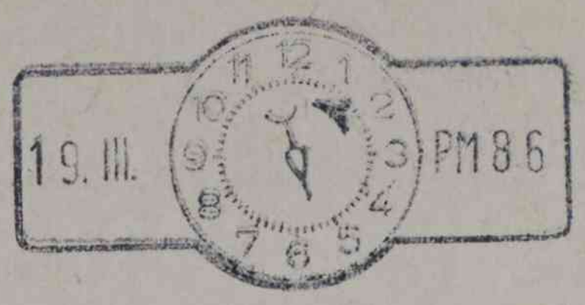
Yours sincerely,

John Wakeham

(Approved by the Lord President and signed in his absence)

The Rt Hon Douglas Hurd MP

IMMIGRATION: Rules: Pt 2.



HOME SECRETARY

QUEEN ANNE'S GATE LONDON SWIH 9AT

18 March 1986

Dear William

PROPOSED CHANGE IN THE IMMIGRATION RULES TO PREVENT THE ADMISSION OR STAY OF CHILD SPOUSES UNDER 16

In my letter of 12 March to the Lord Chancellor and colleagues on the Family Law Bill and the admission of second wives, I referred to my intention to deal with the problem of child brides by an early change in the Immigration Rules. The purpose of this letter is to seek the urgent agreement of H Committee in correspondence to the changes I propose below.

The present Immigration Rules provide no basis for refusing admission to spouses however young who meet the relevant requirements of the Rules; (spouse - or wife - means someone whose marriage is recognised as valid under our family law). The case of the Iranian student and his 12 year old wife to whom the visa officer in Tehran was obliged to issue a visa has highlighted the unacceptable state of our provisions. Although the number of cases are small David Waddington and I consider it politically imperative to take early action to deal with the problem of child brides. To be wholly comprehensive, revision of the family law to deny recognition to overseas marriages involving a partner under 16 would be necessary, but I think that we can deal adequately with the problem, at least for the moment, by a relatively simple change in the Immigration Rules.

It seems to us that there are two options. One could delay admission or stay to someone applying as the spouse of somebody here if they are under 16 at the relevant date. The rule change would be on the following lines.

> "A person (other than a person referred to in section 1(5) of the Immigration Act 1971) shall not be granted entry clearance, leave to enter or remain or variation of leave as a spouse of another if he or she will be aged under 16 on the date of arrival in the United Kingdom or (as the case may be) on the date on which the leave to remain or variation of leave is granted."

This would deal with the under-age spouses of people settled here and wives of students and workers. It would not however prevent the admission of under-age spouses coming in as visitors. If we left the gap we might find ourselves in the ludicrous position of being able to keep out a student's under-age wife but not that of his brother-in-law if they visited him as a couple. A more wide-ranging amendment that would prevent the admission of

/anyone who was

The Rt Hon Viscount Whitelaw, CH, MC

anyone who was married and aged under 16 is necessary. It would be achieved by a new paragraph 1A in the Immigration Rules as follows:-

> "Nothing in these Rules is to be construed as permitting the admission into the United Kingdom of a spouse (other than a person referred to in section 1(5) of the Immigration Act 1971) who is aged under 16 or the grant of leave to remain or variation of leave to such a spouse, if the other party to the marriage is to be in the United Kingdom at the same time."

Such a change would without the proviso at the end prevent the admission of anyone under 16, perhaps even somebody settled in the United Kingdom, who had married in their country of origin - whether or not they were travelling together with their spouse as man and wife. While it would be possible to exercise discretion to grant admission outside the Rules in individual anamalous cases, in our view it would be preferable to make an explicit proviso so that under-age spouses would only be caught if they were going to be in the country at the same time.

A change in the Immigration Rules alone cannot prevent the admission of spouses aged less than 16 who are themselves British citizens or persons benefitting from the protection of section 1(5) of the Immigration Act 1971. It is however unlikely that such a person would have a domicile in a country overseas that permitted them to marry under 16. Our analysis of the few known child bride cases suggests that nearly all would be caught by the rules change. We must acknowledge too that any under-age spouse of EC workers could not be kept out under the new rule.

There is of course the possibility of challenge in an individual case under the European Convention on Human Rights. It is possible that someone settled here whose under-age spouse was refused admission might claim a violation of the right to respect for family life under Article 8. Our primary defence would be that our rules were necessary in a democratic society .... for the protection of health and morals. Moreover, we could also argue that marriage involving a child bride does not have the same claim to family life. (It is perhaps also worth noting that with the passage of time, an applicant at Strasbourg would probably gain the relief sought before their claim was concluded.)

I should be most grateful if colleagues could agree by Monday 24 MARCH to my laying a Statement of Changes in the Immigration Rules before Parliament before the House rises for Easter.

Yours,
Douglas.

010

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SWIH 9AT

14 March 1986

Dear John.

IMMIGRATION: MPs' REPRESENTATIONS

We need now to make early progress on the subject of MPs' representations in immigration cases, taking account of the comments David Waddington and I have received and the meetings we have held since the publication of the draft guidelines on 11 February.

The greatest criticism was of our proposals that Members should make initial contact with the ports and not with Ministers' Private Offices. The Parliamentary Labour Party sought to make an issue of principle out of this. Moreover, a good many Members on our own side expressed considerable reservations and indicated that they would prefer to retain the present system whereby initial contact is made with Private Office or, out of working hours, with the Home Office Duty Officer.

The proposal for initial contact with the ports was not an essential part of our proposals. If we are to reassert control what is essential is clear deadlines about the time within which representations have to be made and proper enforcement of them.

I have accordingly prepared the revised guidelines, a copy of which is enclosed. They respond to comments on two other points by clarifying the position of MPs who act on behalf of a constituency Member who may be absent and the proposals about temporary admission and detention.

I believe that by making these changes we can show we have engaged in a worthwhile process of consultation. I think the proposals will now command considerable support on our side of the House and a measure of (no doubt disguised) acquiescence from the Opposition. I am satisfied that they add up to a useful and practicable scheme. I therefore very much hope that you can arrange a debate, as you suggested, before Easter. If you agree, I would like to answer the attached draft Parliamentary Question on 19 March, both to provide adequate time for Members to study the revised proposals before the debate and to pre-empt the Oral Question on the subject which Max Madden has down for answer the following day.

I am copying this letter to the Chief Whip. I would very much welcome early views from you and him. Copies also go to the Prime Minister, the Lord President, the Foreign & Commonwealth Secretary, the Chancellor of the Exchequer, the Secretaries of State for Trade & Industry, Transport and Employment, the Chancellor of the Duchy of Lancaster and Sir Robert Armstrong.

Yours ever,
Douglas

The Rt Hon John Biffen, M.P.

FOR.

PARLIAMENTARY QUESTION FOR ANSWER ON.....

To ask the Secretetary of State for the Home Department, pursuant to his reply [to the hon Member for Burton] on 11 February, 1986, Official Report, Columns 394 and 395, what representations he has received on the draft guidelines concerning representations made by Right Honourable and honourable Members in immigration cases; and whether he will make a statement.

DRAFT REPLY

My hon and learned Friend and I have had meetings with, and have received written comments from, a number of Right Hon and hon Members from all sides of the House.

We remain convinced that the working of the present system creates serious strains which could destroy it if numbers continue to increase rapidly, and that it is therefore in the interests of all concerned to find means of improvement.

The main points which emerged from these consultations concerned the proposals about contacts with the ports, the need to provide for Right Hon and hon Members to act for a constituency Member when he or she is not available, the references in the draft guidelines to temporary admission and detention, and the need to emphasise that persons who marry while on temporary admission should be required to return to their own country to obtain entry clearance.

In the light of the points raised I am today placing in the Library revised draft guidelines. The principal change reflects the wish of a number of Right Hon and hon Members that they should still be able to ring my Private Office and that of my hon and learned Friend to ask for the removal of a passenger to be deferred while representations are made and considered. Although I believe that many of the objections raised to the proposal for contacting the ports were misconceived, I am ready to see if the present arrangements can effectively be sustained for the future.

An opportunity will be provided for the House to debate the revised proposals before new guidelines become effective.

SECOND DRAFT

INTRODUCTION

1. This document sets out guidelines for the assistance of MPs in carrying out their responsibilities on behalf of constituents in the general run of immigration cases. In particular it describes the way the Home Office will proceed in carrying out its responsibility for implementing an effective and efficient immigration control in accordance with the Immigration Act 1971 and the Immigration Rules which have been endorsed by Parliament.

THE ROLE AND PRACTICE OF THE HOME OFFICE

Representations in cases where a person has been refused entry

Appeal Rights

2. Section 4(1) of the Immigration Act 1971 makes it clear that the statutory power to admit a person to this country is vested in the immigration officer, not the Minister: and. The law provides that unless a person has on arrival an entry clearance or work permit he can only appeal from abroad against the immigration officer's decision to refuse leave to enter. When, therefore, a person refused entry has no right of appeal in this country, the Minister will not normally intervene to overturn the decision of an immigration officer unless he considers that there is new and compelling evidence which was not available to the immigration officer.

Representations to the Minister

3. A Member wishing to submit representations in the case of a passenger refused entry may request the Minister's Private Office, or, out of working hours, the Home Office Duty Officer, to arrange for the removal of the passenger to be deferred. Action to remove the passenger will then normally be deferred for a period of 12 working days to enable the Member to submit written representations.

Temporary admission

4. If removal arrangements are deferred the Act provides that the passenger may be detained under the authority of an immigration officer or with his written authority granted temporary admission.Temporary admission is likely to be granted except where the Immigration Service judges that there is a high risk of the passenger not keeping to the terms of temporary admission (but see also paragraph 19 below).

5. Temporary admission is an alternative to detention. It is not the grant of leave to enter and persons who become engaged to marry or marry while on temporary admission are ineligible to stay on the basis of their marriage or engagement. The Rules require them to obtain entry clearance abroad.

No written representations received within the time limit

6. In the event of written representations not being received in the Home Office within 12 working days the Minister's Private office will instruct the Immigration Service to proceed with the passenger's removal as soon as practicable

Receipt of written representations to the Minister

7. On receipt within that time of written representations challenging a refusal decision the Minister's Private Office will arrange for the deferment of removal and for the passenger's temporary admission, if appropriate, to be extended until the Minister has had the opportunity to review the case.

Decision reversed by the Minister

8. If the Minister decides to reverse the refual decision, the Minister's Private Office will instruct the Immigration Service to grant the passenger leave to enter. At the same time the Minister will inform the Member in writing of the decision.

Decision upheld by the Minister

9. If the Minister upholds the refusal decision the Minister's Private Office will notify the Immigration Service of the outcome. At the same time the Minister will inform the Member in writing of the decision. The Immigration Service will not, however, effect the removal of the passenger until four working days after the date of the Minister's reply to the Member. Removal will not normally be further deferred unless new and compelling evidence is received within that timescale.

Representations made on after-entry cases

Appeal rights

10. In after entry cases a statutory right of appeal is exercisable in this country, unless the decision relates to an application made after a person's leave to remain has expired or to the removal of an illegal entrant.

Cases where an appeal is pending (either against the refusal to grant further leave to remain or against a decision to deport)

11. When an appeal is lodged no action is taken to remove the appellant until the appeal proceedings have been completed and the determination has been considered by the Home Office. The Minister will not normally intervene while an appeal is pending and, unless there has been a significant change of circumstances, there is therefore little point in a Member making representations at this stage.

Cases where an appeal has been dismissed

12. Even if the appellate authorities dismiss an appeal a recommendation may be made and any such recommendation will be seriously considered by the Minister. If, however, the appellate authorities dismiss an appeal and do not feel it is appropriate to make a recommendation, the Minister is unlikely to overturn that decision unless new and compelling evidence is provided.

Cases where there is no right of appeal or where the right of appeal has not been exercised

13. Representations may be considered in cases in which either the right of appeal against a decision has not been exercised or if the law provides no right of appeal. Due account will be taken, however, of the reasons why there was no right of appeal or why an appeal right was not exercised, and the Minister is unlikely to reverse the decision unless the Member raises any significant or compelling factors which were not known when the decision was taken.

Requests for deferment in deportation/illegal entry cases

14. Deportation can only follow the issue of a notice of intention to deport or the recommendation of a Court, against both of which there is a right of appeal. Members may wish to defer making representations until the appeal process has been completed. If after an appeal has been dismissed a Member requests deferment of removal he will be asked to submit written representations within 5 working days and advised that removal will be deferred for that period. If written representations are not received within this period, the Minister's Private Office will give instructions for the removal arrangements to be implemented.

15. If a Member requests deferment of removal in an illegal entry case (in which there is no right of appeal in this country) or a deportation case in which the right of appeal has not been exercised, he will be asked to submit written representations within 12 working days and advised that removal will be deferred for that period. If written representations are not received within this period, the Minister's Private Office will give instructions for the removal arrangements to be implemented.

16. If the Minister upholds the decision to remove he will inform the Member in writing. Arrangements to effect removal will not be made until four working days after the date of the Minister's reply to the Member. Removal will not normally be further deferred unless new and compelling evidence is received within that timescale.

THE ROLE OF MPS

The Constituency Member

17. It is not for the Home Office to police the convention that Members of Parliament do not take up cases involving other Members' constituents, but the Home Office will not normally accept a request to defer removal from anyone other than the person who appears to be the constituency Member, or a Member dealing with constituency business on his behalf if he is absent or ill.

Members with special interests

18. Ministers recognise that Members with a known specialist interest in the problem of particular national groups do sometimes wish to raise matters including immigration matters touching on the welfare of those nationals, but in hearing any such representations Ministers assume that the Member making the representations has consulted the constituency Member. A copy of any reply sent to the Member will be sent to the constituency Member where he or she can be identified.

Advice to or for persons abroad

19. A person intending to travel to this country who has doubts as to whether he will be admitted can apply for entry clearance abroad, even though entry clearance is not required by the Immigration Rules. If there is clear evidence that a Member, though fully aware that a passenger is most unlikely to be admitted under the Rules, nevertheless advises him to travel without entry clearance on the presumption that if refused entry he will gain access to the country on temporary admission as a result of representations to the Minister, then temporary admission will not readily be granted.

House of Lords

20. The Home Office recognises that Members of the House of Lords do sometimes wish to make representations in individual cases. In hearing any such representations Ministers will assume that the Peer concerned has consultd the consitituency Member and will send the constituency Member a copy of any reply where he or she can be identified. If the constituency Member has already taken up the case the Peer will be told and he will be sent a copy of the reply to the constituency Member.

CUBO

HOUSE OF LORDS,
SW1A 0PW

14 March 1986

MBPM

FAMILY LAW BILL

ATTACHED

My dear John:

On 29th January Legislation Committee met to consider a Memorandum L(86)24 presented by the Lord Advocate and myself, in which we asked the Committee to approve introduction of the Family Law Bill. After circulation of the Memorandum, but before the Committee meeting, it became apparent that Part II of the Bill, which implements the Report of the two Law Commissions on the Recognition of Foreign Divorces and Nullity Decrees, was defective because it facilitated the recognition in this country of talaq divorces and other informal divorces which were obtained without any judicial or other proceedings. The Bill was therefore withdrawn so that these provisions could be put right. Revised provisions giving effect to the amended policy have been agreed between officials of the interested Departments, namely the Home Office, the Lord Advocate's Department, the Scottish Courts Administration and my own Department.

However, as members of H Committee will be aware, the Home Secretary has been seeking to have included in this Part of the Bill provisions which would control the admission to this country of second wives of polygamous marriages by amending the law on the validity of such marriages. A change in the law on immigration achieved by amending the law on the validity of marriages would

The Right Honourable
John Biffen, M.P.,
Lord Privy Seal.

.../2

of course be controversial, and it was only on the basis that this Bill would be uncontroversial and hence suitable for Second Reading Committee procedure in the Commons that the Lord Advocate and I obtained permission for it to be included in the programme.

If this Bill is not introduced in the very near future, it will be too late to introduce it at all. I therefore seek your agreement and that of colleagues in L Committee to Part II of the Bill being omitted, and the Bill being introduced only with Part I (Child Custody), Part III (Declarations of Status), the amendments of the Child Abduction Act 1984 and the Child Abduction and Custody Act 1985 in clauses 64 and 65, and amendments of the corresponding Northern Irish provisions. I would be grateful if this proposal could be discussed and agreed at a meeting of L Committee.

I am sending copies of this letter to the Prime Minister, the Lord President, the Home Secretary, the Lord Advocate and other members of L and H Committees, and to Sir George Engle and Sir Robert Armstrong.

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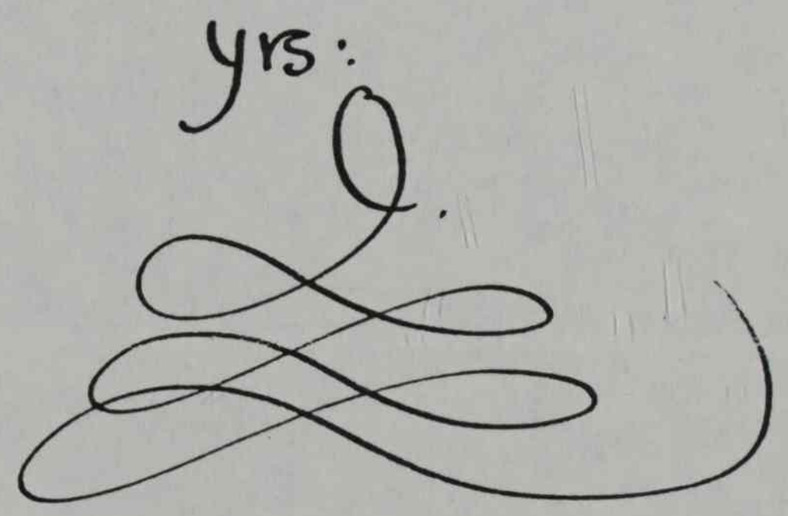

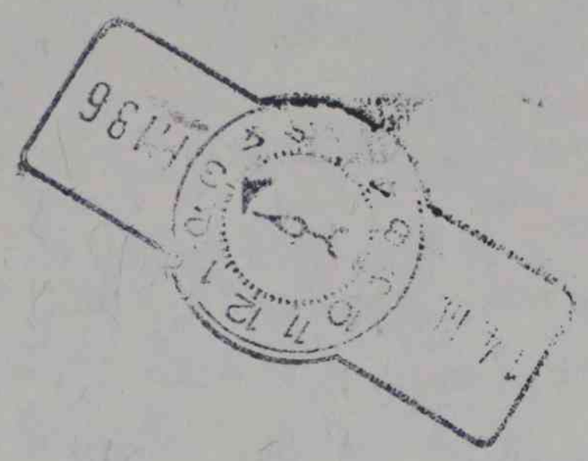

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QUEEN ANNE'S GATE LONDON SWIH 9AT

13 March 1986

PM

Prime Minister

CDP 13/3

Dear Quintin,

FAMILY LAW BILL AND SECOND WIVES

File with CDP

Thank you very much for your extremely prompt reply of the same date to my letter of 6 March about polygamous wives and the Family Law Bill.

I quite agree that we do not want to lose Part II of the Family Law Bill. I welcome the changes designed to limit the recognition of informal foreign divorces which you set out in the letter you sent me and the Lord Advocate on 24 February. In particular your proposal that such divorces should not be recognised if one of the parties has been habitually resident in this country for a year is helpful from an immigration point of view.

But the position we have got into with polygamous marriages is politically indefensible and, as the Prime Minister has agreed, calls for an early change in the law. Whereas the problem of child brides, to which the Prime Minister has also referred, can be dealt with adequately by an early change in the Immigration Rules (about which I shall write to colleagues very shortly) this is not so, as I have made clear in my earlier letters, in the case of the admission of polygamous wives. I am convinced that legislation to restrict the recognition of polygamous marriages is necessary - this Session if at all possible.

It seems to me that the Family Law Bill offers that possibility. I recognise the difficulties; but the problem is urgent; and although the Bill does not at present deal with polygamous marriages it does cover a range of family law matters. In your letter of 6 March you objected that the issue would be highly controversial. But it seems to me that legislation to limit the recognition here of polygamous marriages will not necessarily be more controversial than legislation to limit the recognition of informal divorce. How controversial the legislation will be in reality is difficult to assess but it must be doubtful how far the Opposition will wish to put themselves forward as the champions of polygamy and talaq divorce.

The approach I would propose involves an amendment to Section 11 of the Matrimonial Causes Act 1973 such that polygamous marriages are void where either spouse had, at the time of the marriage, been habitually resident in this country for a year. Although you say that there is no settled policy on the matter, what I am

/suggesting

The Rt Hon Lord Hailsham of St Marylebone, CH, FRS, DL

suggesting reflects the approach you have now adopted in your amended proposals in respect of informal divorces. A similar approach would be necessary in respect of the recognition of polygamous marriages in Scotland and Northern Ireland.

I would hope that you and colleagues would agree that this is the right way to deal urgently with an unacceptable situation and that officials should work up the necessary provision for inclusion in the Family Law Bill on introduction, or if necessary during its passage. There are two other possibilities both of which seem to me to be more unattractive. The first would be for you to proceed with the Bill along the lines that you prefer but announce at Second Reading that the necessary provisions on polygamy would be enacted next Session in the further Family Law Reform Bill which is planned for then. The other would be to proceed by way of a freestanding Bill either this Session or next. Waiting till next Session would be very much a second best, politically, not least because the longer we delay in grasping the nettle the more cases we shall be pressed to concede under the present unsatisfactory law. Subject to the views of the business managers I also see advantage in getting the matter out of the way now rather than having to make room in next session's programme. Whether in Parliamentary terms it would be more straightforward to have a separate Bill on polygamy rather than slotting the provision into a Family Law Bill is again a matter on which the business managers will have views but my own inclination is to think that the higher profile of a separate Bill will not be particularly helpful.

Accordingly I hope that you and colleagues will agree that our officials should as a matter of urgency prepare detailed proposals for early legislation in the present Family Law Bill on the lines I have proposed to limit the recognition of polygamous marriages.

I have just seen Michael Havers' letter of 10 March. I think there may be a misunderstanding here. I am not suggesting that we should refuse admission to any second wife whom we are advised is eligible for admission under the present law. I quite see that this would be wrong. What is not politically acceptable is for us to facilitate the arrival of polygamous wives without being able to say unequivocally that we are about to change the law which now apparently compels us to admit them.

I am sending copies of this letter to the Prime Minister, Members of H Committee and L Committee, the Foreign Secretary and to Sir Robert Armstrong.

Yours,
Douglas.

IMMIGRATION : Rules : Pt 2.

cc BF

Lord Advocate's Chambers
Fielden House
10 Great College Street
London SW1P 3SL

Telephone Direct Line 01-212 0515
Switchboard 01-212 7676

The Rt Hon Douglas Hurd CBE MP
Secretary of State
Home Office
50 Queen Anne's Gate
London SW1H 9AT

12 March 1986

MEA 25

FAMILY LAW BILL: RECOGNITION OF FOREIGN DIVORCES

Quintin Hailsham copied to me his reply of 6 March to your letter of the same date since he and I are jointly promoting this Bill.

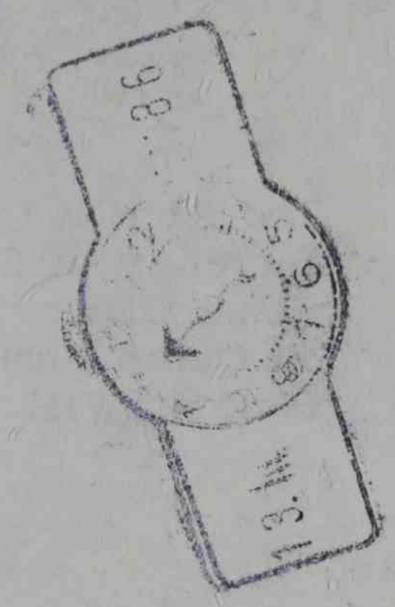
I am writing to record that I fully agree with what Quintin says in his letter of 6 March. In particular I am very concerned that the continuing discussion about the difficult matter of the repercussions for immigration policy of the admission of second wives may further delay the introduction of the Bill whose scope is different. The Bill also implements the recommendations of the two Law Commissions for dealing with problems arising in connection with child custody conflicts within the United Kingdom. This is a matter on which continuing public concern has been expressed. In replying to representations from Mr Robert Hughes MP I told him last November that the Government intended to introduce legislation as soon as possible in the current Parliamentary Session to deal with the unsatisfactory position of conflicting child custody orders made by the courts within the various law districts of the United Kingdom.

I very much hope that our continuing discussions about the vexed matter of the admission of second wives of polygamous marriages will not delay the introduction of legislation to deal with the problems and distress caused by custody orders made by a court in one part of the United Kingdom not necessarily being recognised and enforced by the courts in another part.

Copies of this letter go to the Prime Minister, Members of H Committee, the Foreign Secretary, the Solicitor General and to Sir Robert Armstrong.

CAMERON OF LOCHBROOM

IMMIGRATION RULES: Part 2.



CCBG
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ATTORNEY GENERAL

01-405 7641 Extn

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

Prime Minister
CDP
11/3

The Rt.Hon. The Lord Hailsham of St Marylebone CH, FRS, DL.,
The Lord Chancellor
House of Lords
London SW1

10 March 1986

Dear Quintin

THE ADMISSION OF SECOND WIVES

I have seen a copy of Douglas Hurd's letters to you of 21 January and 6 March and of Geoffrey Howe's minute of 14 February.

I am very conscious of the fact that this is a highly explosive subject and that there is a need for early amendment of the law. I must, however, advise in the strongest terms against taking any action against second wives until there is a change in the law. Douglas Hurd in his letter of 6 March proposes to postpone compliance with his legal obligations to admit these wives until we are able to say that the practice is being stopped. Such unlawful action by the Government cannot be contemplated. For Counsel on behalf of the Crown to have to admit in Court that the Government had knowingly and deliberately acted unlawfully in refusing admission to a second wife would do untold damage to the Government's credibility as a Government which upholds and abides by the law.

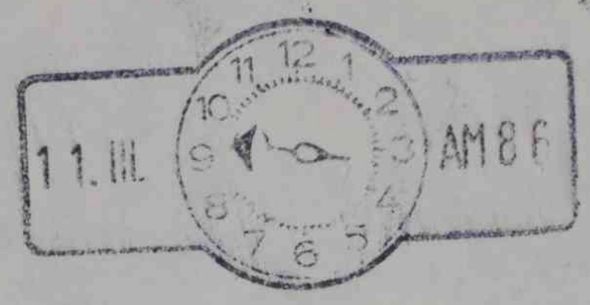
I should only add that I agree with Douglas Hurd and Geoffrey Howe that any amendment of the Immigration Act or Rules would need to be considered very carefully in the light of our obligations under the European Convention on Human Rights.

.../I am

I am sending copies of this letter to the Prime Minister, Members of H Committee, the Foreign Secretary and to Sir Robert Armstrong.

Yours ever, Michael

Immigration : Rules Pt 2.



Pete MJ

CC BG ✓

10 DOWNING STREET

From the Private Secretary

7 March 1986

Dear Richard,

THE ADMISSION OF SECOND WIVES

The Home Secretary wrote to the Lord Chancellor on 6 March about the problem of the entry to this country of polygamous wives.

The Prime Minister strongly shares the Home Secretary's view that an early change in the law is required to rule out polygamous settlement in this country, as well as to deal with the problem of child brides.

I am sending copies of this letter to the Private Secretary to the Home Secretary, to the Private Secretaries to other members of H Committee and to the Private Secretaries to the Foreign Secretary, the Solicitor General and Sir Robert Armstrong.

Yours sincerely

Charles Powell

Richard Stoate Esq
Lord Chancellor's Office.

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610

CCBG

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SWIH 9AT

6 March 1986

CDP - to see
MLGA 6/3

Dear Quintin,

THE ADMISSION OF SECOND WIVES

/ will request if rea

On 21 January, I wrote to you about my concern about the way in which our law allows men who have made this country their home to bring in polygamous wives. On 14 February, Geoffrey Howe expressed support for my proposal that we should look urgently at our law to see whether and how it should be amended. You have written to me separately about the Family Law Bill, which is now overdue for introduction.

David Waddington and I have now started to examine specific cases involving entry clearance applications by polygamous wives and they have reinforced my view that there is no way in which the issue of an entry clearance in such cases can be made acceptable to public - or Parliamentary - opinion. I regard it as essential that we work out now a clear plan of action rather than having to react at speed to adverse publicity.

It may help if I gave details of one case by way of example. It involves a Bangladeshi man who has lived in this country since 1959. He married his first wife the year before, and brought her and three children here in 1981. He had however married a second wife in 1974. He has applied to bring her and their children to live with him and his first family in the same house in Birmingham. The application was refused on the ground that we were not satisfied that the marriage was valid in that the man had acquired a domicile of choice in this country after some 15 years residence here. This was, however, overturned by the independent appeals adjudicator. He allowed the wife's appeal on the basis that the husband had retained his domicile of origin and that the marriage was therefore valid.

Effective action through the Immigration Rules against this sort of case is difficult. Apart from the inherent difficulty of drafting a rule which kept out second polygamous wives there is the problem of section 1(5) of the Immigration Act 1971. In virtually every case we have seen the sponsor was a Commonwealth citizen settled in this country at 1 January 1973. The admission of the wives is therefore protected by section 1(5).

As Geoffrey Howe pointed out in his letter, Leon Brittan indicated in Parliament when the Immigration Rules were changed last summer that we would introduce legislation in due course to change section 1(5). But even with this change we should remain

/vulnerable to

The Rt Hon The Lord Hailsham of St Marylebone, CH, FRS, DL

vulnerable to successful challenge under the European Convention on Human Rights if we were to deny admission to a second wife whose marriage was under our family law considered valid.

To sum up so far, I am advised that the law as it stands obliges me to agree to the entry of the second wife of the man mentioned above even though his first wife is alive, still married to him and living in Birmingham. There are other similar cases in the pipeline. Subject to the view of colleagues, I do not find this acceptable. It seems to me that we need to work out and announce as quickly as possible the change in the law necessary to rule out polygamous settlement in this country. I would propose meanwhile to postpone compliance with my legal obligation to admit these wives until we are able to say that the practice is being stopped.

Provision restricting the recognition of polygamous marriages would be the most direct way of tackling the problem. For example amending the Matrimonial Causes Act to void a polygamous marriage contracted overseas by someone settled here might be an effective way of preventing the sort of cases we face. Any such change would have to apply to existing marriages unless they had alredy been recognised here since the marriages we are concerned with have often been contracted some years ago.

Another possible approach would, as I commented in my earlier letter, be to change the law on domicile so that people settled here more readily acquired a domicile of choice here. But I recognise that may be less attractive and that it would pre-empt the Law Commission's review.

I understand your anxiety to finalise the Family Law Bill; but I do regard it as essential that we decide how to approach the problem of polygamous marriages now. I do not think that public or Parliamentary opinion would tolerate such wives being admitted to this country without being assured that the Government has action in hand to stop the mischief.

I am sending copies of this letter to the Prime Minister, Members of H Committee, the Foreign Secretary, the Solicitor General and to Sir Robert Armstrong.

Yours,

Douglas.

My concern is reinforced by the present rumpus about a child bride.

FROM:

THE RT. HON. LORD HAILSHAM OF ST. MARYLEBONE, C.H., F.R.S., D.C.L.

HOUSE OF LORDS,
SW1A 0PW

CcBG

6 March 1986

My dear Douglas:

FAMILY LAW BILL : RECOGNITION OF FOREIGN DIVORCES

I wrote to you on 24th February seeking your urgent argeement to the revised policy of Part II of the Family Law Bill, which deals with the recognition of foreign divorces, annulments and legal separations. I now have to hand your reply of 6th March, and I must confess that I read it with considerable dismay.

I fully recognise your anxiety over the repercussions for immigration policy of the admission of second wives of polygamous marriages. You may well be right in saying that one way of dealing with the problem would be to void a polygamous marriage contracted overseas by someone settled here, rather than someone domiciled here as is at present the case, and my officials are looking at the question. But, as I attempted to explain in my previous letter, this has no connection with Part II of the Family Law Bill, which is concerned, not with the validity of marriages, but with the recognition of divorces.

The Right Honourable
Douglas Hurd CBE, MP
Secretary of State for the Home Department

You say that you understand my anxiety to finalise the Family Law Bill, but unfortunately you do nothing to allay that anxiety. There seems to be an implication that the Bill might itself contain provisions to deal with the problem of polygamous marriages. If that is indeed your view, I must tell you that I regard this as quite impossible. First there is as yet no settled policy to implement. Secondly, such a matter would be outside the terms of the Bill, and not something for which I sought or obtained the permission of colleagues. Lastly and most importantly, it would be highly controversial, and I have permission to introduce the Family Law Bill only if it can go through the Commons on second reading committee procedure.

It was on 7th February that my officials wrote to yours setting out the revised policy for Part II to which I sought your agreement. If for some reason you feel you cannot agree to that revised policy, I shall have no alternative but to introduce the Bill without Part II. The result will be that the present more liberal law on the recognition of foreign divorces will continue to apply, and I doubt if that would accord with your wishes.

I am sending copies of this letter to the Prime Minister, members of H Committee, the Foreign Secretary, the Solicitor General and to Sir Robert Armstrong. Your letter does not appear to have been copied to the Lord Advocate, whose Bill this also is, and I am therefore sending him a copy of your letter and of my reply.

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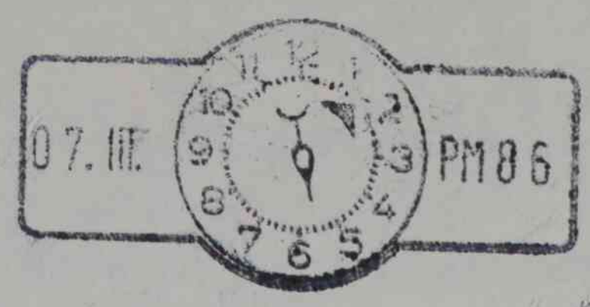
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CONFIDENTIAL

CDP

CDP - to see.

CDP 1/2.

FCS/86/036

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Review of Entry Clearance Policy

Thank you for your letter of 15 January. I agree that it is very important to have a carefully costed analysis of all the various options open to us. I also agree that the review should consider the longer-term implications of any particular course of action. There are important foreign policy considerations involved, as you acknowledged in your minute of 20 November.

Work on the joint Home Office/Foreign and Commonwealth Office review is now well under way and should be completed during February. I am strongly of the opinion that we should wait until we have seen the recommendations before we consider drawing up any detailed contingency plans : additional visa regimes obviously have very big implications for FCO manpower resources and the Diplomatic Service structure.

It is difficult to see a situation over Bangladesh in which both governments would agree that the imposition of a visa regime was necessary or desirable. The circumstances which led to the imposition of a visa regime for Sri Lankans were abnormal. These and other aspects will need to be considered in greater depth when the results of the review are known. I

/ feel

feel however that summary removal could continue to be a most useful practice in deterring those who have a tenuous claim to admission.

I am sending copies of this minute to the recipients of your letter.

GEOFFREY HOWE

FOREIGN AND COMMONWEALTH OFFICE
10 February 1986

From: THE PRIVATE SECRETARY

CCPC

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

7 February 1986

TFSeen

Dear Robert.

IMMIGRATION CASES

Following the Home Secretary's letters of 15 January to your Secretary of State and to the Lord Privy Seal, the Home Secretary has approved draft guidance for the future handling of representations by Members of Parliament in immigration cases. The Lord Privy Seal and the Chief Whip have agreed that the guidance should be published on Tuesday, 11 February in response to an Arranged Question, and that after a period for comments (during which Mr Waddington will hold discussions with some groups of MPs) there should be a debate.

..... I enclose a copy of the Arranged Question and Answer, and a copy of the draft guidance.

Copies of this letter, and enclosures, go to the Private Secretaries to the Prime Minister, the Lord President, the Chancellor of the Exchequer, the Lord Privy Seal, the Chancellor of the Duchy of Lancaster, the Secretaries of State for Employment, Transport and Trade & Industry, the Chief Whip, and Sir Robert Armstrong.

Yours,

S Boys Smith

S W BOYS SMITH

Robert Culshaw, Esq.

PARLIAMENTARY QUESTION FOR ANSWER ON TUESDAY 11 FEBRUARY 1985

Mr Ivan Lawrence (Burton): To ask the Secretary of State for the Home Department pursuant to his reply of 18 December 1985, Official Report column 176, how he intends to proceed with the discussions about representations made by right honourable and honourable Members in immigration cases.

DRAFT REPLY

Draft guidelines have been prepared setting out proposals for the practice to be followed in the general run of immigration cases, and a copy of the draft guidelines has been placed in the Library of the House.

The objective of these proposals is to assist rt hon and hon Members to carry out their responsibilities on behalf of their constituents in a way which is compatible with an effective and efficient immigration control in accordance with the Immigration Act 1971 and the Immigration Rules which have been approved by Parliament. The guidelines provide a facility for rt hon and hon Members to obtain the facts relating to a decision to refuse entry quickly so that they can decide whether there is a case for making substantive representations. At the same time the guidelines seek to set sensible time scales within which representations should be made.

My hon and Learned Friend has written to a number of rt hon and hon Members, whom we know to be closely involved or interested in these matters, inviting their views on the guidelines proposed but the views of all hon Members will be welcomed. The House will have an opportunity to debate the proposals before new guidelines become effective.

GUIDANCE ON THE HANDLING OF REPRESENTATIONS BY MEMBERS OF PARLIAMENT IN IMMIGRATION CASES

The Home Office
February 1986

DRAFT

INTRODUCTION

1. This document sets out guidelines for the assistance of MPs in carrying out their responsibilities on behalf of constituents in the general run of immigration cases. In particular it describes the way the Home Office will proceed in carrying out its responsibility for implementing an effective and efficient immigration control in accordance with the Immigration Act 1971 and the Immigration Rules which have been endorsed by Parliament.

THE ROLE AND PRACTICE OF THE HOME OFFICE

Representations in cases where a person has been refused entry

Appeal Rights

2. The statutory power to admit a person to this country is vested in the immigration officer, not the Minister. The law provides that unless a person has an entry clearance or work permit on arrival he can only appeal from abroad against the immigration officer's decision to refuse leave to enter. When, therefore, a person refused entry has no right of appeal in this country, the Minister will not normally intervene to overturn the decision of an immigration officer unless there is new and compelling evidence which was not available to the immigration officer.

Initial Inquiries

3. A Member of Parliament can obtain the reasons for refusal of entry in a particular case by contacting the Chief Immigration Officer at the port concerned. Any Member wanting advice as to the procedure, or experiencing difficulty, can ring the Minister's Private Office, but the Minister's Office will no longer relay requests for 'stops' to the port now that Members can approach the port direct and at the same time get the facts.

Dealing direct with the port

4. On being furnished by the Immigration Service with a brief oral summary of the reason(s) for the refusal decision the Member can decide whether, in the light of the statutory provisions, there are grounds for making representations

and the Chief Immigration Officer will then ask him whether he wishes to pursue the case formally with the Minister. If the Member decides that he no longer wishes to pursue the case, arrangements will be made for the passenger to be removed as soon as practicable.

Representations to the Minister

5. If the Member says he wishes to submit written representations (or have further time to consider whether to do so) action to remove the passenger will be deferred for a period of 10 working days to enable written representations to be submitted.

Temporary Admission

6. If removal arrangements are deferred the Immigration Service will decide whether the passenger should be kept in custody or granted temporary admission. Temporary admission is likely to be granted, except:

i. where the Service judges that there is a high risk of the passenger not keeping to the terms of a temporary admission; and

ii. where it appears that an intending traveller likely to be refused entry has been advised directly or indirectly that if he arrives an MP will nevertheless make representations to procure temporary admission [see paragraph 18].

No written representations received within the time limit

7. In the event of written representations not being received in the Home Office within 10 working days the Minister's Private Office will instruct the Immigration Service to proceed with the passenger's removal as soon as practicable.

Receipt of written representations to the Minister

8. On receipt within that time of written representations, challenging the facts of refusal, or questioning the decision on the basis of those facts, the Minister's Private Office will arrange for the deferment of removal and for the passenger's temporary admission, if appropriate, to be extended until the Minister has had the opportunity to review the case.

Decision reversed by the Minister

9. If the Minister decides to reverse the refusal decision, the Minister's Private Office will instruct the Immigration Service to grant the passenger leave to enter. At the same time the Minister will inform the Member in writing of the decision.

Decision upheld by the Minister

10. If the Minister upholds the refusal decision the Minister's Private Office will notify the Immigration Service of the outcome. At the same time the Minister will inform the Member in writing of the decision. The Immigration Service will not, however, effect the removal of the passenger before 4 working days have passed from the date of the Minister's reply to the Member. Removal will not normally be further deferred unless new and compelling evidence is received within that timescale.

Representations made on after-entry cases

Appeal rights

11. In after-entry cases a statutory right of appeal is exercisable in this country, unless the decision relates to an application made after a person's leave to remain has expired or to the removal of an illegal entrant.

Cases where an appeal is pending (either against the refusal to grant further leave to remain or against a decision to deport)

12. When an appeal is lodged no action is taken to remove the appellant until the appeal proceedings have been completed and the determination has been considered by the Home Office. The Minister will not normally intervene while an appeal is pending and there is therefore little point in a Member making representations at this stage.

Cases where an appeal has been dismissed

13. Even if the appellate authorities dismiss an appeal a recommendation may be made and any such recommendation will be seriously considered by the Minister. If, however, the appellate authorities dismiss an appeal and do not feel it is

appropriate to make a recommendation, the Minister is unlikely to overturn that decision unless new and compelling evidence is provided..

Cases where there is no right of appeal or where the right of appeal has not been exercised

14. Representations may be considered in cases in which either the right of appeal against a decision has not been exercised or if the law provides no right of appeal. Due account will be taken, however, of the reasons why there was no right of appeal or why an appeal right was not exercised, and the Minister is unlikely to reverse the decision unless the Member raises any significant or compelling factors which were not known when the decision was taken.

Last minute 'stops' in deportation/illegal entry cases

15. Removal arrangements will not be deferred as a result of a Member saying he wishes to make further representations unless he provides new and compelling evidence to justify such deferment. In the latter case he will be asked to submit written representations within 5 days and advised that removal will be deferred for that period. If written representations are not received within this period, the Minister's Private Office will give instructions for the removal arrangements to be implemented.

THE ROLE OF MPs

The Constituency Member

16. It is not for the Home Office to police the convention that Members of Parliament do not take up cases involving other Members' constituents, but the Home Office will not normally accept a request to defer removal from anyone other than the person who appears to be the constituency Member.

Members with special interests

17. Ministers recognise that Members with a known specialist interest in the problems of particular national groups do sometimes wish to raise matters including immigration matters touching on the welfare of those nationals, but in hearing any such representations Ministers assume that the Member making the representations has consulted the constituency Member. A copy of any reply sent to the Member will be sent to the constituency Member.

Advice to or for Persons Abroad

18. If a person intending to travel to this country has doubts as to whether he will be admitted he can apply for entry clearance abroad even when entry clearance is not required by the Immigration Rules. A Member may well tell a constituent that if a relative or friend who is intending to travel runs into difficulties he can be contacted so that he can look into the case. But the Home Office has a duty not to allow temporary admission to be used as a device to enable someone to visit the United Kingdom even though an immigration officer has refused him leave to enter under the Rules, and immigration officers will be slow to grant temporary admission if it appears that an intending traveller likely to be refused entry had been advised directly or indirectly that if he arrives an MP would nevertheless make representations to procure temporary admission.

House of Lords

19. The Home Office recognises that Members of the House of Lords do sometimes wish to make representations in individual immigration cases. In hearing any such representations Ministers will assume that the Peer concerned has consulted the constituency Member and will send the constituency Member a copy of any reply. If the constituency Member has already taken up the case the Peer will be so told and he will be sent a copy of the reply to the constituency Member.

IMMIGRATION
RULES
PTR

CONFIDENTIAL

CC PC

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SW1H 9AT

15th January 1986

1. CDP - HJeu.
2. DF - HJeu.

Dear Geoffrey,

VISAS

We exchanged minutes at Nap before Christmas, and I was very grateful for your agreement that officials of our two Departments should conduct a general review of visa policy. I understand that the work is now well in hand and I hope that the analysis by officials will be available for us to consider within a month.

Given the near breakdown of the immigration control at Heathrow last summer it is necessary to look at the possibility of extending the use of visas, as compared with other ways of enabling the control to operate satisfactorily this summer, and, for that purpose, we need the properly costed analysis that officials have in hand. I have also stressed to officials here that their analysis needs to have a longer term as well as a short term focus. Because we are an island we can exercise our immigration control as passengers seek to enter the country. As a result, we do not have to face the scale of evasion of the immigration control, and the numbers of illegal immigrants, that concern other Governments in Western Europe, such as France and Italy, not to mention the United States. Nor do we need the greater internal controls such as the checking of identity documents and sanctions on employers, which some other countries have to use.

For some time past, however, the control at the ports has been supported by a compulsory system of entry clearance for those ostensibly coming for settlement. The question for the future is whether in the face of increased traffic, especially from 'difficult' countries, that requirement will need to be supported by a greater use of a general visa requirement if the operation of the control at the ports is to be satisfactory, and not to cause undue problems for the vast majority of bona fide passengers.

Coming back to more immediate issues, I was also grateful for your agreement in paragraph 7 of your minute of 2 December that contingency plans for the extension of visa requirements to individual countries should be discussed separately. The position in November and December remained that substantially more passengers had to be refused admission at Terminal 3 than in the equivalent months of 1984 (341 compared with 233) but that

/Bangladesh

The Rt Hon Sir Geoffrey Howe, QC, MP

CONFIDENTIAL

Bangladesh passengers did not contribute disproportionately to the increase in the way that they had done in the preceding months. We could, however, face at any time a sudden increase of inadmissible passengers from one country, whether Bangladesh or Nigeria or elsewhere, as a result of unrest or rumour in that country and we must have contingency plans ready so that visas can be imposed quickly on the nationals of that country if that proves necessary.

In paragraph 8 of your minute you referred again to the problems caused by representations by MPs on behalf of passengers refused leave to enter. I fully agree that we need new and firmer arrangements to prevent MPs undermining the control by exploiting the system that has grown up. David Waddington and I have given a good deal of further thought to how we might achieve this. Our proposals are summarised in a letter I have sent today to the Lord Privy Seal. As you will see from the enclosed copy I believe the next stage must be further consultations with MPs and that it would be unacceptable to the House if, without consultation, we were effectively to end the present arrangements for delaying removal when an MP has made representations, even with an undertaking to pay the passenger's fare back to this country if the representations were successful.

But quite apart from these Parliamentary considerations, there would be policy and operational difficulties if we attempted to introduce a process of summary removal in all cases irrespective of circumstances, and irrespective of representations from Members of Parliament. First, there is the risk to which I referred in my minute of 20 November, that we should receive very many more claims to political asylum from passengers refused at the ports if such claims appeared the only plausible way of gaining a respite from removal. Our international obligations require us to examine such claims carefully. Experience with the Tamils confirmed that this inevitably takes time, and if the people concerned were not granted temporary admission we should have to provide larger and more expensive detention facilities than exist at present while those claims were examined. Second, there would have to be some exceptions to summary removal in cases where the availability of flights precluded removal for several days, and on compassionate grounds, eg to cope with those coming to attend a family funeral who do not satisfy the requirements of the rules for admission in visitors. In cases of this kind the flexibility of temporary admission has proved its value.

To abandon the use of temporary admission altogether, or to make an abrupt move to a general policy of summary removal in the face of representations from MPs, could in my judgment actually damage the effectiveness of the control. Nor could we readily apply the policy only to passengers of certain countries. On the other hand the present misuse of the system also damages the effectiveness of the control. We need to pursue urgently the proposals about which, if John Biffen agrees, I now intend to write to Gerald Kaufman.

/We need

We need to keep up the momentum of all these related pieces of work. Our experience in 1985 makes it clear that we must have more effective arrangements in place by the Spring, and be sure that the resources and systems available to us restore the effectiveness of the control and minimise delays.

Copies of this letter and its enclosures go to the Prime Minister, the Lord President, the Secretary of State for Trade and Industry, the Chancellor of the Exchequer, the Lord Privy Seal, the Chancellor of the Duchy of Lancaster, the Secretaries of State for Employment and Transport, the Chief Whip and to Sir Robert Armstrong.

Yours,

Doyle.


15. I.
AM 8 6

COVERING **CONFIDENTIAL**

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SWIH 9AT

15th January 1986

Dear John,

I have been considering how to follow up the statement which you agreed I should make by way of an Arranged Parliamentary Question and Answer on the subject of MPs' representations in immigration cases.

We need to move fairly quickly into discussions to try to obtain a sensible agreement on revised arrangements, both in Parliamentary terms, and also to restore the effectiveness of the immigration control for next summer. Subject to your views I would propose to write to Gerald Kaufman setting out in general terms the sort of guidelines we have in mind. A draft letter is attached. It sets out briefly the substance of my proposals - essentially the offer of a new facility for obtaining information quickly in return for tight controls on the timescale for representations. It also touches on alternative ways of taking the matter forward.

Those alternatives seem to be either to seek discussions with a range of Members with a possibility of a half day debate when the discussions have been completed or to have a debate first and then move on to the discussions. My own preference would be for the first option but in discussion before Christmas Gerald Kaufman expressed the view that it might be helpful on his side to have the debate first. I should be grateful for your views on the tactics and on how, from your point of view, we should select the members who should be invited to take part in the discussions, and how these discussions might best be organised. Do you, for example, think that the discussions we shall need to hold with some of our own supporters should take place separately from any discussions with the Oppsotion?

I ought to add that before deciding to put forward the proposals summarised in the attached draft letter to Gerald Kaufman, David Waddington and I considered alternative proposals, including the possibility of summary removal of passengers refused leave to enter notwithstanding that representations were being considered, coupled with an undertaking to bring them back to this country at public expense if the representations proved successful. Any such proposal would be politically highly controversial. Our feeling is that it would be resented by a large number of Members, including some on our own side of the House, at least if the change were made without full consultation. Moreover, these Parliamentary considerations apart, there are

important

The Rt Hon John Biffen, MP

important practical and policy objections to such an approach. They are briefly set out in the attached letter which I have sent to Geoffrey Howe with whom as you will know I have had wider exchanges about the operation of the immigration control.

I think it important to move as quickly as possible towards establishing discussions so that we can try and establish more sensible arrangements before the peak summer period at the ports and thus reduce the difficulties that we experienced in 1985. I am at your disposal if you and John Wakeham, to whom I am copying this letter and its enclosures, would like an early word.

Yours,

Douglas.

FILE NUMBER .....

DRAFT LETTER

ADDRESSEE'S REFERENCE .....

TO	ENCLOSURES	COPIES TO BE SENT TO
The Rt Hon Gerald Kaufman, MP House of Commons (FULL POSTAL ADDRESS)		(FULL ADDRESSES, IF NECESSARY)

Home Secretary

LETTER DRAFTED FOR SIGNATURE BY .....

(NAME OF SIGNATORY)

When we met before Christmas I said that I thought it would be necessary to introduce some changes to the existing arrangements for handling Members' representations in immigration cases; and I should like now to arrange discussions with a view to setting out new guidelines in an area where they seem very much required. The purpose of this letter is to set out in general what I have in mind and to seek your views on how we might make progress.

I believe that it should be possible in discussions to establish sensible guidelines which enable MPs to exercise their rights and privileges on behalf of constituents in a way which is not incompatible with the need for an effective and efficient immigration control. We should recognise that the law provides

for a right of appeal for a person refused leave to enter from abroad unless he had an entry clearance or a work permit on arrival. Our starting point for consideration has been the point you made yourself in replying to my statement in the House on 29 October that members take up these cases, like others, on behalf of their constituents in part to get at the facts. At the moment Members frequently feel bound to make formal representations to Ministers in order to establish the facts in an immigration case. Roy Hattersley in a letter to David Waddington has made much the same point and has aksed if in port cases a way could be devised for some sort of direct contact between the immigration authorities and those enquiring about a case.

What we have broadly in mind therefore is that we should introduce a new facility for Members to get the facts underlying the reasons for refusal in an immigration case directly from the Immigration Service. Passengers refused entry would normally (and subject to the risk of absconding appearing low) be allowed a limited period of temporary admission while a Member was obtaining the details and considering the case. Members could in this way reach a more informed judgment on the merits of the

/case at

case at the earliest stage and decide, within an agreed timescale, whether, in the light of all the facts, they felt there was sufficient merit in the case to make substantive representations to a Minister. If a Member did decide to go to Ministers, I hope we could equally proceed to set out procedures and timescales for that stage. In this way a proportion of cases might be resolved without formal representations and the full process of Ministerial consideration could be reserved for the seriously contested cases. We would also speed up the whole process. This way of approaching cases would also better reflect the fact that the statutory power to admit a person to this country is vested in the immigration officer not in Ministers.

The discussion should also consider the circumstances in which it is appropriate to make representations in after entry cases where the rights of appeal had been fully exercised and the decision fully reviewed by the independent appellate authority. I hope we can aim to try to settle agreed conventions relating to the role of the constituency Member, to the role of those Members who have special interests in the problems of particular countries and to the appropriateness of a Member making it known in advance of a person

/travelling to

travelling to the United Kingdom that he or she will make representations to obtain temporary admission for that person in the event of his being refused entry.

I have noted what you and others have said about a debate on this subject. My own feeling is that a debate would be more useful after rather than before the discussions I have proposed and that such an approach would provide the best chance for a measure of agreement and for an informed debate. You will be aware that some of the issues were aired recently in the debate on the Consolidated Fund Bill just before Christmas and I would certainly prefer to see if we could make some progress in discussions before the matter is broached again in the House.

I would welcome wide consultation on these issues, which would bring in those Members particularly or most frequently concerned on a constituency basis. I am concerned by the deeply unsatisfactory strains placed upon the system we have at present and I am anxious to prevent a recurrence of the pressures on the immigration control generated last summer and autumn. Action needs to be taken if difficulties are to be prevented from growing, and if we are to avoid the immigration control being further undermined.

/I hope

I hope you will find these proposals offer a useful way forward. I should be glad to have your views on what form discussions might take, who might be invited to take part, and on the timing of any debate.

From: THE PRIVATE SECRETARY

DM
JL

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

16 December 1985

Dear Alison

MPs' REPRESENTATIONS

I attach the draft of an Arranged Parliamentary Question and Written Answer that the Home Secretary proposed to give before Christmas.

The Home Secretary sees the purpose of this Answer as dealing with the correspondence with the 23 MPs. There is some expectation that he will have something to say before the start of the recess. The Answer does not address the wider question of future arrangments, or the handling of discusssions about them. The Home Secretary wishes to consider this aspect further before making proposals.

At the time of sending this letter we do not know whether MPs' respresentations will feature in the Consolidated Fund debate. If they are to, we would propose that the Answer was given before that Debate. In any case, it will be given before Christmas.

Yours sincerely

for S W BOYS SMITH

cc Mr Hudson
Mr Hyde
Mr Phillips
Mr McGueen
Mr Acton
Mr Bickham.

n Smith

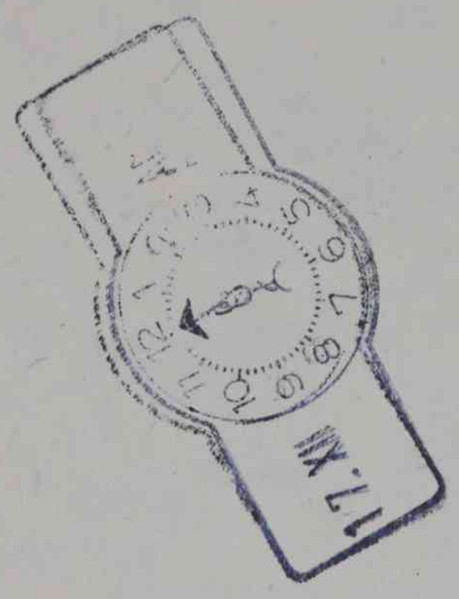
ARRANGED PARLIAMENTARY QUESTION FOR ANSWER ON

To ask the Secretary of State for the Home Department what response has been received from those honourable Members referred to in his statement of Tuesday 29 October about representations made by rt hon and hon Members in immigration cases; and whether he will make a statement.

DRAFT REPLY

Individual replies have been received from twelve hon Members of whom only two have given express consent to make the correspondence public. Four have objected to publication; one has written but has not make his position clear; and one has asked for further information. Four hon Members have agreed to their names being published - but not the correspondence - in the context of a debate. Three of these hon Members have drawn attention to a statement issued following a meeting of hon Members of the Parliamentary Labour Party concerned with immigration and entry procedures making the same point. A letter in similar terms has been received from the hon Member for Erdington in his capacity as Chairman of the Parliamentary Labour Party's Home Affairs Group. I do not believe in these circumstances that it would be right to name any of the hon Members or to make the correspondence public.

I think it would now be sensible to proceed to hold discussions referred to in my statement to the House on 29 October. The aim of these discussions should be to agree upon a Code of Practice which can be applied to the general run of immigration cases and which achieves a sensible balance between the rights and privileges of hon Members to make representations on behalf of their constituents and the need to maintain an efficient and effective immigration control in accordance with the Immigration Act 1971 and the Immigration Rules which have been endorsed by Parliament.



FCS/85/311

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Entry Clearance for Bangladeshis

1. Thank you for your minute of 20 November about the problems that have arisen over entry clearance for Bangladeshis.

2. I was grateful for your recognition of the problems that might arise elsewhere if we were to impose a visa regime on Bangladesh. For that reason I think it important that any planning we do should involve visas for the entire subcontinent.

3. I continue to believe that the introduction of a visa regime would also lead to difficulties for our wider relations with Bangladesh, and with other Commonwealth countries, as well as setting an unhelpful precedent for South Africa. That is quite apart from the major resource and organisational difficulties that would be created by any major extension of our visa regimes, and the increase in superfluous paperwork.

4. As you say there has been a recent and welcome reduction in the number of Bangladeshi passengers arriving in Britain, whom your immigration officers do not consider qualified for leave to enter. The latest weekly figures I have show a distinct continuing downward trend: around 30 arrivals a week now instead of one hundred a week at the end of October. This trend reinforces my view that it would be wrong to be rushed into decisions on imposing new visa regimes.

/5.

5. We cannot be sure of the reasons for the reduction, just as we could not be sure about the reason for the earlier increase. But there are good grounds to think that the decrease has been partly because the word got around that those who came without the appropriate clearances were returned forthwith to Bangladesh, suffering some inconvenience in the process. It is most important in my view that we should reinforce this impression. The reports that already have appeared in the press will not have escaped the notice of the Bangladeshi authorities and may have persuaded them to discourage Bangladeshis not entitled to enter the UK from coming here. I am asking Tim Eggar to speak to the Bangladesh High Commissioner on the lines indicated in paragraph 6 of my minute of 5 November, with parallel representations in Dhaka. I think this should be done separately from David Waddington's meeting to discuss the situation at Heathrow, although Tim Eggar will be happy to attend that.

6. In the meantime, I am glad that our officials are getting together to start work on the general review of visa policy which I agree will inevitably take longer to complete if it is to cover, as it should, all the relevant considerations.

7. The question of contingency plans for the extension of our visa regimes should, I believe, be dealt with separately. We are already looking into the serious administrative problems that might be posed, in conjunction with our Missions abroad. Our officials must certainly stay in close touch, in particular about the provision of staff and resources.

8. I think that at the same time we should continue to explore without commitment alternative approaches. I did indeed envisage letting it be known that those who arrived from Bangladesh without an entry certificate and without good cause would be immediately returned unless their MP intervened.

/This

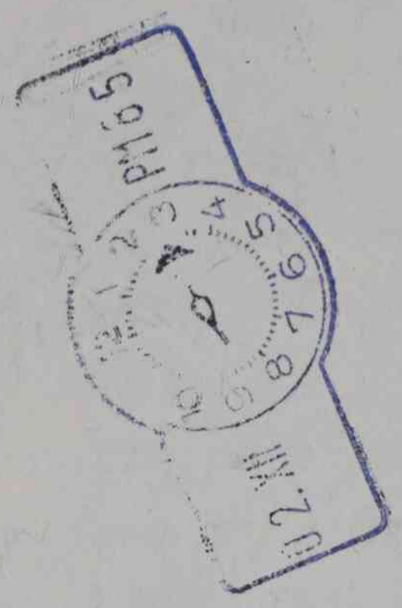
This practice has been going on and it will be very important that those dealing with these cases should not encourage Bangladeshis to seek intervention by an MP as a matter of course. I hope that David Waddington will have success in persuading MPs to exercise restraint over representations. I understand that a number of colleagues with whom we have been in contact appreciate the need for this. I continue to believe that we should look carefully at the idea of sending people home on the next 'plane while being prepared to refund their fare if their representations were successful. I was interested to note that we are at one with the Immigration Service Union in raising this possibility. I do not believe that large numbers of Bangladeshis would in practice start claiming political asylum on their return.

9. I am copying this minute to the Prime Minister, the Lord President, the Chancellor of the Exchequer, the Lord Privy Seal, the Chancellor of the Duchy of Lancaster, the Secretaries of State for Employment and Transport, and to Sir Robert Armstrong.

(GEOFFREY HOWE)

Foreign and Commonwealth Office
2 December 1985

IMMIGRATION
RULES
PT 2



CONFIDENTIAL

SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH AFFAIRS

NBPM
CJP
20/11

ENTRY CLEARANCE FROM BANGLADESH

Thank you for your minute of 5 November in reply to my letter of 30 October about the problems faced by the immigration control and the need for a visa requirement for Bangladeshis.

I acknowledge the problems to which you draw attention, in particular the possible risks we run in imposing a visa requirement for Bangladesh alone. When we imposed visas for Sri Lanka there was no upsurge from other countries; but the cause of the inflow that led to the visa requirement was specific in Sri Lanka. A visa requirement for Bangladesh could, as I recognised in my letter, be taken as a sign of impending action in respect of other countries, in the sub-continent and elsewhere, from which people seek to emigrate.

I am accordingly grateful for your agreement that your officials should join mine in reviewing visa policy urgently. The review will certainly have to cover the implications for our relations with the countries concerned and not resource costs alone. We should also have to have an eye to the European Community dimension, and the pressures there for harmonisation of visa policy, and the question of countries where extension of the visa regime may be desirable on security rather than strictly immigration grounds. This review will be a demanding and important task and, while we must get on with it as quickly as we can, I doubt if it is realistic to think that a general review can be completed, and put to Ministers for decision, until early in the New Year. I have, therefore, considered whether we can maintain the present system of control until the review has been completed, and have looked, in that context, at the particular suggestions made in paragraphs 7 and 8 of your minute.

As to the situation at the ports this month, there has been a recent, and welcome, reduction in the number of Bangladeshi passengers arriving who do not qualify for leave to enter. The numbers are still four or five times higher than in November last year, but this is at least some improvement on the October position. The Immigration Service is just able to cope with the traffic at Heathrow, although it remains under strain and faces a very worrying backlog of correspondence and casework. We do not know whether this respite in the Bangladeshi problem will last, and I am sure we need, as you suggest, to bring in the Bangladeshi authorities. The Bangladesh High Commissioner has written to me about the effect on citizens of his country of refusal and detention at Heathrow and a representative of the High Commission has recently been meeting flights from Dhaka at Terminal 3. I propose to reply suggesting a meeting with him at which a Foreign Office Minister should, of course, be present.

The other change in the situation is less encouraging. There have been industrial relations difficulties in the Immigration Service. These are exacerbated - out of all proportion, we believe, to the real issues - by inter-union rivalry for membership, but the strong, and understandable, feelings expressed by the unions about representations from Members of Parliament are not likely to make out attempts to deal with that problem any easier.

CONFIDENTIAL

I assume that in paragraph 7 of your minute you had it in mind that any passenger who was refused leave to enter should be removed immediately unless he held an entry certificate. This is how the present system would work but for MPs' representations. The law makes it clear that a passenger who is refused despite holding an entry certificate has a right of appeal to the immigration appellate authorities before leaving the country, whereas a passenger without an entry certificate can only appeal to them from abroad. It is when a Member of Parliament intervenes that removal is delayed, and it is the enormous growth in the number of such interventions that has contributed to the difficulty of operating the control as was originally intended.

Naturally I hope that we can find some satisfactory way of restraining representations by MPs, but the chances of success are uncertain. We have to recognise that the House of Commons will need careful and deliberate handling, and that was why I indicated in my statement on 29 October that I intended to proceed through consultation.

Although the problems of MPs' representations is most acute when a passenger is refused leave to enter at the port, we also receive a substantial number of representations against refusal of extensions of stay, even when those refusals have been confirmed by the appellate authorities. In other words, MPs, and the immigrant organisations, have come to see their representations as additional to the role of adjudicators. Unless, and until, we can secure some general agreement to a change in practice in that respect I do not believe that the suggestion in paragraph 8 of your minute for the establishment of some independent authority to consider MPs' representations at the ports provides a way forward. It would amount to an extra-statutory appeal system; the recommendation of the "adjudicator" could not, in law, be binding on the Home Secretary and there is a real danger that MPs would simply continue to make representations as now if they were not satisfied with the results of making representations to the independent person you have in mind. There might also be an increase in applications made to the High Court for judicial review.

Your other proposal was that all passengers who are refused entry should be removed immediately, notwithstanding representations, but brought back here at public expense if the representations are successful. This approach, which is strongly advocated by the main Immigration Service union, has obvious attractions, but I do not think we can consider it except in the more general context of the consultations with Members that I hope to institute. It would be fiercely resented by many Members. There are also other problems. It would be difficult to justify returning a passenger who had claimed political asylum before any representations were considered, but if an exception were made in respect of such passengers that would create a loophole which would lead, as has a similar state of affairs in Canada, and as has happened in West Germany, to a rash of groundless claims for asylum.

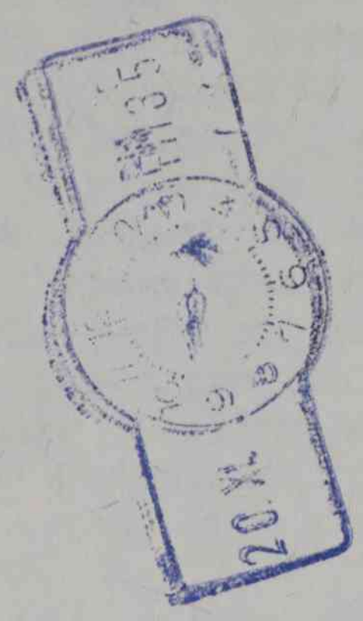
To sum up, I am determined to try and make progress in finding a way of handling MPs' representations more sensibly than happens at present, and I accept that it would be better not to have to take a decision on visas for Bangladeshis in isolation from the proposed review of visa policy for other nationalities. But I think we must be ready to impose such a requirement on Bangladeshis at very short notice if the present respite in the number of "bogus" visitors arriving from that country proves temporary. Otherwise we could be faced with a breakdown of the immigration control over Christmas. I hope, therefore, that you will agree we should instruct officials immediately to settle the practical details of a visa scheme for Bangladesh so that, if necessary, it could be implemented at very short notice this side of Christmas; and at the same time to press ahead urgently with the wider review so that we can take decisions about the form of the control before the operational problems at the ports build up again next year.

I am copying this minute to the Prime Minister, the Lord President, the Chancellor of the Exchequer, the Lord Privy Seal, the Chancellor of the Duchy of Lancaster, the Secretaries of State for Employment and Transport, and to Sir Robert Armstrong.

Douglas Hurd

20th November 1985

IMMIGRATION
RULES PT2



10 DOWNING STREET

CP

No-one is aware outside

PM communicated this.

So simply p.e.

MGA 19/1

MA.

Mark.

We spoke. I should have mentioned that the section 29 scheme used to be referred to as 'voluntary repatriation' but to avoid confusion with Powell type repatriation the word has now been dropped.

14/4

(Assisted return to country overseas.)

E.R.

SECTION 29 OF THE IMMIGRATION ACT 1971

Under section 29 of the Immigration Act 1971 the Secretary of State is empowered to give help towards the expenses of persons who are not British citizens (or families or households whose head is not a British citizen) in leaving the United Kingdom in order to reside permanently overseas. The Secretary of State is required by s.29(2) to administer the section so that such expenses are paid only where it is in the person's interests to leave the United Kingdom and that he wishes to do so.

2. The scheme is operated on the Government's behalf by the International Social Services of Great Britain (ISS) an independent national social work agency under an agreement revised in May 1984 following a review of the scheme's operation. This note sets out how the scheme now operates and to what effect.

Criteria of eligibility

3. It has been made clear from the beginning that the scheme is based on the principle of helping only those persons of non-British nationality who wish to leave the country voluntarily and who seek assistance of their own free will. Care has accordingly been taken to ensure that it should be, and be seen to be, free of any element of coercion or inducement and should direct assistance only to those genuinely in need of it. The current criteria of eligibility, are set out at Annex A.

Assistance available

4. Financial assistance is limited to travel expenses and certain necessary incidental costs including the transport of a small amount of personal effects. Grant specifically does not include any help towards resettlement, nor is it available for travel to Europe (with the exception of Turkey). Assistance is discretionary; there is no right to receive it, nor any formal mechanism of appeal against refusal.

Publicity

5. It was an important feature of the section 29 scheme when it was introduced that as the Government's principal arrangement for repatriation, it should be seen to be operated in the interests of those considering leaving the country and not as a means of immigration control. This has continued to be the case. Ministers accepted in 1983 in the context of the Immigration Rules Debate that repatriation should not be regarded as an element of immigration policy on the practical ground that it was unlikely to make any appreciable difference to the total black population in the country, and because any move in this direction would be detrimental to the Government's general stance on race relations. It follows from this that apart from making known its existence and the terms of its provisions, as a matter of general policy little publicity has been given to the scheme. It was felt that campaigns to publicise the arrangements could be construed as bringing pressure to bear on members of the ethnic minority communities to return overseas; and it was and remains the firm view of ISS that such publicity would conflict with the voluntary nature of the scheme. However, when the scheme was introduced in 1971, circulars giving information about the arrangements were issued to local authorities, the National Association of Citizens Advice Bureaux, the police and other bodies to whom would-be repatriates might turn for advice. Similar circulars were sent out to the same bodies in 1984 notifying them of the changes made to the scheme, and the revised criteria.

ISS's operation of the Scheme

6. ISS are ready to give full information about the scheme to all enquirers, and to give full advice to applicants for assistance. But in order to safeguard the voluntary nature of the scheme ISS consider only applications submitted in persons by the would-be repatriate.

Number of persons assisted

7. The number of persons helped by the scheme has usually been between one and two hundred in each year. Statistics are at Annex B.

ANNEX A

CRITERIA OF ELIGIBILITY AS SET OUT IN THE LETTER OF AGREEMENT WITH ISS OF 1 MAY 1984

1) The applicant is not a British citizen (although the members of his household might be)

2) The applicant wishes to reside permanently overseas.

3) In his, and ISS's opinion, it is in his personal interest to return.

4) His household's current average weekly earnings do not exceed by more than £20 the appropriate supplementary benefit level (before 1984 the corresponding figure was £5.)

5) In ISS's opinion he has insufficient realisable capital to finance his departure.

6) He has been admitted to the UK for settlement (persons on restricted conditions are not eligible for help nor are those who have been settled in the UK for less than 2 years).

Previous criteria requiring that applicants for assistance must have had a poor employment record and prospects, or be able to demonstrate that they had "failed to settle" in the UK were removed at the time of the 1984 review.

ANNEX B

NUMBER OF CASES OF ASSISTANCE

The numbers of persons helped by the scheme since 1972 together with the associated costs are set out below:

Year	Number of persons assisted	Cost £ (Travel expenses plus administration costs)
1972	122	15,176
1973	277	41,828
1974	156	32,307
1975	221	50,636
1976	112	31,181
1977	130	46,508
1978	178	65,533
1979	131	61,991
1980	139	78,454
1981	251	169,206
1982	152	162,203
1983	144	169,259
1984	81	118,982

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CC PS PS/K

Chancellor of the Duchy of Lancaster

CABINET OFFICE,
WHITEHALL, LONDON SW1A 2AS

Tel No: 233 3299
7471

November 1985

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

CC PS/Home Sec

Dear Douglas,

A VISA REQUIREMENT FOR NATIONALS OF BANGLADESH

Thank you for the copy of your letter of 30 October to Geoffrey Howe.

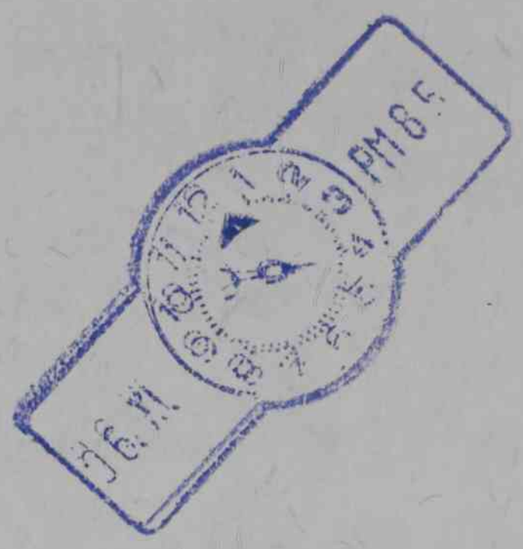
I recognise, as you do in your letter, that the imposition of a visa requirement may cause voices to be raised in sections of the Bangladeshi Community, and be the subject of speculation that it is the prelude to a wider imposition of visa controls. Nevertheless, I am persuaded that it would be right to proceed as you propose. I think that substantial sections of the Asian Community will also be among those ready to understand the need for our action, which is consistent with an immigration policy which itself safeguards their position; and we should not be too worried to justify our action against unreasonable speculation.

I am copying this letter to the Prime Minister, the Lord President, the Chancellor of the Exchequer, the Lord Privy Seal, the Secretaries of State for Foreign and Commonwealth Affairs, Transport, and for Employment and to Sir Robert Armstrong.

Yours ever,
Norman

NORMAN TEBBIT

IMMIGRATION
RULES
PT 2



CCBE

CDP
B/M

FCS/85/287

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Entry Clearance from Bangladesh

1. Thank you for your letter of 30 October about a possible visa regime for Bangladesh. I fully recognise your problem and can assure you that we wish to do all we can to help. We have been considering urgently here the various options for action as set out in your paragraph 4 and have been in touch with our High Commissioner in Dhaka.

2. I agree that the issue is of sufficient importance to merit an urgent high-level review by our respective Departments of the arguments for or against an extension of our current visa policy which would shift much of the burden of dealing with immigrants and visitors to our posts overseas. There are attractions in this course, for example in reducing pressures and queues at our ports of entry. There would be serious disadvantages in creating queues overseas, as well as implications for our bilateral relations and for the Commonwealth as a whole (where I agree the main problems lie). Any major extension of our visa regimes would bring into question the need to establish a visa regime for South Africa. But I suggest all these points should be gone into thoroughly by our officials. My officials would be happy to meet with yours as soon as possible to work out the framework for such a review to which both Departments would contribute and which we would aim to have completed well before Christmas.

3. In the meantime we shall be faced with the continuation of the problem presented by young Bangladeshis arriving in London which I accept puts a severe strain on your immigration staff.

/I

I do not think we could, unfortunately, take Bangladesh in isolation. There would almost certainly be a knock-on effect in that the imposition of a visa regime in Bangladesh would create a surge of young men from India and Pakistan who would arrive in the United Kingdom to try and pre-empt more rigid controls. Your immigration staff would then find themselves in an even worse position that they are today.

4. I need hardly say that the prospects of instituting visa regimes for Bangladesh, India and Pakistan, which I fear is the minimum that would be necessary, causes me concern. The effect on our bilateral relations might be tolerable, though queues would inevitably build up which could for example put strain on our current sensitive relations with India. But the extra resources required in terms of immigration staff in the field, with support staff, accommodation, communications and additional administration etc, would present formidable problems. To keep an Entry Clearance Officer in Dhaka costs £68,000 sterling a year. I estimate we would need about 90 additional immigration staff in the Sub-Continent, costing some £5 million a year. It will not surprise you to know that I would have to look to you to provide the necessary staff involved and to help us with finance, in so far as increased fee revenue is insufficient to cover costs (I am writing to you separately proposing increases in entry clearance charges, which have become necessary to cover current costs worldwide).

5. The main problem about instituting a visa regime in the Sub-Continent, let alone for other Commonwealth countries such as Nigeria, is that we would be setting up bureaucratic mechanisms to provide pieces of paper for large numbers of visitors, 90% of whom at present come to Britain with no problems at all. This would go against the grain of the Government's efforts to reduce bureaucracy and paperwork. Before instituting such an operation we need to be sure that there is absolutely no other way of dealing with the current

/Bangladesh

Bangladesh problem. I quite accept that if we fail to deal with it, visa regimes, with all they imply, may have to be instituted.

6. In the immediate future, I propose to take certain steps to try and stem the flow of immigrants from the Bangladesh end. I propose to make representations to the Bangladesh Government, both in Dhaka and through their High Commission in London, to enlist their help in restraining current traffic, pointing out the inevitable pressures otherwise for the imposition of a visa regime. We will urge them to take what administrative or exhortatory action they can, such as delaying issues of passports and putting pressure on the State airline to refuse to take their nationals to Britain without entry certificates. We have some credit with the Bangladesh Government and I propose we should speak firmly to them. If necessary, we should make a Minister, such as Tim Eggar or David Waddington, available to go out and discuss the matter with them.

7. At the same time, I propose that it should be made known in Bangladesh that in future those without entry certificates would be likely to be immediately removed from Britain. For this we will need some immediate reinforcement of additional Immigration Officers in Dhaka, which I hope I can look to you to provide and pay for.

8. In all this I shall need your own cooperation. I hope very much that you may succeed in restraining representations by MPs on the lines suggested by David Waddington in his letter to Gerald Kaufman. I think it also worth considering two other possibilities which have, you may have seen, been suggested by our Mission in Dhaka. One is a temporary arrangement whereby those who do not qualify for entry are returned immediately to Bangladesh pending consideration of their case, with the Government if necessary paying the costs of their eventual return to the UK. The current air fare is £536 per return

/ticket

ticket and it may well be cheaper to spend money in this way rather than for additional staff at home or overseas. The second proposal is that an independent individual with the standing of an adjudicator might be stationed at London Airport to investigate MPs' representations on the spot. If he recommended removal, this would be carried out.

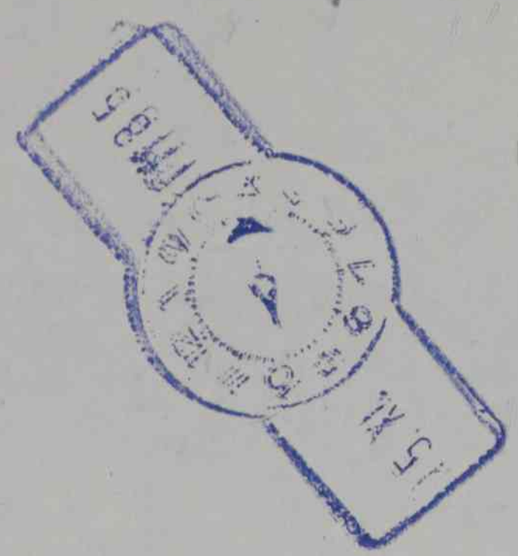
9. If we pursue these various measures vigorously it should give us a breathing space in which to make a more considered appraisal of the wider implications of the need to extend visa regimes.

10. I am copying this letter to the Prime Minister, the Lord President, the Chancellor of the Exchequer, the Lord Privy Seal, the Chancellor of the Duchy of Lancaster, the Secretaries of State for Transport and Employment and Sir Robert Armstrong.

(GEOFFREY HOWE)

Foreign and Commonwealth Office
5 November 1985

IMMIGRATION
RULES
PT 2



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(2) CCPC

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SWIH 9AT

30 October 1985

Prime Minister
You should be aware of this problem. The only way the Home Secretary is right to go for visas.
C.D.P.
30/X

Dear Geoffrey,

A VISA REQUIREMENT FOR NATIONALS OF BANGLADESH

You will have heard of the severe pressure which is being placed on the immigration control at Heathrow. The immediate cause of this is the unprecedented increase in the arrival of passengers from Bangaldesh seeking entry as visitors who have no claim to do so. They are mostly young, single men. We have been attempting to cope, for some weeks now, by diverting increasing numbers of staff to deal with these cases. I have reviewed the position, and assessed the options open to me, and have reluctantly concluded that the only feasible cost-effective way of dealing with the problem is to impose a general visa requirement on Bangladeshi nationals.

My officials have prepared the attached summary paper which sets out the pressures on the control, and the advantage of a visa requirement. You, and other colleagues should know that the recent increase in Bangladesh traffic compared to the overall numbers of passengers arriving is small. But as passenger traffic is rising year on year a small increase in arrivals which are difficult, in immigration terms, has a quite disproportionate effect on the overall control system: our detention facilities are full and doubtful passengers who ought to be detained are being admitted temporarily; increasing numbers are managing to get MPs to take up their cases and get their removal stopped, and increasing numbers of staff are being diverted from their primary task of clearing passengers at the front line.

My officials have been in touch with yours to try to discover the reasons for this increase in traffic from Bangladesh. There is no obvious political crisis or unsettled conditions such as those which existed in Sri Lanka when we imposed a visa regime there earlier this year. No doubt when we tightened the immigration rules in August rumours circulated that those changes presaged even tougher restrictions to come; and our initial assessment of the increase in traffic was that this was the cause and that it would cease as misunderstanding was removed. The High Commission has taken steps to clarify the position but the flow is not slackening. The conclusion has to be that this increase is not a temporary aberration; that the airlines and travel agents see greater profits in more Bangladeshis buying tickets to London, and, most important, that many of those who are travelling are well aware that you can get in and stay for weeks or months, and perhaps indefinitely despite the risk or fact of refusal.

/The problem

The Rt Hon Sir Geoffrey Howe, QC, MP

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The problem could in theory be tackled in a number of ways: increasing detention; reducing MPs' rights of representation; increasing staffing at the ports; or imposing visas. I believe we must rule out a major increase in the use of detention. Even if we were to go back on the policy of minimising detention, the acquisition and staffing of new detention accommodation would take a good deal of time, and at a capacity say of 200 places, would cost 6 million to create. But this would not stop the customary practice, now perceived, as a 'right', for MPs to make representations in individual cases, and in doing so, to stop or delay a removal. In my statement to the House yesterday afternoon I underlined the importance we attach to tackling misuse of the system, and David Waddington and I will be pursuing what might be done and whether it will be possible to devise, and police, new restrictions on MPs: but this will take time to effect, will be highly controversial, and uncertain of success. By diverting staff to handle refused cases more and more quickly I hope we can make some inroads into the problem in the short-term but these staff will have to be returned to normal duty for a lengthy period before, during, and after Christmas; and then again from Easter to October, if the normal seasonal increase in general passenger traffic is to be handled without a major increase in delays at Heathrow and other ports. I am making increased provision for staffing Terminal 4 when it opens in the Spring, but if we are to staff the domestic control to cope with this new pattern of difficulty many more will be required, and the increasingly criticised delays in the queues in the immigration halls for the majority will not thereby decrease.

Our judgement here is that a visa requirement on Bangladesh nationals would be a much less costly and more certain way of controlling arrivals than the other options I have considered; it would also insulate other passengers, and the rest of the control, from increasing delays. It worked most effectively in resolving the problems over Sri Lankan Tamils which were the same in effect if different in cause to those we now face. We would need only 5-10 more staff overseas to operate it, and its effect would be to enable me to return more than that number of staff to their normal duties on the passenger controls.

I realise that such a proposal has its difficulties for you: there are resource and accommodation issues in Dhaka and possibly criticism from the Bangladesh Government at being singled out. I must also weigh the predictable criticism from ethnic minority groups, especially the Bangladesh community here, although I believe that, for many, a visa regime would facilitate travel and avoid charges of discrimination between them and other passengers at Heathrow.

Further, and more important, there are the implications of a decision to impose visas for Bangladeshis so far as other nationalities are concerned. A visa requirement on Bangladeshis may be seen as the prelude to a decision to impose a similar requirement for citizens of India and Pakistan, and possibly, because of the high refusal rate, of passengers from West Africa, on Ghana and Nigeria. Although some of the traffic from these other countries is certainly difficult in immigration terms there are no signs at present that it is likely to create problems of the same relative proportion or persistent degree of

/difficulty as we

difficulty as we have experienced since August in relation to Bangladesh. There must be some risk - I find it difficult to assess how great - that an announcement of visas for Bangladeshis could lead to a rush of passengers from these other countries. More generally, and looking beyond the present short term problems, I think we have to consider whether it would be more cost effective to move - as the Canadians, for example, have done - to a system that makes a more general use of visas for selected nationalities. I fully recognise that the amount of travel from, for example, India is much greater than from Bangladesh, that it includes large numbers of totally genuine visitors and that both the political implications and cost-effectiveness of proposals to introduce a visa regime for India, Pakistan, Nigeria and Ghana are of a quite different order from what I propose we should do for Bangladesh. Nevertheless, I think that officials of our two Departments ought to study the implications of a wider visa regime so that we have some contingent work done against the possibility of new difficulties arising from other countries, and so that we can make a considered judgment on the way in which the control should be operated to meet the likely increase in the volume of traffic in future years.

All that, if you agree, will take time and must not, I suggest, be allowed to get in the way of a decision regarding visas for Bangladesh. You will see that the attached paper outlines the way in which such a visa regime would be imposed and how much it might cost. There is a good deal of further work to be done on the proposals by officials of both Departments. I hope you will agree in principle that we should aim to have a visa regime in place as soon as possible, and certainly well before Christmas, and that officials should be instructed accordingly.

If you would like to discuss these issues, either in relation to Bangladesh, or more generally, I would welcome a very early meeting.

I am copying this letter and enclosure to the Prime Minister, the Lord President, the Chancellor of the Exchequer, the Lord Privy Seal, the Chancellor of the Duchy of Lancaster, the Secretaries of State for Transport and for Employment and Sir Robert Armstrong.

Yours ever,

Douglas.

E.R.

CONFIDENTIAL

THE PRESSURE ON THE IMMIGRATION CONTROL: ESPECIALLY FROM BANGLADESH

NOTE BY HOME OFFICE OFFICIALS

1. In recent months there has been a sharp increase in pressure on the immigration control at our ports. For example, during the late summer bank holiday weekend the control at Heathrow Terminal 3 (TN3) where the majority of intercontinental travellers arrive, came very close to complete breakdown. There is an underlying general increase in passenger traffic and the predictions are that steady growth will continue and, at the present rate, passenger movements could triple before the end of the century. The present British Airports Authority forecast within this growth, is a ~~smaller~~ larger increase in traffic to Britain from the Middle East and Asia and a declining growth in traffic from North America. This implies for the immigration control a higher proportion of passengers who have to be interviewed in depth on arrival. This process has begun to occur this summer.

2. The pattern of growth in the last two years had placed severe pressures on the control but had it been maintained staffing levels could, with difficulty, have coped. But what has occurred in relation to Bangladeshis has created major new difficulties. There have been increases far exceeding general trends both in the number of passengers arriving from Bangladesh and, most important, in the number who have had to be refused entry. In the first months of 1985 arrivals of Bangladeshis were 30% higher than last year and the detailed arrival figures for this summer when available look likely to record an even greater increase. The scale of the problem is shown by the fact that 684 Bangladeshis were refused entry at TN3 in July, August and September this year. This was about a quarter of the total of all refusals there and compared with 72 in the same months in 1984. There are normally considerable seasonal fluctuations in the arrivals of Bangladeshi visitors and we would expect the number of refusals to be falling back now but this is not happening. In the first three weeks of October at TN3 a further 219 were refused compared to 37 in the same period last year.

3. It is not clear what has caused this change. There has been no tightening in the tests applied by staff to visitors from Bangladesh. The fact that the high levels have continued suggest that it cannot be attempts to beat the change in the Immigration Rules which came into effect at the end of August. The refusals are mainly young men seeking entry as visitors, some of whom are arriving with kits of similar documents in support of claims that they are successful businessmen; unscrupulous travel agents in Bangladesh may be involved. The airline may be less concerned about checking on dubious passengers because,

/ as

as explained below, the refusal and return of a passenger may cost it nothing. If these are the explanations there is no reason to expect a lull this winter.

4. The problem of handling this flow is exacerbated by the system of temporary admission and MPs' representations. If a passenger is refused entry, and is not to be removed immediately or if the immigration officer wishes to make further enquiries before admission can be settled, the passenger is liable to be detained. There is, however, power in the Immigration Act 1971 for the passenger instead to be admitted temporarily (with restrictions about residence and reporting to the police or an immigration officer). When a Member of Parliament tells the Minister that he wishes to make representations against the decision to refuse entry the removal of the passenger is deferred a practice of all Governments, and of long standing. If the passenger is not already on temporary admission it would normally be granted at this stage. A passenger is not detained unless there are reasonable grounds for believing that he will not comply with the terms of the temporary admission or that he has no means to support himself and nobody to turn to if admission is given.

Some 75% of all Indian citizens refused admission at Terminal 3 are now the subject of such representations.

5. Representations by MPs ~~in port refusal~~ cases handled by the Immigration Service at ports have grown rapidly from about 1,000 a year in 1980/81/82 to ~~3,532~~ 3532 in 1984, and ~~5,569~~ up to around 5,000 up to 22 October of this year. Although extra staff have been diverted from the initial control to deal with these representations a backlog has developed with consequent delays. The result is that many passengers remain here far longer on temporary admission than the period they originally requested when seeking entry. Once it becomes known that the intervention of a Member results in temporary admission there is an incentive for doubtful visitors to present themselves at the port provided that their sponsors have been alerted to involve an MP. There is evidence that some MPs make promises of intervention to their constituents before the passenger arrives in the United Kingdom.

6. The effect of these customary arrangements has become acute in relation to Bangladeshis. In July, August and September this year MPs made representations on behalf of 360 Bangladeshis refused at TN3, compared with 16 in 1984. This substantial increase has persisted into October.

RESOURCE CONSEQUENCES

7. These pressures have a number of financial and other costs.

/ 8.

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E.R.

8. In normal circumstances there should be no direct public expenditure as a result of a refusal because the carrying company is liable to the costs of detention and removal. However, if firm removal directions are not given within 2 months the removal costs fall to public expenditure, although if the passenger has a return ticket it will be used. There are now over 1000 cases outstanding which are quite likely to be cleared within the two month period.

9. The extra pressure means that staff are having to be diverted away from the initial interview desks of the immigration control. Some are needed to cope with the detailed interviews and many are now occupied in processing the representations by MPs. To cope with the general growth in MPs casework a new unit was set up on 1 October 1984, initially with 11 staff. It now has 24 plus clerical support, including from 7 October, 8 staff devoted solely to new Bangladeshi cases as to try to turn them round faster. More staff will have to be transferred on to this work to tackle the backlog. This diversion of manpower and the general increase in the proportion of passengers who cannot be passed through immigration control without at least a careful preliminary interview are creating increasing delays for the great majority of bona fide passengers who do not qualify to pass through the British or EC channels. Inevitably there have been complaints.

10. The increasing number temporarily admitted also increases the risk of absconding. Until recently the number of absconders has not been high and although the percentage has risen slightly it is not yet alarming. The percentage is, however, significantly higher for Bangladeshis than for other nationalities and the recent influx of Bangladeshis may accelerate the rate of absconding. This creates further enforcement problems.

VISAS

11. Under the Immigration Rules nationals of specified countries require visas to enter the United Kingdom. There is in law no reason why a full visa requirement should not be imposed on Commonwealth citizens, as was done in May this year in respect of Sri Lanka. One solution to the problems described above is thus to impose a general visa requirement on Bangladeshis.

12. This would mean that (subject to statutory exceptions) all Bangladeshi citizens would have to apply for visas whatever the purpose of their journey. A visa requirement means that a more considered decision can be taken at the post abroad than is possible when a passenger arrives here. For the would be traveller it provides reassurance about admissibility to the United Kingdom at the expense

/ of

E.R.

of inconvenience of prior application and perhaps delay. Immigration officers have some powers to refuse entry to a passenger with a visa but this is not often necessary to exercise. Visa holding passengers can be admitted with much less enquiry than passengers without entry clearance. Moreover, any passenger who requires a visa and arrives here without one can be refused on that ground alone without any detailed investigation of the circumstances of the case. Because carriers are generally liable to the costs of detention and removal of a passenger who is refused entry they are unlikely to accept visa requiring passengers who are not properly documented.

13. The mechanism for extending a visa requirement to Bangladeshis would be an amendment to the Immigration Rules. The change could be made and take effect at once. However, Rule changes may be prayed against and a visa requirement for Bangladeshis would certainly be controversial, giving rise to debates in both Houses.

14. On the basis of 1984 figures a visa requirement might generate 8-10,000 extra applications annually by Bangladeshis at posts abroad. Most would fall to Dhaka. Two main, but unquantifiable, factors influence the estimate of extra applications: the general growth in passenger traffic on the one hand and the deterrent effect of a visa requirement. (This happened in Sri Lanka, although the lessons there may not be directly applicable to Bangladesh.)

15. Returning residents are a special problem because of the protection which the Immigration Act 1971 affords Commonwealth citizens settled here before the Act came into force at the beginning of 1973. Such a Bangladeshi citizen cannot be obliged to obtain an entry clearance to enter as a returning resident, and thus a significant proportion of Bangladeshi returning residents might be exempt from a visa requirement. This exemption was also necessary in the case of Sri Lankans and has caused confusion, particularly for airlines, who cannot easily recognise those who are exempt. The answer to this would be to exempt all Bangladeshi returning residents from a visa requirement (and to treat Sri Lankans similarly). This would avoid the unnecessary additional work in issuing re-entry visas to those resident here who wished to travel which would otherwise fall to Passport Offices.

/ 16.

E.R.

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16. It is difficult to assess the effect of a visa requirement on the traffic of visitors from Bangladesh. About 10% of potential Bangladeshi visitors are being refused entry at the ports compared to 28% of the applications for visit entry clearances decided at Dhaka in 1984 which were refused. If all Bangladeshi visitors had to apply for visas the refusal rate might fall, but it could remain well above the normal port refusal rate. This would undoubtedly cause considerable resentment among Bangladeshis. It also has implications for the Immigration Appeals system. A formal right of appeal exists against a refusal of an entry certificate and the number of cases going to appeal could rise by 600 to 700 a year.

17. A visa requirement for Bangladeshis would transfer the initial handling of much of the problem to the High Commission in Dhaka which already has the largest immigration section of all posts abroad. However, the extra applications generated by a visa requirement would be relatively straightforward and 5-10 extra staff are estimated as sufficient to process them. The cost in staff terms might thus be £¼-£½ million annually. Increased receipts from additional entry clearance fees might yield £50-£100,000 to set against the costs.

18. On the basis of this initial analysis it would appear less expensive to control the arrival of Bangladeshi passengers from Dhaka than from Heathrow because fewer passengers would have to be interviewed in depth and the heavy investment in enforcement work would be reduced. In all we judge that a visa scheme would result in overall savings and even if it were cost neutral there would be benefits in relieving the pressure on the immigration control so as reducing delays for the majority of passengers.

Immigration & Nationality Department
Home Office
October 1985

STATEMENT

TO BE CHECKED
AGAINST DELIVERY

Following the recent exchanges in the House I will with your permission, Mr Speaker, make a statement about representations made by Rt Hon and hon Members in immigration cases.

Ministers receive large numbers of representations from Members of this House on a wide variety of individual cases. What distinguishes those made on behalf of passengers refused entry at the ports is that they have the effect of securing an immediate change in the action that would otherwise be taken by the Immigration Service under the relevant statutory provisions. The Service is by convention, though not in law, precluded from arranging the passenger's removal until the Member's representations have been received and considered. In the vast majority of cases the passenger is granted temporary admission. In a small minority of cases he may be held in detention at the port.

Home Office Ministers received representations on immigration cases about 20 times a week in 1980. Last year the average was some 70 a week. In the last few weeks there have been 200 representations a week. I must make it clear that the increase since 1980 is not the result of some dramatic change in the criteria being employed by immigration officers at the ports in operating the Immigration Rules. Nor can it be explained by an increase in passenger traffic which has increased by 25% while MPs' representations have increased five-fold taking the year as a whole.. Members are being approached and asked to put "stops" on cases more often than in the past and Members are agreeing to ask for "stops" on cases more often than in the past.

/This increase has

This increase has created real administrative problems for the staff at the ports. People are being temporarily admitted who do not qualify as visitors under the Rules and often spend a considerable time here. The diversion of staff to deal with increasing representations, and the case work involved, has meant that visitors who are fully qualified find themselves held up and inconvenienced at Heathrow.

Against that background I believe it was entirely right for my hon and learned Friend to bring the situation to the notice of the House. I would like to make it clear that my hon and learned Friend was not any any time suggesting that the law had been broken. In the letter he sent yesterday to the Rt Hon Gentleman the Member for Gorton he described the ways in which the present arrangements are being misused.

It was argued yesterday that my hon and learned Friend should have given specific examples to the House of the action taken by particular Members. He could not have done this without revealing the terms of letters which they had written to or about individual immigrants and in two cases letters written by them to third parties. He is writing today to 23 Members, whose cases are examples of the various problems we are facing, seeking their permission to make such correspondence public so that the House as a whole can be given some examples of the problems which we are facing.

/These strains,

There are obvious difficulties, for example when Members make representations on behalf of sponsors of whom they have made no enquiries and when Members arrange for a "stop" to be placed on a passenger's removal, but fail to follow up the initial telephone call with a confirmatory letter. There is also, as my hon and learned Friend said, concern that some Members are willing to take up cases from outside their constituency which the constituency Member has himself not chosen to pursue. Here, again, some restatement of the agreed conventions of the House is, I suggest, needed.

Finally, there are one or two cases in which it seems to us that a Member is deliberately facilitating the attempt to secure the temporary admission of a passenger whom he has every reason to believe would not qualify for entry under the Rules approved by this House. I am not suggesting that even where this happens hon Members have acted unlawfully. But if their actions were to be more widely copied the result could only be the weakening of our system of immigration control, based at the ports of entry. I believe our present system suits both our geography and our constitution and that we need collectively to consider how it can best continue to operate.

I ask the House to accept that we wish to make a genuine attempt to strike the right balance between the representations of hon Members and the need for an effective and efficient controlwithout the strains at present imposed on it. We are anxious to discuss these difficulties urgently with those in this House who are mainly concerned in the hope of working out a sensible answer, and in any case there will not be any changes in our procedure before I have reported to the House.

E.R.

How many cases of serious abuse

My hon and Learned Friend has made it clear, consistently, that he was referring only to a small number of cases where there appeared to be serious abuse of the present system. That remains the position. I hope that when honourable Members have considered the approach which my hon and Learned Friend is making to them that they will accept that it is in the public interest for these examples to be made public.

The system would be quicker if MP's were given detailed reasons for a refusal before they made representations.

The rt hon Gentleman, the Member for Birmingham Sparkbrook has written to me making this point, and I will be giving him a considered reply in due course. But I must underline the enormous potential resource cost of such a system. It would add new and major burdens to the control if it applied to every passenger who was initially refused.

How many representations are made by MPs?

Representations by MPs in port refusal cases have grown rapidly from about 1,000 a year in 1980, 1981 and 1982. In 1984 MPs made representations in 3,532 cases handled by the Immigration Service and up to 22 October this year the total around 5,000.*

The problem is especially acute at Terminal 3 at Heathrow and in relation to Bangladeshis where MPs made representations in 360 cases in July, August and September this year compared with 16 cases in the same period last year. This substantial increase has not slackened in October, and this is the immediate cause for our bringing the matter to the attention of the House.

* [These figures include a few cases handled by the Immigration Service which are not port refusals.]

E.R.

Why does this level of work create a problem?

This substantial growth in casework is very serious since additional resources to handle it are being drawn from the initial control at ports of entry. The longer this persists the more serious will become the impact on large numbers of other passengers. The more that representations are made, and the longer they take to deal with, the longer it is that persons refused entry are likely to stay in this country and where it is not possible to serve removal directions within two months of the date of refusal the cost of removal may fall on public funds.

Giving information to the media, not the House

Yesterday the right hon Gentleman, the Member for Bethnal Green and Stepney raised the fact that some information answering one of a number of Questions which he had put down was given by my hon and Learned Friend in a radio interview before the Question itself was answered. I can only repeat what my hon and Learned Friend said yesterday; that no discourtesy was thereby intended either to the rt hon Gentleman or to the House. The rt hon Gentleman is well aware of the decision which faces Ministers faced with a group of related questions where some information is readily available and some is not. On this occasion we took the decision that they should be answered together.

E.R.

What is the problem for immigration control?

There has been an increase this year, as last, in the number of passengers arriving. At Terminal 3 Heathrow up to August it was about 7%. at all ports for the early part of this year (up to May) there was a 15% increase in admissions (excluding EEC passengers). This level of growth reduces the capacity to cope with proportionately larger increases in the number of passengers who do not meet the requirements of the Immigration Rules. There has been an increase in the number of passengers who are refused entry for example of over 20% at Terminal 3 largely as a result of the increase in passengers from Bangladesh.

Who are these passengers?

Young, single, male Bangladeshis have been arrving in unprecedented numbers seeking entry as visitors, students, or businessmen. On examination they have been found to be inadmissable under the relevant Immigration Rules.

E.R.

What is the particular problem with Bangladeshis?

These have been increases far exceeding general trends both in the number of passengers arriving from Bangladesh and, most important, in the number who have had to be refused entry. In the first months of 1985 arrivals of Bangladeshis were 30% higher than last year and the detailed arrival figures for this summer, when available, look likely to record an even greater increase Refusals at Heathrow Terminal 3 over the summer months this year compared with last year were as follows:-

	1985	1984
July	129	22
August	237	28
September	318	22
	684	72

There is no sign of the number of refusals falling back as a further 219 were refused from 1-19 October compared with 37 in that period last year; giving totals of 903 in 1985 as against 109 in the same four months last year.

Why is this happening?

We do not yet know the reason for the unprecedented increase in the last three months in the number of young Bangladeshi males coming here and seeking admission as visitors for which they do not qualify under the Rules. There may have been some confusion about the Immigration Rules changes introduced in August, but this was rapidly clarified.

Urgent enquiries have been made through the High Commission in Dhaka to see if the reason can be discovered and any measures taken in Bangladesh to stem the flow.

E.R.

It is at present open to any person in Bangladesh who wants to be certain that he will not encounter difficulties at Heathrow to apply for an entry certificate as a visitor. Such certificates are not, however, compulsory for visitors.

Why is the situation so bad at Heathrow Terminal 3 (YN3)?

Terminal 3 (Heathrow) is where the majority of inter-continental travellers arrive. The problems caused both by the general increase in passenger traffic and the increase in passengers liable to be refusedd are, at present operational problems in handling cases are aggravated by the arrival pattern of flights. The result has been serious delays both for the small minority of passengers who have had to be held back for detailed interview and for the great majority of others.

How many passengers have been refused entry?

The most up-to-date figures are for Heathrow Terminal 3 alone where 2,629 passengers were initially refused entry in July, August and September this year compared with 1,791 in the same period last year. From 1-19 October a further 675 were refused compared with 385 last year. These figures do not identify those who were subsequently given leave to remain, or removed.

The problem is cause because people are refused when they should be admitted. Most of them go home after temporary admission.

That is a quite mistaken view of the way in which immigration control does, and should, operate. Successive Governments have placed considerable value on any system of control at ports of entry, and on the responsibility of Immigration Offices operating under the Rules approved by Parliament, to make careful decisions about admission. Some hon Gentlemen opposite may want to reject the arrangements fully sustained by their hon Friends when in Government. But we believe it is in the general public interest to have a system (including representations by M P's) which sustains a firm and fair control rather than undermines it.

E.R.

The Immigration Rules for Visitors

The Rules pinpoint the responsibility of the Immigration Officer very clearly. Paragraph 17 states

"17. A passenger seeking entry as a visitor, including one coming to stay with relatives or friends, is to be admitted if he satisfied the immigration officer that he is genuinely seeking entry for the period of the visit as stated by him and that for that period he will maintain and accommodate himself and any dependants, or will, with any dependants, be maintained and accommodated adequately by relatives or friends, without working or recourse to public funds, and can meet the cost of the return or onward journey. But in all cases leave to enter is to be refused if the immigration officer is not so satisfied, and in particular, leave to enter is to be refused where there is reason to believe that the passenger's real purpose is to take employment or that he may become a charge on public funds if admitted."

E.R.

How many of those given temporary admission abscond?

The number of absconds is recorded at the point at which the passenger is due to be removed and cannot be traced and does not therefore yet reflect any effect from the increase in refusals over the summer months. The figures from Heathrow (Terminal 3) from 1 January to 23 September this year are as follows:-

	Absconds	% of refusals
Bangladesh	42	4.6
Other nationalities	93	2.0
Total	135	2.4

For further comparison, 24 Bangladeshis absconded in July, August and September this year compared with 2 in the same period last year

How many of those refused are detained/temporarily admitted?

There has been increasing use of temporary admission rather than detention in recent years. In 1977, 2,868 passengers were granted temporary admission; the figure had risen to 8,527 in 1984. As a persentage of all passengers refused this an increase from 22% to 47%.

At Heathrow Terminal 3, in July August and September of 2629 passengers refused, 2053 were granted temporary admission i.e. 78%. 576 passengers were, during those months, in detention for some period.

What is the policy on detention?

The basic policy is to minimise detention, and every case is considered on its merits by officers of supervisory grade. Staff have to judge the wish of a passenger absconding in the light of the reasons for refusal, the amount of money a person has, and whether he has accommodation. The increase in the number of Bangladeshis not granted temporary admission in recent months does not indicate any sharp change in policy but the application of the policy I have described to a new pattern of arrivals in increasing numbers. All of those in detention are held because they do not meet the criteria for temporary admission.

E.R.

Where are passengers detained?

In the London Airports area the Immigration Service detention centres at Harmondsworth, Queens Building and Gatwick are able to accommodate those passengers who are not considered appropriate to be granted temporary admission. Where this cannot be done passengers are detained in Ashford Remand Centre and exceptionally in other prison accommodation or in police cells. In recent weeks there has been a sharp rise in the arrival rate of nationals of Bangladesh who have been refused entry, a number of whom have not been considered appropriate to be granted temporary admission.

Are the reports that the Government is contemplating a visa requirement for Bangladesh correct?

Reports of a visa requirement for Bangladeshis are speculation. Immigration control arrangements, including visa requirement, have to be given continuous re-examination in the light of changing patterns of travel and traffic. If the situation in relation to any country sharpely deteriorates and is likely to continue a visa requirement can become necessary.

I hope it will be possible to avoid reaching this position in relation to Bangladesh.

E.R.

Ministers are denying, intend to deny MPs their rights

There is, and could be, no question of Ministers trying to prevent hon Members making representations in these cases. The issue is the way in which the customary practice of stopping the removal of a passenger at the request of a Member can be balanced against a sensible and efficient operation of the Immigration Control.

What happens next?

My hon and learned Friend is writing to a number of hon Members and this will, I hope, assist in briefing out some of the areas of misuse or difficulty in the present arrangements. I am willing to look at ways in which the process might further be examined, perhaps with the help of senior backbench Members from both sides of the House [or with that of the Home Affairs Select Committee].

Home Office

NEWS RELEASE

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Telephone 01-213 3030/4050/5050
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June 26, 1985.

SELECT COMMITTEE IMMIGRATION REPORT WELCOMED BY MINISTER

Mr David Waddington, QC, MP, Minister of State at the Home Office, today (June 26, 1985) welcomed the Report on the working of the Immigration and Nationality Department of the Home Office produced by SCORRI (the Sub-Committee on Race Relations and Immigration of the Home Affairs Select Committee).

Mr Waddington said: "The Report is based on up-to-date and first hand enquiry into the Department's work by the Sub-Committee. It demonstrates our willingness to be open about our operations and the way in which officials have worked to improve performance and standards. It also shows - and indeed says so directly - that much of the criticism which has been levelled at the Immigration and Nationality Department has been misconceived, unjustified or based on outdated evidence. The Sub-Committee have taken a realistic and sensible look at the Department and have recognised the constraints under which it operates. I - and the officials concerned - share their view that we must continue to strive to eliminate bad practice and improve standards of service. It follows that we shall be studying the Sub-Committee's specific recommendations with a view to responding constructively".

FOREIGN POLITICAL ACTIVISTS IN THE UNITED KINGDOM: IMMIGRATION CONTROL

Review by Home Office and Foreign and Commonwealth Office Officials

November 1984

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FOREIGN POLITICAL ACTIVISTS IN THE UNITED KINGDOM

Introduction

1. This paper reviews the relevant aspects of the present law, policy and practice on immigration (taking account of asylum considerations) as means of handling the problems posed both for domestic and foreign policy of the activities of foreign political activists or refugee dissidents in, or trying to come to, the United Kingdom. It takes as its starting point the minutes, from the Foreign and Commonwealth Secretary to the Home Secretary, and from the latter to the former, of 13 July and 8 August respectively. (These are annexed, A and B, to this paper.) Both Secretaries of State have, in the light of incidents during 1984 involving nationals of Iran, Libya, India and Nigeria, asked officials to consider the need for further action in this area; and the Permanent Under Secretaries of State at the Home Office and the Foreign Office had already instructed Home Office and Foreign Office officials to examine the possible scope for using the instrument of immigration control to tackle the problem of dissidents who abused our hospitality by plotting, or by encouraging or taking part in disturbances.

2. This paper is in three parts. The first describes the origin and basis of the powers available, the limitations on them, and the procedures required to implement them. The second examines policy and practice as it has developed, and assesses the stage which has now been reached. These two parts deal separately with 'exclusion' ie keeping people out of this country (and including removing those who are not lawfully here); 'deportation' - the removal of those who, in law, have been given permission to be here; and refugee and asylum status . The third part explores a range of options for tightening the control. Annex E lists those countries which have

/recently

recently protested about the presence of foreign political activists in the UK in such a way as to affect, or possibly affect, our bilateral relations.

PART I

THE ORIGIN AND NATURE OF CURRENT POWERS AND PROCEDURES

The exclusion of those seeking to enter

3. The Immigration Act 1971, and the Immigration Rules made under it, (1) are generally designed strictly to limit the number of people seeking to settle or to work in this country. People who are coming for temporary purposes, such as visitors or students, have to meet a number of conditions both in order to qualify for entry and, if they wish, for a continued stay. In some cases it may be possible to use these 'routine' powers to limit visits here by foreign political activists. If, for example, there were genuine doubts about whether more than a visit was intended such a person could be refused entry on that ground alone. The person concerned would have a right of appeal either before removal (if he holds an entry clearance) or from abroad.

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(1) The Rules are not subordinate legislation but, under the Immigration Act 1971, they are subject to a procedure akin to the negative resolution procedure associated with some statutory instruments. The Rules describe the practice to be followed by the Secretary of State (in practice the Home Secretary) and immigration officers in implementing the 1971 Act. Under section 19 of the 1971 Act, an appeal against a decision which is not in accordance with the Rules must be allowed. It follows that the Secretary of State and immigration officers in taking decisions on cases covered by the Rules must follow the Rules.

4. However, the main powers on which reliance is currently placed to deal with those who are the focus of this paper are those which enable the Home Secretary to give directions personally to refuse someone entry on the ground that his exclusion is conducive to the public good. There is no appeal to an adjudicator or to the Immigration Appeals Tribunal [2] against such a decision. (These provisions are contained in section 13(5) of the Immigration Act 1971 and paragraph 85 of the Immigration Rules, HC 169.) A refusal on grounds that exclusion is conducive to the public good may also be taken by an immigration officer if it seems right to refuse leave to enter, for example, in the light of the passenger's character, conduct or associations. There is a right of appeal against such a decision by an immigration officer but this right of appeal is only exerciseable in the United Kingdom if the person concerned is the holder of a current entry clearance or work permit. If he does not have such a document the appeal can only be exercised, after removal, from abroad. An application could, however, be made to the Divisional Court for judicial review of such a decision to refuse leave to enter regardless of whether the right of appeal can be exercised in the United Kingdom or only from abroad. An application could also be made to the Divisional Court for judicial review of a refusal of entry pursuant to the Secretary of State's direction.

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(2) Refusal of an application to enter or stay generally attracts a right of appeal. At first instance the appeal is heard by an adjudicator sitting alone. He is appointed by the Home Secretary but is, in his judicial capacity, wholly independent. At the second stage, the Tribunal consists of 3 members. They are appointed by the Lord Chancellor. The appellate authority's decision can be challenged in the higher courts and cases referred to the European Court of Justice in Luxembourg or taken to the European Commission of Human Rights.

Deportation of those already in this country

5. There are related but different provisions governing the deportation from this country of persons who have already been properly admitted here. Essentially there are 3 routes to deportation which are relevant to this review:

(i) on the recommendation of a Court on conviction for an offence punishable with imprisonment;
(ii) for breach of conditions attached to a leave [3];
(iii) because the person's deportation is conducive to the public good.

Most deportations concern people who have been recommended for deportation ((i) above) or who are in breach of the conditions of their leave ((ii) above). These powers of deportation are available to deal with foreign political activists who have transgressed immigration or other laws. An appeal lies to a higher court against the recommendation or the conviction on which the recommendation is based. Deportation for breach of a condition attracts a right of appeal to an adjudicator under section 15 of the Immigration Act 1971. The extent to which deportation on conducive grounds ((iii) above) can be resorted to in the case of foreign political activists is considered further below. Deportation on this ground ordinarily attracts a right of appeal to the Immigration Appeal Tribunal.

6. The appeal procedures are, however, recognised in current legislation as not being appropriate for certain cases which are most likely to be the ones associated with the deportation of foreign

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(3) This is the term to describe a permission to be in the UK.

political activists or dissidents. Section 15(3) of the 1971 Immigration Act removes the right of appeal if the Home Secretary's decision is on the grounds that the deportation is conducive to the public good defined as being in one or more of three interests namely:

(i) national security;
(ii) the relations between the United Kingdom and any other country; and
(iii) other reasons of a political nature.

7. The Immigration Rules paragraph 150 provide that such cases are subject, however, to a non-statutory advisory procedure (4) following a commitment to Parliament by the then Home Secretary during the passage of the Immigration Act 1971. If a person is to be deported on one of the three grounds mentioned above, he is to be informed, of the reasons for the decision, (by virtue of the Immigration (Appeals) (Notices) Regulations 1972). He must also be informed, as far as possible, of the nature of the allegations against him and be given the opportunity to appear before the advisers and to make representations to them. They then give their advice to the Home Secretary who reconsiders his decision in the light of what they say.

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(4) The present advisers, who sit as a tribunal are:

The Hon Mr Justice Lloyd; Sir Patrick Nairne; and Mr David Neve (Chairman of the Immigration Appeals Tribunal). This procedure has been used only once, in the case of Agee and Hosenball.

In addition, in all cases of deportation a person can exercise a right of appeal, after the Home Secretary has signed the Deportation Order, against the country to which it is intended to deport him provided he specifies another country or territory to which he believes he would be admitted.(5) In making the decision to deport, even in cases under the 3 grounds mentioned above, as Paragraph 159 of the Rules requires, the Home Secretary is also bound to take account of a very wide range of personal factors - such as a person's strength of connection with the United Kingdom, his length of residence and any compassionate circumstances. The factors are set out in Paragraph 156 of the Immigration Rules.

The origin of the powers

8. The present powers of exclusion or deportation on conducive grounds essentially preserve provisions which had existed for aliens throughout most of this century. While the power to exclude aliens was unrestricted, express provision for the deportation of aliens as conducive to the public good was certainly present in the Aliens Orders of 1920 and 1953. However two important changes had occurred by the early 1970s which re-shaped the context in which the provisions were exercised. First, such powers were extended

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(5) Paragraph 1 of Schedule 3 to the 1971 Act provides that where a deportation order is in force against any person the Secretary of State may give directions for his removal to a country or territory specified in the directions being either:

(a) a country of which he is a national or citizen;
(b) a country or territory to which there is reason to believe that he will be admitted.

This Schedule gives effect to Section 17(i)(b) of the Immigration Act 1971, which deals with appeals against removal or objection to destination.

to Commonwealth citizens; and, second, Immigration Act powers to exclude and deport were limited by recognition of individual rights which could be tested by a system of appeals.(6) (In part the changes were prompted by controversial cases, eg Soblen, which led to concern about abuse of powers to exclude and to deport over which there was no independent control.)

9. The rationale of the present provisions is that denial of rights of appeal may be justified if:

(a) the evidence on which refusal is based cannot reasonably be made known - the security case; and/or

(b) the reasons for refusal are of such a kind that the appellate authorities cannot reasonably be expected to assess their strength; in other words that they are "reasons of State".

10. The extent of public explanation of the powers and restrictions on normal appeal rights, at the time of the passing of the 1971 Act, went little further than this. No examples were given in debates on the Immigration Bill of either security cases or of decisions "in the interests of ... the relations between the United Kingdom and any other country". Under the first security heading, the Wilson Committee (which made recommendations on an appeal system), identified those coming here for the purpose of sabotage, espionage or other activities on behalf of the intelligence services of another state, although the powers in the Act were clearly not intended to be confined only to those working on behalf of a foreign state. Under the second, foreign policy heading, the Wilson Committee had accepted that a decision, for example, to exclude the exiled opponents of a friendly government was essentially a political one which should ultimately be left to the Secretary of State's discretion and should not be justiciable. The Home Office then had particularly in mind someone

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(6) The Immigration Appeals Act 1969

who was known to be engaged in attempts to overthrow by force the government of a friendly state.

11. In the Parliamentary debates in 1969 and 1971 however some examples were given of 'political' grounds for exclusion. In 1971 the Home Secretary (Mr Maudling) cited as an example that of someone wanting to enter to make 'a speech wholly offensive to a certain section of our public'. The Labour Minister of State, Lord Stonham, had given a similar example during the passage of the Immigration Appeals Bill in 1969. Ministers of both Governments said that the existence of such powers, and restrictions on appeal rights, would not affect, and were not designed to affect, the opportunity for people to apply for political asylum. Outside of such categories Ministers pointed to the exclusion of people with criminal records - "racketeers, Mafia people and drug traffickers".

12. In sum, public explanation of the proposed use of these powers without right of appeal focused not on particular activities but on the argument that the powers should exist, without normal appeal rights, either because of the nature of the evidence or of the reasons for the decision.

Constraints on exclusion and deportation, including asylum status

13. There are a range of legal constraints on the exercise of the powers of exclusion and deportation even where those powers explicitly deny or limit a right of appeal to the independent appellate authorities. Many of these constraints are imposed by our international legal obligations and are of three kinds:

(a) our obligations under the 1951 Convention relating to the Status of Refugees, as extended by the 1967 Protocol relating to the Status of Refugees.

(b) Human rights obligations under the European Convention on Human Rights and the International Covenant on Civil and Political Rights.

/(c)

(c) our obligation under customary International Law, restated in the Friendly Relations Declaration, not to tolerate subversive terrorist or armed activities directed towards the violent overthrow of the regime of another State.

The Convention relating to the Status of Refugees

14. The British tradition of granting political asylum long pre-dates the 1951 United Nations Convention to which the United Kingdom is a party but that Convention is the present ruling instrument. Under the Convention, and its 1967 Protocol, we are obliged to grant refugee status to anyone who, applying in this country, in the words of the Convention "owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion" is outside the country of his nationality and is unable or unwilling to return to it. If he has also come from a safe third country it must also be impossible to return him there (but see paragraph 16). A wide range of factors have to be taken into account in making a judgement about any particular individual application. One of these is bound to be the nature of the relationship between the individual concerned and the regime from which he is attempting to escape. The judgement that has to be made however is primarily about that relationship as relevant to the claim of a well founded fear etc not about the nature of the regime as such or whether it is one which is to a greater or lesser degree inimical to our own principles and traditions.

15. It is relevant to note the circumstances in which foreign political activists, many of whom seek or have successfully sought asylum in this country, might be excluded from the benefit of the Convention or, if refugee status has been granted, subsequently expelled. Article 1(F) of the 1951 Convention says that its provisions should not apply to any person with respect to whom there are serious reasons for considering that:

/(a)

(a) he has committed a serious crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes;
(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
(c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

The United Kingdom has had occasion only rarely to invoke these clauses. A restrictive interpretation of them is in accordance with the internationally agreed rules for the interpretation of treaties and accords with the guidance contained in the UNHCR's handbook.(7) Whether or not a person qualifies for refugee status under the Convention depends, among other things, for example, in relation to serious non-political crimes, on the variation in definitions from one country to another on what is both serious, a crime, and most difficult of all, what constitutes 'non-political'; mitigating factors such as the existence of a person's criminal record or not; whether there is evidence that a crime has been committed or whether it is merely alleged that it has been committed, etc.

16. The key provisions of the Convention relevant to the present review are contained in Articles 2, 3, 26, 31, 32 and 33 (text set out in Annex C). Article 2 emphasises that every refugee has duties

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(7) Guidance on the considerations which may have to be applied in considering such applications and interpreting the general provisions of the Convention are set out in the "Handbook of Procedures and Criteria for Determining Refugee Status" published by the Office of the UN High Commissioner for Refugees.

to the country of refuge - in particular to conform to its Laws and Regulations as well as to public order measures. Article 26 accords rights of free movement within the territory, but subject to Regulations applicable to aliens generally. Article 3 requires the Convention to be applied without discrimination as to the race or country of origin of the refugee. These provisions would make it difficult to impose restrictions on the conduct of refugees which were discriminatory by reason of their national origin. Article 32 restricts expulsion of a refugee 'lawfully' in the territory to grounds of national security or public order, and the expulsion requires a decision reached under due process in which the refugee is given rights to submit evidence and to appeal. But whilst in general the Convention does not confer a right to admission and allows deportation based on these limited reasons of national security or public order, there are critical limits on the powers of exclusion and deportation contained in Article 33 ('Refoulment'). This Article provides that a refugee cannot be expelled or returned to a territory 'where his life or freedom would be threatened on account of his race, religion, nationality, membership of a political social group or political opinion'. The only exception to this central prohibition on return to a State constituting a threat (which may in practice be the only one willing to receive him) relates to a refugee reasonably regarded as a danger to the security of the host country or who following conviction of a particularly serious crime constitutes a danger to the community.

17. The European Convention on Human Rights not only contains limitations on arrest and detention (Article 5) and on interferences with the right to respect for family life (Article 8) (under which Agee (see part II below) challenged his deportation before the European Commission of Human Rights), it also confers, under Articles 10 and 11, the rights to freedom of expression and freedom of peaceful assembly and association. The Convention also prohibits, under Article 3, torture and other forms of ill-treatment. Commission jurisprudence shows that an individuals rights vis-a-vis the United Kingdom under Article 3 extend to his not being removed by the

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United Kingdom to a country in which he will suffer such treatment. The Convention (Article 14) requires that these rights are accorded without discrimination on any ground such as political opinion or national origin, but Article 16 provides that these provisions do not prevent Contracting Parties from imposing restrictions on the political activity of aliens. The 1966 International Covenant on Civil and Political Rights contains rights of free movement and limits on the expulsion of aliens in Articles 12 and 13. In addition, Articles 19 and 21 accord rights of freedom of expression and peaceful assembly. The rights under the Covenant are required to be given without discrimination based on political opinion or international origin, and there is no provision in the Covenant parallel to that in the European Convention preserving a general right to impose restrictions on the political activity of aliens. Discriminatory or excessive restrictions could therefore be open to challenge either before the European Commission of Human Rights or before the Human Rights Committee (established under the Covenant).

18. The General Assembly Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States (which on this reflects customary International Law as well as having a considerable status resulting from its adoption by United Nations acclamation) provides

> Also, no State shall organise, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State.

The obligation not to tolerate may be discharged either by exclusion or deportation of subversive activists or conspirators or by controlling their activities under the Criminal Law (a method outside the scope of this paper).

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EC Nationals

19. Under the Treaty of Rome and subsequent Community legislation, an EC national who is here or coming here to exercise the freedom of movement as a worker, as a self-employed person or as a provider or recipient of services (including his or her family regardless of nationality) may only be excluded on grounds of public health, public policy or public security. EC nationals not coming to exercise those rights can be dealt with under the other, normal, parts of the Immigration Rules. Setting aside the public health criterion, an exclusion on public policy grounds has to be justified on the basis that the person's likely conduct constitutes a genuine and serious threat to one of the fundamental interests of society. There is no EC jurisprudence on the meaning to be attached to public security. EC law requires the giving of reasons for an exclusion or deportation decision save where to do so would be contrary to the security of the State. In general, our own appeals arrangements appear to satisfy EC requirements and have not been challenged in this context.

Common Travel Area (CTA)

20. The common travel area comprises the United Kingdom, the Channel Islands, Isle of Man and the Republic of Ireland. Under section 1(3) of the Immigration Act 1971, persons travelling on local journeys within the area are not subject to control, and do not require leave to enter. Section 9(4) of the Act, however, excludes from this provision deportees, those excluded in the interests of national security and those previously refused leave to enter the United Kingdom. The Immigration (Control of Entry through the Republic of Ireland) Order 1972 also excludes from section 1(3) additional categories of people who enter the United Kingdom through the Republic of Ireland. The main categories specified in the Order are those who merely passed through the Republic in transit, persons requiring but not holding visas, persons who entered the Republic unlawfully and persons who are subject to directions given by the Secretary of State for their exclusion from the United Kingdom on the ground that their exclusion is conducive to the public good. Also covered are persons who entered the United Kingdom unlawfully, or remain after their limited leave has expired, and who then seek to re-enter the United Kingdom having travelled to the Republic of Ireland on a local journey.

21. A foreign national who enters the common travel area from abroad by landing in the Republic of Ireland is seen by the authorities there (the Garda) but the landing conditions imposed are not operative in the United Kingdom. If he then comes to the United Kingdom he becomes subject to a standard set of restrictions under the 1972 Order. The restrictions are a time limit of 3 months on his stay in the United Kingdom, coupled with a prohibition on taking employment (unless he is an EC national). If, however, he is a visa national, and the visa is endorsed 'short visit' the time limit is one month and there is a requirement to register with the police.(8)

22. The Irish immigration authorities receive copies of entries in the Home Office Suspect Index (see paragraph 82). The Irish Aliens Order provides for the refusal of admission of a person who "intends to travel" (whether immediately or not) to Great Britain or Northern Ireland and the officer is satisfied that the alien would not qualify for admission to Great Britain or Northern Ireland if he arrived there from a place other than the State.

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(8) Broadly speaking foreign nationals other than EC nationals are required to register with the police if they are admitted for employment for longer than three months, or for other purposes for longer than six months. The requirement does not apply to Commonwealth citizens. A person subject to the requirement needs to register with his local police force within seven days and notify them of any changes of address or residence. There is a fee of £25.

23. Although there is no control on the entry of Irish nationals to the United Kingdom (save under the provisions of the Prevention of Terrorism (Temporary Provisions) Act 1984)(9) they are liable to exclusion pursuant to the Secretary of State's personal direction. With the exception of long-term resident Irish, Irish nationals are also liable to deportation notably following a court recommendation of deportation or on conducive grounds.

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(9) This paper does not deal with this Act, which contains powers to exclude people from Great Britain, Northern Ireland or the United Kingdom as a whole if the Secretary of State is satisfied that they have been involved in terrorism connected with Northern Ireland.

Part II

The Development of Policy in Practice

Exclusion

24. Exclusion powers are used regularly to keep out intelligence agents of hostile (mostly Sovbloc) countries, on the recommendation of the Security Service. Such cases present little practical problem, partly because exclusion is effected abroad by the denial of a visa. But in the last few years there has been increasing use of exclusion powers to prohibit the entry of terrorists (other than in connection with Northern Ireland where, in the main, Prevention of Terrorism Act powers have been used) and, in the last year, particularly, a number of exclusions on other grounds.

25. Examples of terrorist exclusions are:

(a) the 2 sons of the late President Bhutto of Pakistan because of their leadership of the terrorist group Al Zulfiqar (1981);

(b) Bassam Abu Sharif, a senior member of the Popular Front for the Liberation of Palestine, both because he would encourage acts of terrorism while here, and because his presence risked violence against him (1983);

(c) Sabre Al Banna, the head of the Abu Nidal group, intending to come for medical treatment (1984);

The measures have also been used against arms dealers:

(d) Seyed Hosseini, a pro-Khomeini arms and exposives smuggler (1984);

(e) Sayed Bukhari (Pakistani), arms supplier to Qadhafi regime (1984);

/(f)

(f) Usama Khalifa, Libyan anti-Qadhafi arms dealer (1984).

26. Examples of exclusions on the grounds of the views expressed by the people concerned, and/or the risk of violence, in this country, associated with the propagation of those views - broadly political exclusions - include:

(a) Osvaldo Destefanis, the Argentinian who attempted to come here to discuss Argentine visit to the Falklands (1982);

(b) Stokely Carmichael (American), on the grounds of the offensiveness of his extreme racialist views and advocacy of violence in support of them (1984);

(c) Martin Galvin, the publicity director of Noraid, who had publicly expressed direct support of the killing of members of the security forces in Northern Ireland (1984); and

(d) Talwinder Singh Parmar, Sikh extremist, on the grounds that his presence could foment violence in inter-communal relations here (1984).

Examples of those who the Foreign and Commonwealth Secretary would prefer to be excluded but whom the Home Secretary has decided not to exclude are:

(e) Akata-Pore, and Atamtugre, two Ghanaians believed to be involved in attempted coups against the Ghanaian Government. They have applied for asylum. Efforts are being made to return them to Nigeria where they spent a short time after escaping from Ghana.

(f) Isiaku Ibrahim, a prominent opponent of the Nigerian regime who is reported to have been plotting against it. There are other Nigerians in this category whom the Foreign and Commonwealth Office would prefer to see kept out.

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27. The basis of policy against which these security, terrorist, or political/extremist cases has been decided by the Home Secretary is the threat the visit of the person concerned could pose for this country while in this country. In recent cases, notably that of the possible exclusion of Isiaku Ibrahim following the Dikko affair, the Foreign and Commonwealth Secretary has argued for exclusion where a person's presence might draw violence to himself, and others, where his activities here are hostile to a friendly government, and where our relations with that government would be severely damaged by a person's presence. The Home Secretary has said that he would not feel justified at present in excluding someone on the ground that such action would be welcome to a foreign government and would therefore improve our relations with them. Such a position would in his view undermine our long tradition of accepting in this country the opponents of foreign governments. Nevertheless, the Home Secretary would be prepared to exclude someone, otherwise qualified for admission, who there was reason to believe intended, while in this country, to plot the overthrow of a foreign government by violent means.

28. In developing the policy for taking such decisions the Home Secretary has been influenced by the need to ensure that the decisions should be capable of being effectively enforced, for example in terms of their domestic political acceptability or of being able to prevent an individual entering to pursue an asylum plea. In general terms and in the light of these considerations, it has been easier to keep out a foreign national who requires a visa rather than one who does not and safer to rely on the Home Secretary's personal certification than to risk appeal.

29. The means of exclusion depend in part on whether the material on which the decision is based is suitable for public disclosure at an appeal hearing. In almost all of the cases of exclusion cited in this report, as well as in many others, there has been sufficient sensitivity in the available information, or in the sources from which it has been obtained, to counsel against

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exclusion by an immigration officer on conducive grounds specified in the Rules that "in the light of the passenger's character, conduct or associations, it is undesirable to give him leave to enter". This power is used sparingly. The commonest circumstances are where the passenger has criminal convictions outside the scope of paragraph 83 of the Immigration Rules (under which someone convicted of an extradition crime is to be refused leave to enter); where he is known to have strong criminal associations; and where, after landing, he is found by Customs to be in possession of drugs. Specific reasons for refusal by this means have to be given, and there is a right of appeal.

30. Conducive exclusion by the Home Secretary presents fewer problems but such exclusion without having to expose reasons may be in the process of being questioned in the Courts. In a case of the recent exclusion of a Libyan, Haghegh,(10) who applied for judicial review of the decision, the Court ruling (which rejected the application for review) indicated that the Home Secretary should in future give reasons save where the exclusion was expressly stated to be on grounds of national security, which the judge defined very widely. An even more careful judgement, therefore, may have to be made in future about the grounds on which an

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(10) Haghegh was a class of case where a person is refused entry but is physically present under what is termed temporary admission. By not giving a person formal leave to land enforcement of departure is more effective. These arrangements are used to great advantage in routine visitor cases; particularly to avoid unnecessary detention. But temporary admission may not be used as a substitute for a decision to grant leave to enter or refuse it. In every case it is necessary to show that enquiries relevant to a decision are continuing.

exclusion decision is taken. If it is thought undesirable to expose reasons, the decision would have to be on national security grounds as such, or the courts would have to be persuaded that the source or nature of the information on which it is based would have to be protected for national security reasons.

31. Deportation is more difficult to effect than exclusion: people who are lawfully here have a range of domestic appeal procedures; international obligations towards them are different; and politically and practically, removal confronts bigger hurdles. Thus while deportation is a normal although controversial feature of the enforcement of immigration control in general, it has, until this year, been invoked rarely in national security, political or foreign relations cases which attract the most attention. The most notorious case, that of Philip Agee and Mark Hosenball, (until this year the only case under the present provisions) exposed fully the benefits and dangers of the extra-statutory advisory procedure, the scope for obtaining judicial and international involvement, the political pressures involved in such cases, and their length.

32. However, during this year there have been a number of examples of cases of the removal of foreign political activists already lawfully in the United Kingdom. They include:

(a) Nasser Zadeh (Iranian) a member of a violent pro-Khomeini group deported on suspicion of being concerned in the preparation of acts of terrorism;

(b) Garbani-Far (Iranian), plus two Algerians and a Moroccan, a pro-Khomeini terrorist cell (successors to Zadeh);

(c) eleven Libyans, either involved in bombings in 1983 or leading pro-Qadhafi activists in the UK, removed in the aftermath of the siege of the Libyan People's Bureau.

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In some cases action has not been taken against foreign agents.

(d) Joe Slovo, a stateless man of Lithuanian origin working with the African National Congress. The Foreign and Commonwealth Secretary asked for his UK travel document not to be renewed, but the Home Secretary was not able to agree.

33. Where removal has been effected in these cases it has reflected:-

(a) a considered judgement of the risk involved if the evidence against those concerned had to be produced in the extra-statutory advisory procedure;

(b) a judgement that as agents or activists on behalf of a regime committed to act against dissident fellow nationals abroad they would not resist being returned to their own country, would not seek asylum here, and would not wish their cases to be exposed in pursuing an extra-statutory right of appeal; and thus

(c) although those concerned were in each case fully informed of the opportunity of extra-statutory appeal, each chose to waive that 'right'.

These factors have not applied to activists opposing foreign governments in part because of the greater chance that they would be able to appeal successfully against any destination nominated for their deportation.

Asylum Status

34. Developments in the refugee/asylum field illustrate well the pressures which have prompted this review, and the delicacy of individual decisions on exclusion and deportation. The number and source of applications for asylum reflects the

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increasing instability of a number of regions of the world, particularly the Middle East and parts of Africa. The numbers have increased dramatically in recent years - individual applications rising from 1550 in 1979 to 4167 in 1982, an increase of 168%. The number dropped to 3568 in 1983 but was, at that level, significantly above the years before 1982. The number of applications granted also rose markedly from 808 (1979) to 2368 (1982), 1407 in (1983). The largest number of applications in recent years have come from Iranians. In 1983, apart from Iranians, the bulk of applications came from Ghanaians, Iraqis, Ugandans, Poles, Ethiopians and Sri Lankans. It is a measure of the shift in the focus of asylum work that in 1983 twice as many applications were received from Ghanaians as from all Eastern European nationals combined.

35. There can be severe practical problems in seeking to avoid an asylum request. For example, simply to have decided to exercise the powers to exclude someone may not prevent his arriving and making an application for asylum. Asylum may have to be granted under the Refugees Convention because it may turn out to be impossible to return someone either to the country from which he claims to be a refugee, or to a third country. This dilemma was exemplified in the case of Abdul Qayam Butt, a leading member of the Pakistan People's Party excluded on the personal certification of the Home Secretary. He had to be admitted because it was impossible to find a third country willing to accept him, and in November 1983 he was granted refugee status here.

36. It is possible, but often difficult, to distinguish between those who would really be persecuted in their own country and those who might either be prosecuted for alleged criminal offences or face political retribution on financial, legal or economic grounds. In explaining Article 1F of the Convention in the Status of Refugees, UNHCR guidance states "a refugee is a victim - or potential victim - of injustice, not a fugitive from justice". The determination as to whether refugee status is appropriate where criminal conduct is alleged should depend on a number of factors, including:

whether the likely punishment is excessive relative to the crime charged;

whether the person has a well founded fear of persecution as well as fearing prosecution; and

whether the criminal law and procedure in the country in question are in conformity with accepted human rights standards.

37. It may be worth giving in more detail an example of the most difficult of such areas, hijacking, where it is arguable whether, if it is committed in order to escape from persecution it constitutes a serious non-political crime or not. (Article 1F of the 1951 Convention is relevant - see paragraph 13.) The difficulty of laying down specific guidance in this area is illustrated in the UNHCR handbook. This notes that the international Conventions on Hijacking and Sabotage invariably give contracting States the alternative of extraditing such people or referring the case to the competent authorities in their own territory for the purpose of prosecution, which implies the right to grant asylum. It adds that while there is thus a possibility of granting asylum the gravity of the persecution of which the offender may have been in fear, and the extent to which such fear is well founded, will have to be duly considered in determining possible refugee status. It concludes by commenting that the possible exclusion from refugee status of an applicant who has committed an unlawful seizure of aircraft will have to be carefully examined in each individual case.

38. It has been decided by the Home Secretary, and reinforced by the Immigration Appeals Tribunal, that a person seeking to plot the assassination of a Head of State was not entitled to asylum (in the case of Ibrahim Ahmed Salah-el-Din, a Sudanese, where the Home Office contention that "the purpose of political asylum was not to provide a convenient haven in which people could plot to overthrow their national government" was endorsed

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(August 1983). In this case the Tribunal also proposed that the appellant be given the opportunity to proceed to an alternative destination, or to his own country. This decision is helpful in relation to our international obligations not to tolerate such dissidents.

39. In this context it is worth underlining that it is natural that the Home Office and the Foreign and Commonwealth Office may tend to hold differing views as to whether asylum should be accepted or resisted. Two recent illustrations are:

(a)

(b) Geng Chen, a Chinese political activist who came illegally into Hong Kong. He had applied for asylum in the United Kingdom and other western countries and the Foreign and Commonwealth Secretary pressed for him to come here quickly in order to remove him from Hong Kong at a very sensitive time. The Home Secretary resisted this, partly on the grounds that he had no ties with the United Kingdom, and pressed the Foreign and Commonwealth Office to try to get him into France or the USA, this was successful and he went to France.

40. Although the Home Office believes that it has effectively carried into our Immigration Rules our obligations under the 1951 Convention, until recently the view has always been taken that there are no appeal rights against refusal of asylum or refugee status per se. Nonetheless the great majority of applicants for refugee status have already been admitted to the United Kingdom and they can appeal against a refusal to extend their stay or a decision to deport them; and as such can have the facts of their asylum application examined by the appellate authorities. Moreover, a number of applicants who fail the test

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are allowed to remain temporarily and exceptionally either as individuals or as a member of a group. This conclusion has been reached in relation to national groups only where Home Office Ministers are persuaded that members of the group would not satisfy the strict test of refugee status under the Convention but that it would nonetheless be unreasonable in all circumstances to return them for the time being to the country to which they have expressed a fear of return. Examples of groups currently enjoying exceptional treatment here are Afghans, Lebanese, Iranians, Poles and Ugandans.

41. The lack of appeal rights against refusal of asylum as such is being challenged. In the case of Ahmed Shafiq, an Afghan, the Immigration Appeal Tribunal ruled that where a person is refused asylum but otherwise, and exceptionally, allowed to stay here, he has a right of appeal against the refusal of asylum. This could restrict our options by making it more difficult to avoid damaging our relations with another country by avoiding the express grant of asylum. In the same case the Tribunal found that the appellant had a right of appeal against the duration of the leave actually given to him as well as against the refusal of asylum.

42. Traditionally a distinction has been made between the grant of asylum and that of refugee status: the former a discretionary grant by the state of its protection, the latter the grant of status in terms of the test and obligations of the U.N. Convention. In practice the distinction was found by the Home Office in recent years to be difficult to sustain, and in July this year it was to all practical purposes, abolished. (The terms refugee and asylum status are therefore used interchangeably in this paper.) This announced change is relevant insofar as third countries sometimes differ in their political reaction to our granting asylum or refugee status depending on which label they prefer to see applied for their own domestic consumption.

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Other Administrative Measures

43. This paper has so far dealt with legislative powers and the procedures and practices flowing from this. But there have been occasions when it has seemed appropriate to use administrative devices. Sometimes for example personal representations have been made to those seeking to stay in this country that this will be allowed on the basis that they do not engage in political activities against the Government of their country of origin. The former Sultan of Oman was told he could stay in UK. provided he kept out of politics. The same was done informally with General Gowon. In both cases, though the warning had no legal force, it seems to have helped in keeping those concerned out of the political arena. Foreign Governments are often concerned that we should not give a home to their declared opponents, but their arguments have much less force, and do less damage to our relations, if those opponents, once they are in Britain, disappear from public view. Eg President Thieu. Existing instructions to posts abroad in dealing with requests for asylum include provision in special cases for verbal warnings, after a visa has been given, that the person concerned should not engage while in the United Kingdom in politically embarrassing activities.

44. The most recent example of a measure not fully backed by legal sanction was the Home Secretary's decision, in the wake of the shooting of WPC Fletcher outside the Libyan Embassy, that Libyans applying for visas to the UK should be required to sign a declaration of non-violence before they were given their visas. Relations had already been broken with Libya. Libyans who wanted visas were compelled to travel abroad to apply for them and only a small number were granted. There were no protests about the declaration of non-violence in the circumstances and this measure was politically popular in the UK.

Consultation between Departments

45. As the number of problems presented by political activists or refugee dissidents has grown so too has the process of consultatio

between the Home Office and the Foreign and Commonwealth Office. Neither Department pretends that this always has been a smooth process, because it will reflect not only differing views about the approach to individual cases and competing pressures of domestic and foreign relations interests, but also because while the Foreign and Commonwealth Secretary has a strong interest in the outcome and consequence of particular decisions, those decisions are for the Home Secretary to make. But we know of no recent cases of major importance which have not been considered fully at appropriate level in each Department.

46. At official level there is a great deal of contact, particularly on individual asylum applications: the Home Office refer cases to the Foreign and Commonwealth Office for advice on the situation in the applicant's own country and on particular aspects of his claim which the relevant geographical department or post abroad may be able to comment on. The Home Office also refer cases to the FCO where the grant of asylum may be politically embarrassing or have implications for our relations with the country concerned.

47. In the context of correspondence last year between the two Permanent Under Secretaries of State, mainly prompted by serious difficulties between the two Departments about some Pakistani asylum cases, the arrangements for consultation and liaison were reviewed. It was agreed that the Home Office would consult the FCO at an early stage on cases in which the FCO might have an interest, although the volume of work prevented consultation on every case; that the FCO should be kept informed, if possible, as cases developed; and that any differences of view should be resolved as quickly as possible. At a meeting between officials the following changes were agreed and subsequently put into operation:

(i) updating of the relevant chapter of Diplomatic Service Procedure to include guidance to posts on the manner in which enquiries regarding asylum cases should be pursued;

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(ii) the FCO to copy reports on the internal situation in relevant countries to the Home Office as a matter of course;

(iii) the Home Office to provide FCO departments with regular statistical information on applications;

(iv) the Home Office to co-ordinate with the FCO on the timing of sensitive decisions;

(v) the FCO to keep in mind the need for the Home Office to be able to announce decisions as soon as possible and to avoid asking them to be deferred unnecessarily; and

(vi) the Home Office to inform the FCO automatically of their decision in cases where FCO advice had been sought.

At official level the FCO has now suggested that the HO in addition inform the FCO of all asylum requests, so that the FCO may draw sensitive applications to their attention and request more formal consultation on them.

Part III

POSSIBLE NEW MEASURES

48. The objective of any new measures would be better to prevent foreign nationals here, or seeking to come here, from abusing British hospitality by engaging in unacceptable activities. The types of activity could include:

(a) Taking part in violent political activities in the UK.

(b) Planning violence in this country or overseas.

(c) Advocating violence in this country or overseas.

(d) Participating in public political activities against a Government with which HMG has friendly relations, which would be likely to cause severe damage to those relations and/or risk retaliatory action at home or abroad.

49. Against the background of the present powers and procedures (Part I) and developments in policy in practice (Part II) officials have examined a range of possible new measures under the following headings:

(i) New 'permament legislative restrictions on entry or stay related to a person's intended or actual activities in this country;

(ii) Extended criteria, within the present powers, for exclusion or deportation by the Home Secretary;

(iii) Special or temporary new procedures tightening the control, not necessarily requiring legislation, such as written undertakings not to engage in unacceptable activities;

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(iv) Improvements in intelligence and enforcement.

50. Each of these options needs to be assessed in terms of

(a) its likely effectiveness;

(b) our domestic and international legal obligations and the risk of legal challenge;

(c) domestic political considerations;

(d) foreign policy interests;

(e) likely cost, including diversion of resources;

(f) speed of introduction.

New Restrictions on Entry or Stay

51. The restrictions that can be imposed through current immigration legislation, either at the time of entry or later, on people who are or have been admitted to the UK on a temporary basis (other than those who enjoy the freedom of movement under the Treaty of Rome) are at present confined to conditions governing employment or occupation, or requirements to register with the Police. The tests which a person has to satisfy before leave is granted, either when applying for an entry clearance or on arrival at a UK port, are wider ranging under existing legislation than those conditions which may be imposed at the time leave is granted. A visitor, for example, must to gain entry satisfy the requirements that he or she

i) is seeking entry for the period of the visit only;

ii) will maintain and accommodate himself and any dependants, or will be so maintained by relatives or friends, without working or recourse to public funds;

/iii)

iii) can meet the cost of inward journey and return.

For a student the tests are similar with the obvious addition of study requirements at a proper institution.

52. New tests, designed to discourage the sort of behaviour mentioned in paragraph 48 (a) to (d) above, would require change in the Immigration Rules, which would have to be laid before Parliament.

53. The advantage of such a change in the Rules would be that some dissident visitors might be discouraged from applying or coming to Britain at all. It would also make explicit in immigration law a determination not to see people abuse our hospitality.

54. The disadvantages are that entry clearance or Immigration Officers would have to satisfy themselves that the applicant would not behave in the way described, eg take part in political violence. This would be difficult. A person refused on such grounds would have a right of appeal, normally from abroad. The powers of the officer concerned would inevitably be based on arguments about a person's character, conduct or associations, but paragraph 85(b) of the Rules already empowers Immigration Officers to exclude someone on these grounds. If the reasons cannot be given because of the sensitivity of the information, this would point towards the use of the Home Secretary's own existing exclusion powers in paragraph 85(a). Thus changes to the Rules governing entry would be unlikely to add much to existing powers, though they might contribute to a climate in which political activists were more discouraged from coming here.

55. Different considerations apply if a series of conditions were imposed on an individual's permission to be in the UK. New conditions to be imposed on a leave granted would require

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primary legislation, ie amendments to the Immigration Act 1971, and consequential changes to the Rules. Breach of such conditions would be a criminal offence.

56. The argument in favour of such an amendment if the appropriate formula could be found, would be that this measure more than any change in entry tests, could be a useful additional power in the Home Secretary's hands and of clear declaratory and perhaps deterrent value.

57. The arguments against such a change include the view that Home Office Ministers have so far taken that they would not now wish to initiate new immigration legislation, a debate on which could not easily be limited and which would give rise to controversy beyond the particular change desired. Such a change would be bound to arouse considerable public and Parliamentary opposition partly on the ground that it would not be right to seek to curtail a foreigner's political activity here beyond the existing restraints of the criminal law. Satisfaction expressed by foreign Governments would be of only limited help. Following the recent Libyan incident in St James's Square, there is greater public recognition that we do not want Britain to be used as a battle ground for foreigners of whatever persuasion to settle their own scores, but there is little public sympathy for most of the foreign Governments involved.

58. Any attempt by legislation to add to the conditions imposed as part of an individual's right to be in the UK would involve more rights of appeal, and opportunities for delay, than existing tests on entry. Appeals would lie at the point where the individual's leave was curtailed, or the extension of his stay refused, when action was taken to commence deportation proceedings, and against destination. It would be necessary to ensure that any conditions were justifiable for 'public safety' or 'prevention of disorder or crime' under the European Convention on Human Rights. Planning or advocating violence

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might constitute such a justification though it is difficult to see how mere public participation in political activities (paragraph 48 (d) above) in its peaceful manifestation could be covered. Any restrictions that fell short of involvement with violence would also be likely to offend the International Covenant on Political and Civil Rights. Both instruments provide that these rights might be enjoyed without discrimination on any grounds, including nationality, which might make it difficult, for example, to exclude individuals like Mr Dikko, assuming there is no evidence of plotting violence on his part, and to allow in to Britain representatives of the Afghan Resistance Movement. Even without such difficulties, reasons of natural justice and consistency tell in favour of measures being applied in a non-discriminatory way, though there may be political reason for distinguishing cases.

Preliminary Conclusion

59. The main argument against changes in legislation and to a lesser extent in the Rules, is that these would not greatly add to existing powers, but would precipitate a major public debate with an uncertain conclusion. If a condition based on violence/abuse of hospitality could be formulated so as to minimise the risk of legal and political challenge it would be of clear declaratory and some deterrent value. Ministers may wish to instruct officials to examine the possibilities in more detail.

Extended Criteria for Conducive Powers

60. This review has shown that the basic scope of conducive powers of exclusion or deportation may be wide enough to meet the needs of removing or excluding those individuals whose activities in this country would be demonstrably damaging to the UK's domestic or foreign interests. Insofar as they are limited they are constrained by the difficulty of enforcement and the restraints of law and international obligation. For these general reasons there has so far been reluctance on the part of

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the Home Office to go beyond the criteria for exclusion and deportation set out in paragraph 27 of Part II, ie plotting the overthrow of a foreign Government by violence, or in other words to go beyond the activities in (a) of paragraph 48 above, and (b) insofar as the planning of violence overseas involves plotting the overthrow of a foreign Government.

61. The question posed here is whether the Home Secretary can, and should use his powers more readily than in the past on general political grounds and particularly in the interests of our relations with foreign States.

62. To raise this issue is not to question the primacy of criteria which emphasise domestic considerations, but to argue that the political problems presented by foreign policy issues may be more pressing than they were, and that the defence and commercial interests of this country appear more interlocked in the 1980s with changing and vulnerable regimes than they were two decades ago. There may here be an inherent tension between the appropriate grounds for immigration control and expedient decisions on foreign policy grounds. Immigration control (and the grant of asylum), involving the associated rights and freedoms and the test of decisions through the Courts, traditionally requires evenhandedness and consistency in decisions on individual cases. But many of the problems presented by foreign political activists and refugee dissidents in this country, especially to our relations abroad, stem from the lack of consistent leadership, policy, and political and social stability in a range of Middle-Eastern, African and other countries. It is particularly difficult when many of these countries are Commonwealth members with whom we have a tradition of especially close and friendly relations. Our trade with Third World countries is important to our economy and we are more vulnerable than in the past to hostile action by them when they believe we are helping their enemies. UK nationals overseas can be at risk as events in Nigeria and Libya have shown. In the present international climate there is also a greater danger the States who feel threatened by

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the activities of their nationals in the UK may try to take violent action against them thereby creating a threat to law and order in this country.

63. Extended criteria could cover the remaining categories in paragraph 48 above, ie planning violence overseas short of the overthrow of a foreign Government advocating violence in this country or overseas, and participating in political activities against a friendly Government so as to cause severe damage to our relations with that Government and risk retaliatory action. Any test for a wider use of the Home Secretary's powers would be difficult to defend politically at home unless it were much stricter than the mere maintenance of good relations. At the very least severe damage to British interests would have to be involved and it might be that some element of violence would be necessary in order to avoid offending against international obligations. It might be necessary to link the proposed criteria in 48(d) to violence, national security, etc by concluding that the Home Secretary would use conducive powers where not only severe damage would be caused to our relations with another State, but in addition the activities in question would be likely to precipitate violence in the UK, or violence against British subjects in the country concerned.

64. One of the arguments for interpreting the criteria for the use of the Home Secretary's powers in this extended way would be that no legislation would be required. There would be a presumption in favour of certification by the Home Secretary, thus avoiding appeal rights. Reasons might not have to be given on grounds of national security or protection of sources for national security reasons (though one could not be sure of this in respect of the latter). Even if an appeal were to be lost the foreign Government concerned would be gratified that we had at least tried to tackle the problem.

65. Action taken against foreigners who were using Britain as a base in which to carry out their own political purposes,

whether by violence or in such a way as to precipitate violence would, although criticised by certain sections of the community be likely to receive general public support. It would also be consistent with the General Assembly Declaration on Friendly Relations referred to in Part I paragraph 19 and be defensible in relation to our other international obligations.

66. There are a number of arguments against an extension of this sort. The Home Secretary of the day would still need to defend his decisions in Parliament and before a domestic audience, to which opponents of the foreign Government concerned would have ready access. Account would have to be taken of the extent to which decisions based on extended criteria might be successfully contested in the British Courts. Deportation on such grounds could be especially difficult. For example, a person deported on these grounds would at least have an appeal on the destination proposed for him, and allowance would have to be made under existing Rules for the strength of his ties with this country. Many foreign dissidents now living in the UK have already established such ties here, eg the Sikh leader Dr Chauhan who has been living in the UK for 13 years and the UK citizen, Mr Abbasi of the Al Zulfiqar Movement, who owns a shop in Doncaster and was recently reported to have provided the NUM's links with Col Qadhafi. We would also have to recognise that some people excluded on these grounds could still be entitled on arrival to have an asylum application considered; and that if decisions to deport or exclude were turned down on appeal this could undermine the value of extended criteria.

Preliminary Conclusion

67. There could be advantages in an extension of criteria for the Home Secretary's conducive powers provided these were linked to violence and/or national security. This would mean considering cases to exclude or deport which covered advocacy of violence as well as plotting violence, and public political activities against a friendly Government of such a nature as to make violence likely affecting British nationals at home or abroad. Such cases would

need, as now, to be examined on their merits by Ministers, and, perhaps, on occasions, by the law officers.

Other Special or Temporary Procedures

68. There are a number of other measures which might be considered, not all of which would necessarily require changes in legislation.

69. The principle of the concept of the Declaration of Non-Violence instituted for Libyans mentioned in Part II (paragraph 44) could be extended. Libyans applying for visas or extensions of stay are now asked to sign a Declaration of Non-Violence in which they accept that if they participate for political reasons in criminal violence the Home Secretary may curtail their stay or consider deporting them. Although there are no legal powers to require applicants to sign this declaration as a condition of entry, we know of no cases of any refusal.

70. A somewhat extended and modified version of the text of the Libyan Declaration is proposed for consideration in the following terms:

"DECLARATION OF NON-VIOLENCE"

"I ..... being ..... National declare that I fully understand that if during my proposed stay in the United Kingdom I commit a criminal offence whether for political or any other motives I will be liable to prosecution and the Secretary of State may curtail my stay or deport me. I further undertake that throughout the said stay I will refrain from the advocacy of violence and from conspiracy to effect violence whether in the United Kingdom or abroad. I fully understand that if I break this undertaking the Secretary of State may curtail my stay or deport me."

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The original declaration was instituted as a selective measure applied to nationals from a country with which we had broken off diplomatic relations. It may still be best to see it in that way, applying it selectively to nationals of those countries most likely to bring their political violence into the UK. The declaration could also be applied generally. This would remove legal difficulties and the possibility of political criticism, on the grounds that it was discriminatory against persons of a particular national origin. It would be possible to ask for such a declaration to be signed:

i) by all entrants other than those with a right of abode in the UK, and other Community nationals - perhaps incorporated in the landing card;

ii) by all applicants for visas or entry certificates; and/or

iii) as part of the procedure for applying for refugee status, asylum or exceptional leave to stay in the UK (the wording would need to be somewhat different for this purpose and in order to avoid conflict with international obligations it would be safer to apply it to applicants from all countries).

71. The arguments for such a measure are that it could facilitate the exercise of the Home Secretary's powers to deport on the grounds that the person's presence was not conducive to the public good by making it difficult to argue that the person had not understood the possible consequences of his politically motivated activities. It would be presentationally helpful in regard to Governments who criticise us for harbouring their active opponents. It could have a deterrent effect in discouraging some potential trouble-makers from coming here, and restrain others from unacceptable activities. It would also pose no difficulties in terms of the existing legal constraints.

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72. The main argument against making wide use of such a declaration is that it might be systematically challenged once it became known that it could not be legally imposed as a condition of entry or stay since refusal to sign the declaration does not in itself justify refusal of a visa or of a leave. But if this occurred, and Ministers wished to continue with the declaration, it would fall to be considered as a possible amendment to the Rules so that the signing of the Declaration could be required before a visa or entry certificate was issued or leave to land given. The principles enshrined in the Declaration, worded as suggested, would be likely to command public support.

73. It would also be an administratively cumbersome device (as experience with the Libyan declaration has shown). If applied more generally, it would be likely to result in delays, particularly at the ports, and in additional costs incurred transmitting and registering the signed declarations.

74. Officials have considered two possible selective measures, namely the imposition of travel restrictions and additional police registration requirements, on certain nationalities while inside the UK so as better to control or monitor their movement. We do not recommend them. At the moment certain diplomats from Eastern Europe have travel restrictions imposed on them as a reciprocal administrative response to controls on British diplomats in their countries. To extend such a measure, however, would have a number of major disadvantages. An extension beyond the present limited arrangements would be very burdensome in resource terms on the Police and the Security Service if it were to be enforced; it would be very difficult to enforce; it might require primary legislation; it might be challenged on human rights grounds; and it would probably lead to reciprocal counter measures against British citizens abroad.

75. Additional Police registration requirements for certain foreign nationals, could involve regular reporting to the Police

/and

and even possibly requiring people to live at a particular address. Such changes would require legislation; they would be highly controversial and would be challenged on human rights grounds; and they would be inefficient and costly. They would also run counter to the current thrust of Home Office policy which is to try to eliminate the present Police registration requirement as an inefficient method of after-entry immigration control.

76. One selective measure which does not suffer such disadvantages would be the use of unofficial warnings to certain individuals not to engage in political activity while in the UK. Such measures seem to have been effective in the past, as in the case of the former Sultan of Oman. Warnings could be issued by senior Consular Officers in posts abroad, or by officials (as appropriate to the case) at home. These warnings would have no legal force, but they could have a deterrent effect and encourage visitors, or those given asylum here, to keep their political activities to a mimimum. Most of them would not be aware that such warnings had no legal force and it might give them the excuse they needed to resist pressures to become involved in political activities directed against friendly Governments. For example a word in the ear of the Tamil human rights lawyer, Kanthasamy (see paragraph 39 of Part II above) might persuade him not to use the UK as a base for attacking the Sri Lankan Government. Such measures would, however, have to be used selectively and only as a result of decisions by Ministers.

77. Control over undesirable visitors could also be extended if the Government were to impose an entry clearance system for all or some non-visa countries, including Commonwealth countries where, at the moment, entry certificates for visits are not mandatory. Countries with which we do not at the moment enjoy reciprocity of visas include Nigeria, India and the USA. Extending the visa/entry certificate system would reduce the problem of exclusion at the ports and provide a more comprehensive early warning system. It would require amendment to the

/Immigration

Immigration Rules, however, and could be criticised as an unfriendly departure in our relations with some Commonwealth countries. In the case of the USA it would destroy our arguments for achieving better entry for UK citizens to the USA Only a limited number of countries would be affected, so that such a policy would not resolve problems in a general sense. It would also be extremely expensive to implement, involving considerable numbers of additional staff. The FCO estimates that to introduce a visa regime for India and Nigeria would cost an additional £550,000 a year. We do not recommend this change at present, but it represents a possible option for the future.

78. Foreign students, as a group, have tended to cause trouble because of the political factions among foreign national groupings. One way to bring pressure to bear in controlling behaviour might be to tighten substantially the process of examining student applications for extension. At the moment this is done mostly by paper checks, with further inquiries instituted where there is doubt about a person's financial support, or proper pursuit of an approved course of study. Control would be enhanced if, perhaps for a range of target countries, each foreign student were interviewed by the immigration authorities annually. We currently process 65-70,000 applications for student extensions per year, a large part falling between the months of September and November. It is estimated that if all student applications from Libya, Iran, Iraq, and Nigeria were subject to interview, this would require about 20 staff if existing levels of service on and after entry are to be maintained. In imposing any additional measures on students, however, the Government will wish to bear in mind the hostility that the full cost fee system has already created over policy towards overseas students, particularly in the Commonwealth. Any additional measures would have to be implemented with great sensitivity. Applying additional controls selectively would be regarded as unfairly discriminatory by the countries affected. Most of the additional interviewing work would be nugatory as the great majority of students are bona fide; and there is no guarantee that additional controls would be effective as a dissident student may comply with the normal student requirements. We do not

/recommend

recommend such control at present but, like new visa controls, they represent a possible option for the future.

Preliminary Conclusions

79. A number of additional measures might be adopted which would have the effect of tightening control of dissident visitors. The idea of extending the declaration of non-violence to be signed either by all applicants for asylum or extended leave, or by all visitors (perhaps incorporated in the landing card), is worth serious consideration. It would have deterrent force and might make it easier for the Home Secretary to exercise conducive powers in relation to troublesome visitors while it remained non-obligatory. We would not have to change the Immigration Rules. In selected cases unofficial warnings that those granted asylum or entry should not engage in political activities hostile to friendly Governments might be a useful adjunct to Immigration Act powers. Control of foreign students might be tightened up provided that there was no suggestion that we were discouraging genuine students. The possibility of extending entry clearance or visa requirements for a further range of countries, especially where we do not enjoy reciprocity, might be investigated, but it would be costly (and require legislation). Extension of travel restriction requirements or Police registration requirements would be impractical and costly.

Intelligence and Enforcement

80. Measures available to take action against foreign political activists depend for their effectiveness on timely and accurate information on which action can be based, and an efficient operating capacity to implement them. Different considerations apply for dealing with those here, and those seeking to come here.

81. The capacity to take action against individual foreign dissidents here already exists either through the Police and the Courts (in respect of criminal offences); through the Security Service and the Police (in respect of those who might be candidates,

/because

because of their activities, for conducive deportation); and through the Immigration and Nationality Department of the Home Office for those who fail to observe their conditions of stay. Increasing existing coverage, or the policing of new measures or conditions, would require either additional resources, or the diversion of resources from other areas of enforcement activity. If new action was confined however to a small number of important cases, the cost would be likely to be small.

82. The main concern of immigration control enforcement is the identification of known foreign political activists or refugee dissidents with a view to their exclusion if that has been decided, or to preventing their re-entry if they have been deported. One limited mechanism of enhancing this capability - new visa controls - has already been discussed.

83. At present the names of individuals whom it is desirable to identify on an attempt to enter this country are contained in what is known as the Suspect Index. This is the focal point of immigration enforcement, and is also a means of intelligence collection about the movements of individuals. It is held principally in manual book form, which contains, at present, some 8,000 to 9,000 names and, as a supplement, on a back-up computer, 6,000 names. During 1983 the composition of new entries to the index issued in National Suspect Circulars, ie other than shorter term and local entries, was as follows

(a)	those deported for serious criminal offences or wanted alleged criminals	15%
(b)	drug offenders	22%
(c)	immigration abuse	5%
(d)	voluntary repatriations	11%
(e)	security/political cases	47%

/Decisions

Decisions by the Home Secretary personally that exclusion is conducive to the public good represent only a small proportion of entries; there have been 14 such decisions so far this year.

84. In the short term, the scope for enlarging the size of the index book is limited. Only a small increase could be contemplated if its effectiveness is to be maintained and unacceptable delays in passenger clearance avoided. Computerisation would make possible a significant increase in the size of the index but a number of practical problems need to be resolved beforehand. These issues are described in Annex D to this paper, prepared by the Home Office, which proposes the following steps for consideration:

(a) In the short term: a modest increase in the number of entries in the index book of up to about 1,000 entries. This could include dissidents specified by the Foreign and Commonwealth Office as well as terrorists of interest to the Security Services (even though there might be little evidence that they are likely to come here);

(b) In the medium term (6-12 months): Computerisation of the central index in the Home Office's Immigration and Nationality Department in Croydon to permit easier maintenance and review;

(c) In the longer term: Full computerisation with direct access to computerised indices held locally at ports provided the operational and technical problems can be overcome, and costs can be met.

85. Despite the possibility of future computerisation, the value of entries under any system turns on their being sufficiently identifiable to be of operational value, and indicating against them the clear action to be taken when a person is identified. In dealing with foreign political activists this means

/(a)

(a) identifying in advance, as far as possible, those whom it would be desirable to keep out;

(b) seeking, if necessary, the approval of the Home Secretary to certification, and settling the grounds on which it is justified; and

(c) entering, and reviewing regularly, names in the Suspect Index and the action to be taken.

The organisational arrangements for achieving improvement will be re-examined by the Home Office, and the Foreign and Commonwealth Office will be kept informed.

Preliminary Conclusions

86. Intelligence collection about dissident visitors and means of enforcement of decisions in relation to them are crucial. The size and targetting of frontier control through the Suspect Index could probably be improved. Officials believe there is scope, prior to computerisation (if that is feasible in practice) to enlarge the number of entries, and invite Ministers to endorse further interdepartmental work on better methods of operating the Index.

Entry through Ireland

87. As described in Part I, the common travel area provides for freedom of movement within the area, with controls on entry from outside it. These arrangements work reasonably well to deter large scale evasion of the UK control, but may not be so effective against individuals. The Irish authorities are provided with copies of entries, amendments, and deletions for the Suspect Index (without full case history) and have power to refuse entry to a person who intends to travel to the United Kingdom and who would not qualify for entry here. (If the Irish authorities identified a person whom our Immigration Service had instructions to refuse, they could be expected to refuse him entry to the Republic unless his intention was clearly only to visit the Republic.)

/88.

88. Control on the entry of individuals through the Republic is less effective than the control at UK ports. The present procedures for notifying amendments to the Suspect Index to the Irish authorities result in delays of up to six weeks before they receive them. A fortnightly list is prepared and specially printed on gummed paper to facilitate amendment of the Index and is transmitted to Dublin by diplomatic bag. It is then for the Ministry of Justice in Dublin to despatch the copies promptly to the ports to ensure amendments are made; and, most importantly to check the name of each arriving passenger against the Index. In the Republic the immigration control is operated by the Garda - there is no specialised immigration service - and anecdotal evidence suggests that checks are not made as thoroughly as at UK ports.

Preliminary Conclusion

89. For the purposes of this paper it has been assumed that abandoning the common travel area and establishing immigration controls on the border between the Republic and Northern Ireland is ruled out on political, geographical and resource grounds. If it is considered desirable to improve the control on entry through Ireland the first step is to improve the procedures for transmitting amendments to the Suspect Index to the Irish authorities. Proposals on this are being considered by the Home Office. There are obvious political sensitivities but it is for consideration that we should then open discussion with the Irish Ministry of Justice to see what might be done jointly to tighten the control.

Summary of Conclusions

90. The Home Office and the Foreign and Commonwealth Office are bound to approach immigration control through different perspectives. The Home Office, as the responsible Department, is concerned to establish a consistent and non-discriminatory practice in enforcing existing legislation which while preserving traditional rights of and international obligation to asylum,

/enables

enables action to be taken against undesirables coming here or remaining here if their behaviour justifies deportation. The FCO has a strong interest in the way the control is operated, is responsible for its operation abroad, and is particularly concerned that the UK should not be seen to become a base for hostile political activities against Governments with which the UK has important political or commercial interests, and where British subjects abroad may be at risk.

91. In the light of recent trends in terrorism and violent political activity, marked most clearly in the Libyan and Dikko affairs, both Departments of State are concerned that there should be a firm control on the activities of foreign political dissidents who abuse British hospitality by using the UK as a base or arena for their own violent quarrels.

92. The questions are exactly where to draw the line and what instruments are available to the Home Secretary and enforcement authorities which will deter, or enable him to exclude or deport trouble-makers in such a way that his decisions are consistent and defensible. The events of 1984 have concerned undesirables of two very different types: the political terrorist acting with the support, or on the orders, of his own Government, and the 'refugee dissident' who is at odds with his own Government and may use or wish to use, this country as a base from which to attack it. The first category can more easily be handled in immigration terms because the existing powers are apt for excluding and deporting such people, and asylum considerations and removal difficulties are unlikely to arise.

93. This review has, for the first time jointly attempted to assemble, explain, and assess the relevant constraints and options for policy in this field. As a result it suggests that Ministers might in the first instance consider a range of measures short of new legislation, in particular:

/i)

i) Asking the Home Secretary to use his conducive powers more widely to cover visitors who advocate violence against foreign Governments or whose hostile activities against such Governments risk precipitating violence at home or abroad.

ii) Wider use of a standard form of declaration of non-violence.

iii) Selective use of unofficial warnings to specific individuals reinforcing the requirement that they should not use the UK as a base for political acitivity.

iv) Improvements in intelligence gathering and systems of enforcement, including entry through Ireland.

94. It also recommends that further interdepartmental work should be done to clarify the scope and value of prospective changes in the Immigration Act 1971, and the Immigration Rules, to impose new tests or conditions in the abuse of hospitality. It has pointed to new visa controls or tighter scrutiny of student applications as costly, but conceivable, future contingent measures.

ANNEX A

FCS/84/198

HOME SECRETARY

Activities of Foreign Political Activists in the United Kingdom

1. In my minute to you dated 21 December 1983 (FCS/83/275), I endorsed the request made earlier by Malcolm Rifkind for interdepartmental discussions to review the limitations of existing legislation on terrorism and the possible requirements for further powers. Officials subsequently met on 6 March and it was agreed that the Home Office would draft a paper on the subject.

2. Recent events convince me that this is a subject which should be pursued very urgently. The Dikko affair, the recent activities of Sikh activists and various incidents involving Iranian and Libyan dissidents show clearly how the behaviour of foreign political activists present in this country can lead to serious acts of lawlessness here and to major risks to substantial British interests abroad including danger to British citizens living overseas. Cases of this kind underline the need to consider what scope there is for imposing stricter conditions on the admission of members of exile groups and for expelling them, after due warning, if the conditions are broken. We should also carry further the examination of other possibilities, including that of prosecution (under new legislation if necessary) of those known to be plotting the violent overthrow of foreign governments. I believe we should also consider whether there is a need for more powers of control over demonstrations near diplomatic missions in London, particularly if these are likely to lead to violence.

3. I should be grateful for your views.

4. I am sending copies of this minute to the Prime Minister, the Lord President, the Chancellor of the Exchequer, the Secretary of State for Trade and Industry, the Secretary of State for Transport and Sir Robert Armstrong.

GEOFFREY HOWE

Foreign and Commonwealth Office

13 July, 1984

ANNEX B

14 AUG 1984

SECRETARY OF STATE FOR FOREIGN & COMMONWEALTH AFFAIRS

ACTIVITIES OF FOREIGN POLITICAL ACTIVISTS IN THE UNITED KINGDOM

The incidents involving foreign nationals from Iran, Libya, India and Nigeria have shown the need for further action on both the international and domestic fronts, and our officials have been pursuing jointly various initiatives with other countries and internally to curb the effects of terrorism. The actions we took against the Libyans were, I believe, widely welcomed. Our Permanent Secretaries met on 20 July to follow up the points which you raised in paragraph 2 of your minute. They agreed in the first instance a review between our Departments of relevant aspects of the present law, policy and practice on immigration (taking account of asylum considerations) and on extradition. I shall expect reports to be submitted to our Permanent Secretaries by the end of next month. We shall bring into these consultations the Scottish and Northern Ireland Offices, as Sir Robert Armstrong has suggested, where their responsibilities are affected.

I am sending copies of this minute to the Prime Minister, the Lord President, the Chancellor of the Exchquer, the Secretary of State for Trade and Industry, the Secretary of State for Transport and Sir Robert Armstrong.

L.B.

8 August 1984

ANNEX C

EXTRACTS FROM THE 1957 CONVENTION RELATING TO THE STATUS OF REFUGEES

Article 2

General obligations

Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

Article 3

Non-discrimination

The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.

Article 26

Freedom of movement

Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.

Article 31

Refugees unlawfully in the country of refuge

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

Article 32

Expulsion

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.

2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.

3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

Article 33

Prohibition of expulsion or return ("refoulement")

1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

The National Archives

DEPARTMENT/SERIES PREM 19 PIECE/ITEM 1800 (one piece/item number)	Date and sign
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ANNEX E

(Foreign and Commonwealth Office)

LIST OF COUNTRIES WITH WHICH BRITAIN'S RELATIONS HAVE SUFFERED OR MAY SUFFER BECAUSE OF THE ACTIVITIES OF THEIR NATIONALS IN THE UK

ANGOLA

1. The Angolans have complained to us about the presence of a UNITA (Union for the Total Independence for Angola) office in London.

CHILE

2. On 30 October the Chilean Embassy received three evelopes containing articles used in bomb making and a message saying "the struggle goes on". There is the real possibility that the Chilean Embassy may become a target for terrorist attacks which would have repercussions for UK/Chile relations.

GHANA

3. The Ghanaian Government has protested about statements highly critical of the Government and calling for its overthrow, if necessary by violence, made in the press and on the BBC by General Hamidu and Major Boakye Djan. The activities of and publicity given to dissident organisations like the 'Campaign for Democracy in Ghana' and 'The Ghana Democratic Movement' have also been criticised by the Ghanaian Government and in the media in Ghana. The Ghanaian Government consider these organisations and other dissidents such as Akata-Pore and Atampugre as a threat and/or embarrassment and that by harbouring them Britain is committing an unfriendling act. The Foreign and Commonwealth Secretary's request that the last two individuals named be deported to Nigeria, whence they travelled to the UK, is being considered by the Home Office.

THE GAMBIA

4. Conversely our standing in Gambian eyes was enhanced when the Home Secretary refused entry (at FCO request) to two Gambians allegedly involved in the July 1981 coup attempt.

/INDIA

INDIA

5. The Indian authorities have repeatedly complained about statements made in the UK by a Sikh, Dr Jagjit Singh Chauhan, self-styled "President" of the Sikh "Republic of Khalistan". In June this year, he "predicted" the death of Mrs Gandhi; he has subsequently spoken of Rajiv Gandhi being "a target". His remarks have drawn a sharp reponse from the Indian Government and there is a risk of severe damage to our bilateral relations. Other Sikh extremists in the UK, some of whom have sought asylum, constitute a further threat to bilateral relations.

6. Mrs Gandhi complained personally to Lady Young about Hashim Qureshi, a Kashmiri extremist leader known to have been involved in terrorist and hijacking offences, who visited the UK early in 1984. There are grounds for believing that he was involved in the murder of the Indian Assistant Commissioner in Birmingham, Mr Ravindr Mhatre. There is, however, no substantive evidence. Qureshi appeared on Channel 4's 'Eastern Eye' programme and spoke in favour of armed action in the cause of Kashmiri independence. He subsequently left the UK.

IRAQ

7. Iraqi protests about the activities of Saad Salih Jabr, the Editor of the anti-Government Al Tayyar Al Jadeed newspaper have so far been confined to diplomatic representations. The paper is said to have wide circulation in the Middle East and through Arab Embassies in London. Jabr's objective is to unite the various strands of Iraqi opposition and he has formed a new non-sectarian political party in an attempt to achieve this. His newspaper often contains articles highly offensive to President Saddam Hussain (and in some cases his allies, Egypt and Jordan) and regularly calls for his overthrow.

IRAN

8. The Iranian Government has repeatedly protested at the presence in the UK of opposition groups, some of whom have engaged in violent activities directed at Iranian representations (eg the Iranian Embassy occupation in 1981 and more recently the occupation of the Iranian Consulate in April 1984). They have protested in particular at visits to the UK by opposition leaders such as Massoud Rajavi, Head of the Mujahideen-e-Khalq and Shahpour Bakhtiar. These leaders are normally based in Paris. Admiral Madani, who arouses less excitement in Iran, has French and German residents permits. The Iranians also protest if the Shah's son makes publicised visits to this country.

LIBYA

9. The Libyan authorities have regularly accused us of harbouring and aiding Libyan dissident groups. We have denied giving any sort of support to them. We have invited the Libyan authorities to provide detailed evidence, which they claim to possess, of criminal activities carried out by Libyan dissidents in Britain but none has been forthcoming. Col Qadhafi continues to harbour extensive fears of the small number of badly organised dissidents, some of whom use Britain as their base. The most active group is the National Front for the Salvation of Libya (NFSL) headed by Mohamed Magariaf, a former Libyan Ambassador to India.

NIGERIA

10. The Nigerian Federal Military Government (FMG) greatly resents what it sees as HMG's support for Nigerian fugitives (mostly former politicians and businessmen, strongly opposed to the FMG) in granting them leave to enter and (in some cases) remain in the UK. The Nigerian Government has made it plain that bilateral relations will not improve while such fugitives are allowed to remain here.

11. Two have come to particular notice. Umaru Dikko is a former Minister of Transport, accused of major corruption while in office. He was the subject of a recent abduction attempt. He will have to give evidence at his abductors' trial, which will not take place until late January/early February 1985.

12. Isiaku Ibrahim is a wealthy Nigerian businessman and colleague of Dikko with whom he is said to have discussed plots to overthrow the FMG. He visits the UK periodically, mainly on business. The Foreign and Commonwealth Secretary asked the Home Secretary to exclude him from the UK on the grounds that his presence here was not conducive to the public good. But the Home Secretary determined that there were insufficient legal grounds for him to do so.

13. An earlier example is that of General Yakubu Gowon who came to the UK following the overthrow of his government in July 1975. He was accused by the successor government of complicity in an abortive coup attempt in which the then Head of State, Murtala Mohammed, was assassinated. The Nigerian Government asked HMG to assist in returning Gowon to Nigeria, but no formal application for extradition was submitted and HMG was unable to comply. The Nigerian press alleged UK involvement in the coup attempt, and the British High Commissioner in Lagos was expelled.

PAKISTAN

14. The Pakistani Government has protested over the admission to the United Kingdom of a number of their nationals, including some who are known - or believed - to have links with the terrorist organisation Al Zulfiquar (AZ) (set up in 1979 to overthrow President Zia by force). Certain members of the outlawed Pakistan People's Party (PPP) are also in London, including its leader, Miss Benazir Bhutto.

15. There is special disquiet about the Bhutto brothers, Murtaza and Shanawaz (sons of the former Prime Minister), who are leaders of AZ. They are based in Syria or Libya, but seem able to travel freely in Europe. As far as we know, they have not gained entry to the UK at any time.

16. After the 1981 PIA hijacking mounted by AZ the Pakistani Government formally asked HMG not to admit any of the 54 Pakistani prisoners released as a result of the hijacking. The Home Office agreed to refuse request for asylum made in Damascus by 8 of the released Pakistanis and a request by UNHCR (United Nations High Commissioner for Refugees) that 13 of these prisoners should be resettled in the United Kingdom. (Although the 54 names were added to the Suspect List, 8 of them have since been let into the United Kingdom, together with a dual national; a 9th slipped in earlier this year and is currently under consideration.)

17. Among the notable Pakistani refugees in this country are Altaf Abbasi (self-styled European Representative of AZ, who has Libyan connections), Brigadier Usman Khalid, Air Marshal Rahin Kahn, Aftab Gul, Ghulam Mustafa Khar (allegedly involved in a plot against President Zia in June this year), Abdul Qayyum Butt and Mohammad Zafar Niazi.

18. There are several cases of the Home Office, at FCO request, delaying the grant of asylum to Pakistani dissidents already in this country.

PERU

19. The Peruvian Minister of the Interior recently alleged that Sendero Luminoso (SL) were based in the UK and were being assisted from here. Although we found no evidence to support the Peruvian allegation, there has been evidence of international support for SL in the form of pamphlets

/circulated

circulated in London by the Union of Iranian communists under the auspices of the Revolutionary Internationalists Movement (RIM). SL recently became members of RIM.

SOUTH AFRICA

20. The South African Government has repeatedly protested about the activities of the African National Congress (ANC) in the UK and have formally asked us to close the ANC office in London.

SRI LANKA

21. There are a number of Tamil separatists who are active in the UK, some of whom are resident here. The Sri Lankan Government have alleged that Tamil activists in the UK have collected money for the purchase of arms for use in Sri Lanka, but we have no evidence for this. An increasing number of Sri Lankan Tamils have sought political asylum or refugee status in the UK. Since June 1983 only one such Tamil has been granted refugee status. If this were extended to others there could be damage to our political relations with Sri Lanka.

SUDAN

22. Some years ago the Sudanese Government complained about the activities of prominent exiles (eg Sadiq al Mahdi while he lived in London). They have also recently complained about coverage in the British media (particularly to the BBC) of the Sudanese People's Liberation Movement (SPLM) which maintains a representation in London. The SPLM have held 4 hostages (including one Britain) since February and the FCO have been in informal contact with the London representation in efforts to secure their release. For the time being our interest in maintaining links with the hostage holders has lead us to refrain from action which could endanger these.

23. Opponents of Nimeiri's regime frequently visit London to maintain contacts. The Sudanese Government have not made any complaints about their activities in recent months. Opponents of Nimeiri have suggested that he might seek to emulate the Libyans by sending hit squads to operate against his opponents. Mamoun Abu Zaid (a former Minister and member of the group that brought Nimeiri to power), who fled to Britain to escape charges, may have been harassed by members of the Sudanese Embassy.

TURKEY

24. Turkish Diplomatic Missions outside Turkey have been the target of Armenian terrorists since 1975. A conspiracy to assassinate the Turkish Ambassador in London was uncovered in 1982 and an Armenian sentenced to 8 years imprisonment. The Turkish Embassy (and the Office of Turkish Airlines) are regular focal points for peaceful pro-Armenian demonstrations and Turkish diplomats based here appear to find our tolerance of such manifestations hard to understand.

ZIMBABWE

25. The Zimbabweans are sensitive about the activities of Mr Nkomo and Rev Sithole, who are regular visitors to Britain, but have not complained formally so far, partly no doubt because the visitors have no official contacts.

CONFIDENTIAL

CHIEF SECRETARY TO THE TREASURY

CDP
29/11/84

Treasury Chambers, Parliament Street, SW1P 3AG

Rt Hon Sir Geoffrey Howe QC MP
Foreign and Commonwealth Secretary
Downing Street
LONDON SW1A 2AL

28 November 1984

Dear Geoffrey

THE CHARGING OF FEES FOR ENTRY CERTIFICATES FOR COMMONWEALTH CITIZENS

Your minute of 12 November to the Home Secretary refers.

This is simply to confirm that you may retain as Appropriations in Aid, the receipts arising from the introduction of the £10 charge for entry certificates (£1.6m in a full year) and also, incidentally, the extra receipts from the increase in visa fees (£2.4m in a full year).

I am copying this minute to the Prime Minister and the Home Secretary.

Yours ever

PETER REES

IMMIGRATION : Rules : R2

CONFIDENTIAL

cc MO

NBPM
CDP
13/11

FOREIGN & COMMONWEALTH SECRETARY

FEES FOR ENTRY CERTIFICATES FOR COMMONWEALTH CITIZENS

Thank you for your minute of 12 November proposing that a charge of £10 should be introduced for entry certificates for Commonwealth citizens.

As you know this does present problems for us. But I well realise the difficulties which have led you to it. Accordingly, as my Private Secretary has told your office, I am prepared to agree to the proposal on the basis that it will bring all those seeking entry clearance, whether foreign or Commonwealth, into line if this is necessary to accommodate the recent public expenditure decisions. In doing so I must, however, emphasise the difficulties that this will cause David Waddington and myself in our dealings with the ethnic minorities. That people seeking entry into the United Kingdom will not only have to take the time and trouble to obtain entry certificate but also pay for the requirement will undoubtedly create a sense of grievance. But as you say, the main points are that a £10 fee is a small premium to add to the expense of travel halfway around the world; and that those who require visas, like many from Pakistan, already pay a fee.

I am concerned about certificates issued to visitors to facilitate entry on arrival. It is to be hoped that the imposition of a fee will not discourage those who now accept our advice to obtain entry clearance in advance. (If this were the result it would add to the burden of the Immigration Service at our ports, as well as disappointing your revenue expectations).

I note that you will have to close some overseas posts. This is, of course, a matter for you and I understand the reasons. I expect that this will inevitably involve posts engaged, among other functions, in entry clearance work. I would not oppose that, but would hope that this will not affect the places where the delays in dealing with entry certificates are already a matter of controversy. I should be grateful for the opportunity to comment on the immigration implications when you have formulated proposals.

CONFIDENTIAL

I am copying this minute to the Prime Minister and to the Chancellor of the Exchequer.

Nigel Wanthing.

16 November 1984

Approved by the Home Secretary
and signed in his absence

Immigration : Rules Pt 2.

CONFIDENTIAL

10 DOWNING STREET

From the Private Secretary

13 November 1984

Charging of Fees for Interim Certificates for Commonwealth Citizens

The Prime Minister has noted the Foreign Secretary's minute of 12 November on this subject to the Home Secretary.

I am copying this letter to Hugh Taylor (Home Office) and David Peretz (HM Treasury).

(C.D. POWELL)

L.V. Appleyard, Esq.,
Foreign and Commonwealth Office.

CONFIDENTIAL

FCS/84/294

HOME SECRETARY

Prime Minister

This follows naturally from the PES decisions.

CD?
12/XI

The Charging of Fees for Entry Certificates for Commonwealth Citizens

1. We have again been looking into the question of introducing a fee for the issue of an Entry Certificate to Commonwealth citizens. It is costing us more than £7½ million for Entry Clearance services in Commonwealth countries and in the present economic climate we can no longer justify giving the service without charge. I therefore propose to introduce a charge of £10 for Entry Certificates as from 1 January next in line with the visa fee which rises from £6 to £10 from that date.

2. In arriving at this decision I have taken into account the many practical and political problems involved. I am aware that it will have some effect on our relations with Commonwealth countries, but I think it is a justifiable move and will be accepted as being so. I have taken into account possible problems involving Commonwealth minorities living in the United Kingdom and their reactions. I realise that they will not be pleased, but it is these very communities who have benefited from the free services hitherto provided and I do not accept that a small charge of £10 added to the very large sums of travelling expenses will be of any significance to any would-be immigrants or travellers. Furthermore, I feel that if it became generally known that we are spending such large sums of money on Commonwealth immigration without charging any fees there might be indignant reactions from other sections of the public/

3. You are only too well aware of the financial pressures on FCO programmes following the PES settlement. Severe political difficulties will be caused by cuts in the aid programme, as well as in BBC and British Council spending. We shall also have to close a number of overseas posts to offset the increased costs of the fall in sterling and higher overseas inflation. The extra receipts we anticipate from Entry Certificates would help keep at least some of these posts open.

4. The Chief Secretary invited me - at No 10 as well as in MISC 106 - to consider the scope for raising revenue along these lines, explicitly to limit the effect upon my programmes of the decision not to increase my combined base lines. It is, of course, essential that we should be allowed to retain, for the benefit of my programmes, the modest revenue that will accrue from such a difficult but, in my view, inescapable decision.

5. I am sending copies of this minute to the Prime Minister and to the Chancellor of the Exchequer.

(GEOFFREY HOWE)

Foreign and Commonwealth Office

12 November 1984

From: THE PRIVATE SECRETARY

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

27 September 1983

Note to file

I have spoken to Tony Rawsthorne and told him that the message I received was that the reply should ~~come~~ say that the Home Secretary would be replying direct to Pereira.

WR 29/9

Dear Willie,

You will be aware that the current immigration cause celebre is the case of the Pereira family. They have no claim under the Immigration Rules to stay here, Mr Pereira having been admitted only on a temporary basis for shore leave when he was a merchant seaman. But their case has aroused a good deal of sympathy among the local community where they live and in the press, ironically mainly in the papers that generally advocate a tougher immigration policy.

I have apologised if this was a mistake

WR 29/9

Ministers considered the case last week and agreed that, despite this public sympathy, the decision that the family could not be permitted to stay should be upheld. They decided that, in the interests of minimising the adverse publicity, the necessary action should be taken as quickly as possible.

As a result a notice of intention to deport - the next step in the process - was issued.

Mr Pereira had written to the Prime Minister on 15 September seeking her intervention. Michael Scholar sent a copy of the letter to Mike Gillespie here the following day asking for urgent advice on what reply to send. Mike Gillespie advised Michael by 'phone that we would send an official reply. In the event, however, the acknowledgement that you sent on 19 September said "Mrs Thatcher has asked the Home Secretary to look into your case and he will be replying to you direct."

This apparently reached Mr Pereira in the same post at the notice of intention to deport and understandably gave rise to some confusion on Mr Pereira's part as it suggested that the Home Secretary would review the case, and some embarrassment for the Home Secretary.

In the light of all this, the Home Secretary asked me to write to say that he would be grateful if No 10 could be careful in such circumstances to avoid giving any impression that an immigration case will be reviewed as this may conflict with action being taken here.

Yours ever,

Tony Rawsthorne

A R RAWSTHORNE

Willie Rickett, Esq

CONFIDENTIAL

Immigration
RW

HLE

10 DOWNING STREET

From the Private Secretary

14 February, 1983

MPs correspondence held by GR
HLE 15/2

Thank you for your letter of 2 February to Tim Flesher, with which you enclosed a draft reply for the Prime Minister to send to Mr William Wilson, MP, about his constituent Mr. Patrick Phillips who wants to go back to Grenada. The Prime Minister has written to Mr. Wilson as drafted, and I attach a copy for your records. However, she has commented that she is not convinced that Section 29 of the Immigration Act 1971 should limit financial assistance for repatriation to those cases where it can be shown that it is in the individual's interest to leave the United Kingdom. She feels there is a case for changing the law to remove the requirement to demonstrate that repatriation is in the interests of the individual concerned.

W. F. S. RICKETT

Mrs. L. Pallett,
Home Office

CONFIDENTIAL

010

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

9 February 1983

Dear Tim,

9/2

... Filed on front flap

The Home Secretary thought the Prime Minister would be interested to see the enclosed copy of the Statement of Changes in Immigration Rules which is to be published at 3.30 p.m. today.

I am sending copies of this letter to the Private Secretaries of all members of the Cabinet, the Attorney General, the Chief Whip and Sir Robert Armstrong.

Yours sincerely

Karen

MRS. K. PAPPAS
Assistant Private Secretary

T. Flesher, Esq.

Ref: A083/0280

Immigration

A

CONFIDENTIAL

PRIME MINISTER

Parliamentary Affairs: Immigration Rules

BACKGROUND

The Home Secretary intends to seek the agreement of the Cabinet to his laying before Parliament a revised Statement of Changes in Immigration Rules, based on the proposals set out in the White Paper published on 25th October last year rather than on the modified proposals incorporated in the Statement of Changes disapproved by the House of Commons on 16th December. Subsequent consultations with those Government supporters who voted against the Statement on that occasion have shown that if there is a vote on the revised Statement, it is unlikely that the Government will be able to secure a majority unless the official Opposition abstain; Mr Hattersley has already indicated informally that the Labour Party would not vote against changes based strictly on the White Paper.

2. The need for revised Immigration Rules arose from the replacement of the citizenship of the United Kingdom and Colonies (referred to in the previous Rules) by the three new citizenships introduced by the British Nationality Act, which came into effect on 1st January. The original White Paper proposed that, subject to certain safeguards, all British citizen women as defined in the new Act (and not just those born here, or with one parent born here, as under the previous Rules) should have the right to be joined in this country by their husbands or fiances.

3. The White Paper was debated on 11th November on a take note motion. An Opposition amendment referring to the "racially and sexually discriminatory principles of the British Nationality Act 1981" was defeated by 81 votes, but although only four votes were cast against the motion itself, some 50 Conservative Members joined the Opposition parties in abstaining.

4. In an attempt to meet the anxieties of at least some of the dissenting Government supporters, you agreed with the Home Secretary that the Statement of Changes laid on 6th December should

include further safeguards against abuse through marriages of convenience. Nevertheless, at the end of the subsequent debate on 15th-16th December on Mr Jenkins's motion to disapprove the Statement, a number of Government supporters voted with the Opposition parties (though for diametrically opposed reasons) and the motion was carried by 290 votes to 272.

5. The present position is that new Immigration Rules incorporating the changes disapproved on 16th December came into effect on 1st January; but under the Immigration Act 1971 the Home Secretary is required "to make such changes or further changes in the rules as appear to him to be required by the circumstances" and to lay a Statement of those changes within 40 sitting days of the passing of the motion to disapprove.

HANDLING

6. After the Home Secretary has explained the position reached, the Chief Whip will wish to give his assessment of the prospects for defeating any motion to disapprove revised Rules based on the White Paper proposals. Can the official Opposition be relied upon to abstain? Is there a risk that a significant number of backbench Labour Members might mount an ambush? What will be the attitude of the minority parties? The Lord Privy Seal can comment on the chances of any motion to disapprove commanding substantial support (for whatever reason) in the House of Lords.

CONCLUSION

7. Subject to the course of the discussion, the Cabinet might invite the Home Secretary to lay a revised Statement of Changes in Immigration Rules on the lines proposed in the White Paper.

RCA

Robert Armstrong

26th January 1983

10 DOWNING STREET

From the Principal Private Secretary

Prime Minister

The Home Secretary is likely to raise the subject of the Immigration Rules with you on Monday — probably at the 12.15 meeting — before circulating a paper for Thursday's Cabinet.

The betting is that he will propose reverting to the White Paper proposals and rely on the Opposition's abstention.

FERB

21.1.

From: THE PRIVATE SECRETARY

Immigration

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

6 December 1982

Dear Tim

The Home Secretary thought the Prime Minister would be interested to see the enclosed copy of the Statement on changes in Immigration Rules which is published to-day.

filed on inside of front cover of file.

I am sending copies of this letter to the private secretaries of all Members of the Cabinet.

Yours sincerely

Janice E Fairbairn

MISS J. E. FAIRBAIRN

T. Flesher, Esq.

FLE

IMMIGRATION

10 DOWNING STREET

From the Private Secretary

2 December, 1982

This is to record that the Prime Minister has now seen and noted the Home Secretary's minute of 29 November about the Immigration Rules and, in particular, the deportation of husbands whose marriage has broken down.

TIMOTHY FLESHER

Colin Walters, Esq.,
Home Office

Prime Minister

To note

MR

PRIME MINISTER

IMMIGRATION RULES: HUSBANDS AND FIANCES

1/12

see below

I have seen the Attorney General's minute of ~~22~~ November about the risks there would be at Strasbourg if we made the changes which I am proposing in the safeguards against marriages entered into for immigration reasons, or which break down within a certain period.

The changes which I propose to make in the rules relating to deportation would prevent a man from arguing that he should be allowed to settle here because he was an innocent party to the breakdown of his marriage, or because he had already spent a significant time here as a husband. These limitations are necessary to stop the immigration appellate authorities in effect going behind a decision to refuse a man permission to stay because he cannot satisfy the new tests. If no such limitations were imposed there would be extra work and dispute, but above all, the impact of the new safeguards would be weakened.

The rules on deportation would still allow all other relevant factors, including the fact that a couple had had children, to be taken into account. However, as now, these factors would have to be weighed against the presumption that deportation is the proper course when a man is here in defiance of immigration control. The Department's judgment on where the balance lay in a particular case would be reviewable (on the terms I have stated) by the immigration appellate authorities.

I do not think that in practice we could ordinarly allow a man whose marriage had broken down within the two years to stay, merely because he had children. In a number of the cases where we deport husbands now they have children. If the probationary period is extended for a further year there are likely to be more such cases. Naturally we would look very carefully at compassionate features which might exceptionally justify letting a man stay, taking account of our obligations under the Convention, but I could not offer a general undertaking.

I am copying this minute to the Attorney General, the Foreign and Commonwealth Secretary, members of H Committee, the Chief Whip and to Sir Robert Armstrong.

hrm W.

25 November 1982

30 NOV 1982

Immigration 2

Prime Minister:

You discussed the point at X with the Home Secretary. She will speak to you this week about the possibility of restricting the right to bring in wives and fiancées to citizens. She is not optimistic, I understand.

JT

26/11

FCS/82/196

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Immigration Rules: Husbands and Fiancés

1. Thank you for copying to me your minute to the Prime Minister of 18 November about the changes that you propose to make in the draft Immigration Rules to strengthen the safeguards against marriages of convenience.

2. I am concerned that anything which widens the disparity in treatment between husbands and male fiancés as compared with wives and fiancées is likely to heighten the risks that we run of a successful challenge to our Rules under the European Convention on Human Rights. These proposals will also inevitably bring us bad publicity in the Indian sub-continent (particularly India itself) where, although the relaxation that you have proposed has been welcomed, this has been seen not as a concession but more as the setting right of a wrong. But I realise the difficulties that the opposition within our party to your original proposals presents; and if it is your judgement, and that of colleagues, that these amendments to the proposals published in the White Paper are necessary to secure Parliamentary assent to the new Rules, then clearly we must try to live with them.

3. I note your intention to publish on 25 November the reply to the report of the Home Affairs Committee on Immigration from the Indian Sub-continent. The small changes that you propose to the reply that we originally agreed give me no difficulty.

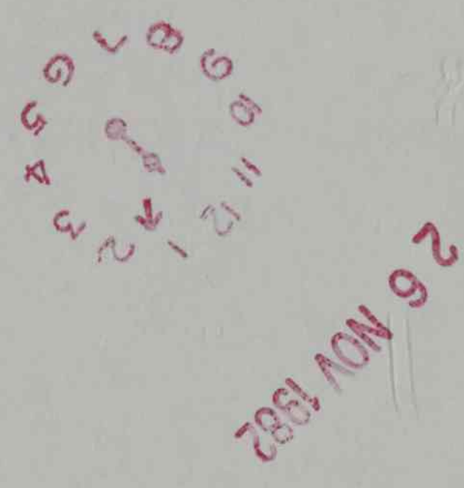
/4.

4. I am copying this minute to the Prime Minister and to the other recipients of your minute.

Foreign and Commonwealth Office

26 November 1982

Immigration, Rules, Pt 2



HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

25 November 1982

Dear Tim

25/11

The Home Secretary thought the Prime Minister would be interested to see the enclosed copy of the Government's reply to the Home Affairs Committee's Report on Immigration from the Indian Sub-Continent which is to be published today.

I am sending copies of this letter to the Private Secretaries of all members of the Cabinet, the Attorney General and Sir Robert Armstrong.

Yours sincerely

Karin

KARIN R. FISHER
Assistant Private Secretary

T. Flesher, Esq.

CONFIDENTIAL

SUBJECT

cc Master

10 DOWNING STREET

From the Private Secretary

23 November 1982

Dear John

The Prime Minister met the Home Secretary today to discuss his minute of 19 November on the immigration rules and in particular on his proposals on husbands and fiancés. The Home Secretary said that the new safeguards proposed in his minute represented a substantial tightening of the rules against abuse. As such they might well be sufficient to persuade many of those who abstained in the debate on the White Paper in the House of Commons to vote with the Government when the rules themselves were debated. There was still nevertheless a risk of defeat in the House of Commons. It was however preferable to present the new rules in their amended form to the House with the option of reverting to the old rules (although couched in the new language required by the British Nationality Act) than to make concessions on operative dates for the new rules. Such a course could well represent the worst of both worlds both in Parliament and in the ethnic minority community. The Prime Minister said that she was content with this approach; every opportunity should be taken in the period up to the debate to stress the substance of the new safeguards proposed by the Home Secretary.

In a more general discussion of the basis of immigration policy the Home Secretary mentioned the position of men settled here who would continue to be able to bring in their wives and fiancées under the provisions of the Immigration Act 1971. There was a case for bringing this arrangement into line with what was now proposed for women so that the right to bring in spouses or intended spouses was held only by British citizens. At the Prime Minister's request he undertook to look into whether this was desirable or possible.

I am sending a copy of this letter to the Private Secretaries to the members of H Committee, the Foreign and Commonwealth Secretary, Chief Whip, Attorney General and Sir Robert Armstrong.

Yours ever,

Tim Flesher

Tim Flesher

John Halliday, Esq.,
Home Office.

Prime Minister:

The Attorney's minute does not affect the point you wish to discuss with the Home Secretary.

22/11

PRIME MINISTER

IMMIGRATION RULES: HUSBANDS AND FIANCES

1. I have seen the Home Secretary's minute to you of 18th November explaining the changes which he proposes to make to the draft of the new Immigration Rules. My principal concern, as Attorney General, is the extent to which what we do may weaken or strengthen our position in the cases which we are currently defending before the European Commission of Human Rights or in cases which may in the future be brought against us under the European Convention. In that context I very much welcome the Home Secretary's view that we should resist pressure to reintroduce rules which discriminated between two groups of British citizen women. Any such discrimination would, I am convinced, seriously handicap us at Strasbourg and would make us very vulnerable to a finding that we had discriminated on grounds of race, a charge which I at present think we have good hopes of successfully rebutting.

2. I do not feel anywhere near so apprehensive about the changes which the Home Secretary does propose to make. I agree with his assessment that these changes, and in particular the extension of the probationary period, will make life more difficult for us in Strasbourg but not, I think, to the point where that need tip the scales against them if we otherwise think them desirable. I would hope, however, that the Home Secretary could ensure that the new deportation rules in practice applied in such a way as to avoid, save in very exceptional circumstances, his having to deport a man who, during his probationary period and before his marriage broke down, had established a family life (e.g. because of the birth of children). In the nature of things,

/this

this is not a situation which is likely to arise very often.

3. I am copying this minute to the members of 'H' Committee, the Foreign and Commonwealth Secretary, the Chief Whip and Sir Robert Armstrong.

MH

Law Officers' Department,
ROYAL COURTS OF JUSTICE

22 November, 1982

* Since writing this, I have heard that the Home Secretary cannot attend Monday's meeting: we should have to find an alternative. TF.

? Can we not delay the final decision until the next election? We discussed this. MF

PRIME MINISTER

Prime Minister:

The Home Secretary proposes three substantial concessions on safeguards against abuse through marriages of convenience. Do you agree to his proposals? If you wish to discuss them with the Home Secretary, the regular Monday meeting might be a convenient forum*. Yes MF

TF 19/11

IMMIGRATION RULES: HUSBANDS AND FIANCES

Following the debate on 11th November, when 50 of our party abstained on a motion to take note of the draft of new immigration rules, I have been considering what changes, if any, in those rules to suggest.

New rules have to be made, to apply to decisions taken on or after 1st January next year when the British Nationality Act 1981 will come into force. It has been known for a considerable time that the Act would be brought into force on that date and to delay its commencement now is not acceptable. New rules have to be made at the same time to avoid complete confusion in the operation of the immigration control. To allow time for orderly implementation the rules need to be laid no later than 7th December.

I remain convinced that the only sensible course in the light of the Nationality Act is to make the changes we propose in the position of husbands and fiances. If we were to revert to a policy of, in effect, preserving the present rules this would be opposed by others in our party who supported the Early Day Motion last Session. I expect this afternoon's debate in the Lords to show that there is a substantial body of opinion there which would be opposed to rules which discriminated between two groups of British citizen women. There is therefore,

I believe, a real risk that rules on these lines would not command a majority in the Lords nor even in the Commons.

There was a good deal of scepticism expressed in the Commons debate and in the Press about the effectiveness of the present tests against marriages of convenience. I believe this scepticism is misplaced. Information available from posts in the sub-continent shows that in the 12 months ending 30th September 560 fiances were refused entry clearances and that a significant proportion of these men, particularly in India, were refused because the parties had not met and thus one of the requirements of the present rules was not satisfied. In this country we are refusing leave to remain to about 150 men a year because they do not satisfy one of the marriage of convenience tests in the rules. Moreover, these tests must have a significant deterrent effect.

I believe, however, that the rules against marriages of convenience could and should be strengthened and that such strengthening would go a long way to meet the views of a good number of those who abstained on 11th November. I have three changes in mind. The first and most important would be to extend the probationary period before which a husband can obtain settlement from one year to two. At the end of each year he would have to show that the marriage was still subsisting. The change would mean extra work for the police and for immigration officers

and other Home Office staff, but it would be a visible stiffening of the rules.

Second, I propose a change in the rules governing deportation to make clear that deportation would normally be the appropriate course where enquiries found that the marriage had ended or the parties were living apart irrespective of the reasons which had led to the breakdown in the marriage.

The third change would put the onus on an applicant to show that the tests in the rules relating to marriages of convenience were satisfied. At present the onus is on the entry clearance officer or on Home Office officials and the change would strengthen our hand in considering these cases. Annex A to this minute shows the changes in the text of the rules that I have in mind.

In addition I also propose a change of presentation, though not of substance. At present the rules governing the admission of fiance(e)s are contained in Part IV of the rules under the heading of "Passengers coming for settlement". I propose that they should in future appear in Part III alongside the rules governing other categories of people, e.g. work permit holders, who are admitted for a specific period though they can, if they satisfy the appropriate tests, be granted indefinite leave to remain.

I believe these changes would tighten our controls on marriages of convenience and will be seen to represent

a significant strengthening of the rules. I ought, however, to warn colleagues that the changes, and in particular the extension of the probationary period of two years for husbands, will make life more difficult for us in the context of present and prospective cases brought at Strasbourg under the European Convention on Human Rights.

There are no proposals in this area which will command universal support within the party, but I believe the best way forward is for the Government to stand firm on the basic principles of the rules we have already presented to Parliament with the strengthening of the provisions against abuse described in this minute. I hope that you and our colleagues will agree that we should do so.

Finally, the Government's Reply to the Fifth Report of the Home Afairs Committee on immigration from the Indian Sub-Continent, which was the subject of my minute of 30th September to Francis Pym, should help the passage of the new rules in two ways: its clear rejection of the Committee's major proposal to increase the number of United Kingdom passport holders coming here from India, and its general support for the Committee's view that immigration from the sub-continent is declining. I have therefore decided to publish the White Paper setting out the Reply on 25th November, in good time before the laying of the Statement of Changes in the rules.

To take account of the current situation, I have made two changes in the draft of the White Paper that

I circulated with my earlier minute of 30th September to the Foreign and Commonwealth Secretary. The major change is that I have decided merely to take note of, rather than accept, the recommendation that a register of dependants should not be established. The detailed changes are in Annex B.

19.11.82

I am sending a copy of this minute to the Chief Whip who will no doubt wish to make urgent soundings within the party. I am also sending copies to the other members of H Committee, the Foreign and Commonwealth Secretary, the Attorney General and Sir Robert Armstrong.

REVISED RULES (CHANGES FROM TEXT CONTAINED IN WHITE PAPER ARE UNDERLINED)

Paragraph 50: Husbands

50. The husband of a woman who is settled in the United Kingdom, or who is on the same occasion being admitted for settlement, is to be admitted if he holds a current entry clearance granted to him for that purpose. An entry clearance will be refused unless the entry clearance officer is satisfied:

a) that the marriage was not entered into primarily to obtain admission to the United Kingdom; and

b) that each of the parties has the intention of living permanently with the other as his or her spouse; and

c) that the parties to the marriage have met.

Where the entry clearance officer is satisfied that all the conditions at (a) to (c) above apply, an entry clearance will be issued provided that the wife is a British citizen.

Paragraph 52: Fiances

52. A man seeking to enter the United Kingdom for marriage to a woman settled here and who intends himself to settle thereafter should not be admitted unless he holds a current entry clearance granted to him for that purpose. An entry clearance will be refused unless the entry clearance officer is satisfied:

a) that it is not the primary purpose of the intended marriage to obtain admission to the United Kingdom; and

b) that there is an intention that the parties to the marriage should live together permanently as man and wife; and

c) that the parties to the proposed marriage have met.

Where the entry clearance officer is satisfied that all the conditions at (a) to (c) above apply, an entry clearance will, subject to the maintenance and accommodation requirements of this paragraph, be issued provided the woman is a British citizen. An entry clearance should not be issued unless the entry clearance officer is satisfied that adequate maintenance and accommodation will be available for the fiance until the date of his marriage, without the need to have recourse to public funds.

Paragraph 126: Marriage

126. Where a man admitted in a temporary capacity marries a woman settled here, an extension of stay or leave to remain will not be granted, nor will any time limit on stay be removed unless the Secretary of State is satisfied:

a) that the marriage was not entered into primarily to obtain settlement here; and

b) that the parties to the marriage have met; and

c) that the husband has not remained in breach of the immigration laws before the marriage; and

d) that the marriage has not taken place after a decision has been made to deport him or he has been recommended for deportation or been given notice under section 6(2) of the Immigration Act 1971; and

e) that the marriage has not been terminated; and

f) that each of the parties has the intention of living permanently with the other as his or her spouse.

Where the Secretary of State is satisfied that all of the conditions at (a) to (f) above apply the husband will be allowed to remain, for 12 months in the first instance, provided that the wife is a British citizen. At the end of the 12 months' period a further extension of leave for 12 months will be granted if the Secretary of State is satisfied that all the conditions at (a) to (f) still apply. At the end of the 2 year period the time limit on the husband's stay may, subject to (a) to (f) above, be removed.

Paragraph 158: Deportation for breach of conditions or unauthorised stay

158. Deportation will normally be the proper course where the person has failed to comply with or has contravened a condition or has remained without authorisation. Full account is to be taken of all the relevant circumstances known to the Secretary of State, including those listed in paragraph 156, before a decision is reached. Where however a man does not qualify for leave under paragraph 126 because the condition in (e) or (f) of that paragraph is not met, deportation will normally be the proper course irrespective of the reasons which led to the termination of the marriage or to one of the parties ceasing to intend to live with the other, and irrespective of the man's length of residence in the United Kingdom as a husband or fiance.

ANNEX B

REPLY TO THE HOME AFFAIRS COMMITTEE: AMENDMENTS

White Paper, paragraph 2:	delete final sentence;
Annex, Recommendation (1), line 12:	delete "accepts", insert "notes";
Annex, Recommendation (1):	delete last two sentences, insert "The need for a register will be assessed in the light of this development".

Jm myrtle Rules

Immigration

PRIME MINISTER

IMMIGRATION RULES

Mr. Raison appeared before the Race Relations Sub-Committee of the Home Affairs Select Committee today and was given a reasonably comfortable time. Alex Lyon took up most of the session with a lengthy and extremely obscure line of questioning about the impact on numbers of the rules; he seemed to be arguing that the change in the rules would produce an increase of only about 500. Mr. Raison said that the upper limit was 3,000 and the most likely number was about 2,000; Mr. Lyon's figures were the product of wishful thinking rather than statistical analysis. Alf Dubs asked about the European Commission and received short shrift. He then asked if girls seeking to bring in their husbands or fiances could be given priority in the citizenship queue; Mr. Raison said no. John Hunt contented himself with saying that the leaks of the rules were extraordinarily unhelpful and merely produced mis-informed comment. The session was chiefly remarkable for being attended by large numbers of backbench potential critics of the changes.

25 October 1982

Immigration

CONFIDENTIAL

FILE SW

10 DOWNING STREET

From the Private Secretary

18 October, 1982

The Prime Minister met the Home Secretary and the Chief Whip today to talk about the handling of the White Paper containing the new draft Immigration Rules. Mr. Gow was also present. The Prime Minister said that the meeting the previous evening of the Conservative Home Affairs Committee had indicated a degree of opposition to the Rules, which went further than had hitherto been anticipated. In these circumstances, the handling of the White Paper, both before and after its publication, would require careful consideration. In discussion of the present position, the Home Secretary said that there was no way of avoiding a major furore; the new Immigration Rules were required by the British Nationality Act which came into effect on 1 January and to retain the present entitlement in relation to husbands and fiances would provoke as much opposition on the Government backbenches as the new Rules. Some of the opposition, moreover, appeared to be based on a misunderstanding of the new Rules; it would be important, once the Rules were published, to stress that they did not involve a return to the pre-1979 position whereby settled status conferred a right to bring husbands and fiances here. It was also important to avoid giving the impression that the new Rules were prompted by the likelihood of an adverse ruling in the ECHL; indeed, an adverse ruling was probable whatever we did. The Prime Minister said that the distinction between the rights of British citizens under the new Act and those settled here should be brought out as clearly as possible; no suggestion should be given that settlement carried with it any automatic right to citizenship.

It was agreed that all these points would be made as strongly as possible when the White Paper was published. In the meantime, however, the line should be taken that there would be an early opportunity for the House to debate the

/White

CONFIDENTIAL

White Paper and the draft Rules and only after the Home Secretary had considered the views expressed in the debate would he lay the new Rules themselves.

I am sending a copy of this to Murdo Maclean (Chief Whip's Office).

TIMOTHY FLESHER

J. F. Halliday, Esq.,
Home Office

CONFIDENTIAL

CONFIDENTIAL

EC JV B2

Prime Minister

FCS/82/154

SECRETARY OF STATE FOR THE HOME DEPARTMENT

13/10.

Home Affairs Committee of the House of Commons: Report on Immigration from the Indian Sub-Continent

1. Thank you for your minute of 30 September.

2. I welcome your decision on the register of dependants. Although the proposal to establish a register has not caused the alarm in the sub-continent that one might have expected, it could not be compiled without substantial use of resources and the unsettling of families there who are still waiting to come to this country. I agree that we should now recognise its impracticability and delete it from our programme.

3. I should have liked (for the reasons given in Douglas Hurd's letter to Tim Raison of 16 August) to accept the Committee's recommendation for expediting the admission of United Kingdom Passport Holders (UKPH) in India. The Committee's proposal seems to me to provide a sensible basis for resolving this problem. I accept however your judgement that this would not form an acceptable package with the proposed revision of the Immigration Rules. I welcome your proposed response to recommendation 37 in regard to the admission of dependants of UKPH. This will have little practical effect on the number of admissions but will ease our task in the administration of the scheme by facilitating the admission of family members at the same time.

/4.

CONFIDENTIAL

4. Our departments have, as you said, worked together on the draft response and I agree the text that you propose.

5. I am copying this minute to the Prime Minister, all members of 'H' Committee and Sir Robert Armstrong.

(FRANCIS PYM)

Foreign and Commonwealth Office

12 October 1982

IMMIGRATION: IMMIGRATION RULES.

SUBJECT

CONFIDENTIAL

2 Dec AH

cc master

ccs Mr Scholar
Mr Rickett
only

NOTE FOR THE RECORD

The Prime Minister had a talk with the Secretary of State for Employment this morning. The following were the main points covered:-

i) Mr Tebbit said that he hoped that he might come back to the Prime Minister about restricting the intake of working holidaymakers from the Commonwealth if H Committee supported such a restriction at its meeting that day. He pointed out that the Australians were introducing measures to put a ceiling of 7,000 on working holidaymakers from Britain: however, this appeared to be a measure designed to achieve reciprocity, since 6,000 working holidaymakers had come from Australia to Britain in the last recorded year. The Prime Minister said that she was doubtful whether it was worthwhile to provoke the fuss which would be created by restricting working holidaymakers in this way. She noted that New Zealand did not impose any restrictions, although they would be affected by the proposed UK restriction. Mr Tebbit said that he would accept the H Committee's verdict on the point.

ii) There was a discussion of Mr Tebbit's proposals on industrial relations legislation. The Prime Minister asked about restrictions to prevent all secondary picketing: Mr Tebbit said that he wanted first to see some cases go through in which union funds were put at risk, to get the present legislation established. It would then be possible to build on this, and this was also the best way of approaching the issue of making union contracts enforceable. The Prime Minister remarked that legislation would need to be introduced in the next Parliament to make union contracts enforceable and asked about political strikes. Mr Tebbit said that these were already excluded from the formula of protected disputes in the present legislation.

iii) Mr Tebbit said that he had a problem about the date of the order bringing the current Bill into force, since he was being told that it took eight weeks to publish the Bill following Royal Assent and he was unhappy about leaving such a long interval,

CONFIDENTIAL

particularly with a number of industrial disputes looming. The Prime Minister said that she fully agreed, and Mr Tebbit should make every effort to be in a position to introduce the order bringing the Act into force soon after Royal Assent.

iv) The Prime Minister referred to the proposals she had received from Mr Sparrow for a CPRS study of the unions, and said that she would want Mr Sparrow to have a talk with Mr Tebbit and the Secretary of State for Industry to define the project. She was also concerned whether the CPRS had sufficiently qualified people to undertake it. One possibility was to second someone from the Department of Employment. Alternatively someone might be brought in from outside.

v) Mr Tebbit said that he was concerned about the circulation of the Minford-Smith study. He had directed that this study should not go outside his office in the Department of Employment nor be photographed, and he was concerned that he had received a letter from No 10 containing photo copies of extracts a l b e i t with the instruction that they should not go beyond Priate Office. He thought it undesirable that this report should be photocopied at all. The Prime Minister agreed that circulation of such documents needed to be very closely controlled and she would give instructions personally about the distribution of such documents by her office or the Cabinet Office.

On the content of the Minford-Smith study, Mr Tebbit said that this study was similar to Professor Minford's Selsdon group paper, and he understood that work by the Treasury had discredited some of this. He did not think that it would be possible to "cap" unemployment benefit before the next election and he was worried about the estimates of cost of the two stage family benefit. The Prime Minister agreed about the first point, but said that it would be very difficult for the Government to take the necessary action if it was prohibited from doing anything which resulted in some people losing their present benefit.

vi) Mr Tebbit said that he would want to come back to the Prime Minister about the proposed increase of £5.00 in the maximum weekly pay figures qualifying for subsidy under the young workers' scheme. The Prime Minister said that she was very reluctant to see increases made in these figures; she would rather put pressure on the wage councils to reduce their recommendations. Mr Tebbit said that his concern was that take up of the young workers' scheme would be reduced if the maximum figure were not raised.

vii) Mr Tebbit said that he was much in favour of David Young's ideas on the development of the Manpower Services Commission's activities in long term training and education. He would be discussing them with Mr Young and also pursuing with the Secretary of State for Education the suggestion that technical schools should be re-established.

viii) Mr Tebbit mentioned that he was resisting ODA ideas for financing tours by trade union leaders around the Commonwealth.

F.E.R.B.

11 October 1982

CONFIDENTIAL

Immigration

Caxton House Tothill Street London SW1H 9NX F
Telephone Direct Line 01-213 6400
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The Rt Hon William Whitelaw CH MC MP
Secretary of State for the Home Department
Home Office
50 Queen Anne's Gate
LONDON
SW1H 9AT

6/10

6 October 1982

Dear Home Secretary

RAYNER REVIEW OF THE WORK PERMIT SYSTEM

Thank you for your letter of 28 September.

Of course I readily accept your proposal that we should set this matter of the working holidaymaker scheme down for discussion at H Committee and I am circulating a short paper today.

So far as Recommendation 11 is concerned, I quite take your point that it would be unwise to state boldly and publicly that enforcement of a ban on students working in their free time would be virtually impossible, even though that is the case. I would however be sorry to lose the reference to enforcement problems altogether because this was, after all, a major consideration in our decision and it must be pretty obvious to anyone that enforcement would inevitably be a very difficult and costly matter. I wonder if you would be happy if in place of the sentence in the appendix which says "enforcement would be virtually impossible" we were to substitute something like "Enforcement would not be easy and would place a burden on the enforcement authorities that would be disproportionate to the possible gains". The last sentence in paragraph 6 of the general commentary could then be amended to say something like "enforcement would be burdensome out of proportion and such a prohibition would have unacceptable international repercussions, especially in Commonwealth countries".

I am copying this letter to the Prime Minister and members of H Committee, Francis Pym, Patrick Jenkin, Arthur Cockfield, Paul Channon and Sir Robert Armstrong.

Yours sincerely

Ronald McCarthy-Ward

(Approved by the Secretary of State
and signed in his absence)

Immigration, Rules, Pt 2

2

PRIME MINISTER

MF

IMMIGRATION RULES

You queried the reference in the attached draft White Paper to children under 25. The Home Secretary's proposal in the draft White Paper in response to the Select Committee's Report on Immigration is that any UKPH child under 25 should be admitted as a dependent, provided that he would be eligible in his own right. This does not, in fact, conflict with the Manifesto, which referred to an upper age limit of 18 for children applying to come here as the dependents of those already here. The Home Secretary's proposal deals only with United Kingdom Passport Holders who qualify to come here in their own right. At present, all UKPH over the age of 18 have to wait for a voucher; the proposal means that children between the ages of 18 and 25 could come here when their parents obtain a voucher rather than them having to wait for one themselves. The figure of 25 was chosen because there is a seven-year waiting list for vouchers. The arguments in favour of the proposal are first that it enables families who are coming here anyway to do so together and, second, that it has a minimal effect on immigration in the short term (and none at all in the long term, since all those affected could come here anyway).

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5 October 1982

2

Prime Minister

FCS/82/147

SECRETARY OF STATE FOR EMPLOYMENT

8/10

Rayner Review of the Work Permit System

1. Thank you for copying to me your letter of 22 September to Willie Whitelaw enclosing the draft of your proposed Action Report on the Rayner work permit scrutiny. I am in general agreement with your proposed replies.

2. I do not think the changes in the Australian working holiday-maker scheme need cause us to reconsider the decision that we recently took, after careful thought, to leave our own scheme as it is. I have noted Willie Whitelaw's suggestion that this aspect should be discussed again in 'H' Committee on 11 October. As I shall then be in the Middle East, it may be helpful if I explain my views on the matter now.

3. Our own working holiday-maker scheme is most used by young people from Australia and New Zealand who have a somewhat similar arrangement. It is however available to young people from all countries in the Commonwealth. The Australian scheme (which is available to people from Canada, Ireland, Japan and the Netherlands as well as this country) is currently more loosely drawn than ours. The Australians are now proposing a tightening of their rules to limit their scheme to people between 18 and 25 (although some applicants up to the age of 30 will be considered) and the maximum period of stay in Australia is normally to be one year, although extension for a second year will in certain circumstances be permitted. Depending on the discretion applied in administering it, this may simply bring their scheme more into line with ours, with its age limits of 17 to 27 and a maximum of two years. Currently, the Australian maximum is 5 years and there is no age restriction. On the basis of this comparison, I do not believe a reaction to limit our own scheme to one year would be justified. The informal quota that the Australians now have in mind for British working holiday-makers is moreover roughly in line with the number of Australians who come to this country each year under our own scheme.

4. I therefore think that we should leave things as they are. Your proposed reply to recommendation 13 might however read:

'Reject: The present arrangements facilitate visits to this country by young people from the Commonwealth of sufficient duration for them to familiarise themselves with our society before they return home. They thus contribute to Commonwealth understanding and form an important and valuable part of our relationship with the sending countries. To confine the arrangements to countries with similar schemes would not save many jobs for resident labour, but would limit the intended purpose of the scheme'.

5. I am copying this minute to the recipients of yours.

(FRANCIS PYM)

Foreign and Commonwealth Office

4 October 1982

Immigration, Rules, #2

HL

Immigration

10 DOWNING STREET

From the Private Secretary

1 October 1982

The Prime Minister has now seen the Home Secretary's letter of 28 September to the Secretary of State for Employment about the working holidaymaker scheme. Despite the Australian changes to their own working holidaymaker scheme the Prime Minister agrees strongly with the Home Secretary that the effect of the restriction of our working holidaymaker scheme from two years to one would alter the political balance in the new immigration rules in an undesirable way. Moreover the Prime Minister favours the continuation of the working holidaymaker scheme in its present form. She has commented that many young Australians benefit enormously from the two-year period and in itself this improves our own relations with Australia. I should be grateful if you could arrange for the Prime Minister's views to be taken into account during the discussion of this issue at H Committee on 11 October.

I am sending copies of this letter to the Private Secretaries to the members of H Committee, to John Holmes (Foreign and Commonwealth Office), Jonathan Spencer (Department of Industry), John Rhodes (Department of Trade) and Richard Hatfield (Cabinet Office).

T. FLESHER

Colin Walters, Esq.,
Home Office.

BM.

Prime Minister 1

Paragraphs 1-10 (flagged) set out the main lines of the Government's proposed response. Agree the Home Secretary's proposed package?

SECRETARY OF STATE FOF FOREIGN & COMMONWEALTH AFFAIRS

1/10

The Home Affairs Committee published on 28 July its Fifth Report on Immigration from the Indian sub-continent and I am now circulating the draft of a White Paper setting out the Government's response which I understand has been agreed between officials of our two Departments and parts of which Malcolm Rifkind has already seen and approved. Many of the recommendations are of a minor administrative nature to which the White Paper attempts to respond in as constructive a manner as possible. The purpose of this letter is to confirm the agreement between our officials on the lines of the response, to draw particular attention to two or three of the more important recommendations, and to give the Prime Minister and colleagues in H Committee an opportunity to comment on what is proposed.

Recommendation (1) proposes that the register of dependants which formed part of our election manifesto should not now be established. For some time I have made it clear in public that, while the register remained a part of Government policy, I could see no early opportunity for legislation. Instead I have laid emphasis upon the new data collection exercise we have begun as an alternative means of fulfilling the main purpose of a register. The Committee has reached the firm view that this new exercise will in due course provide better information than a register and it is, of course, considerably cheaper; the Franks Committee estimated the cost of a register in 1977 at several million pounds. I would endorse the conclusion that the Committee has reached and the White Paper accordingly proposes that the recommendation should be accepted. While it is always difficult to renounce part of an election manifesto, we can reasonably claim credit on this occasion for our flexibility in thinking up a better alternative scheme and thereby saving the country a considerable sum of money. The recommendation did not cause a major stir on publication; nor should its acceptance.

As you know from Tim Raison's letter of 14 September to Douglas Hurd, I have rejected the main recommendations on United Kingdom Passport Holders which propose that the Indian quota should be trebled for two years and a cut off date subsequently fixed (recommendations (34) and (35)). This would mean that an additional 3,000 people could be admitted for settlement in both 1983 and 1984, which would not be acceptable to our supporters at a time when we propose to relax the present marriage rules. I have, however, given careful thought to the proposal (recommendation (37)) that any child under 25 at the time the parents' voucher is issued should automatically be regarded as dependent and granted entry clearance. For a number of reasons this recommendation is not acceptable as it stands, but the White Paper goes some way to meeting the Committee's criticisms on this point by proposing that any UKPH child under 25 should be admitted as a dependent, provided he would be eligible in his own right. This would assist the administration

child? 25 ///

Do we say if in the manifesto? —

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of the scheme, but would lead to an increase in the numbers accepted for settlement of between 50 to 100 a year, with an initial hump because of a backlog of applicants. This compares with total acceptances from India under the scheme at present running at about 1,500 a year. On balance, I think this small addition is an acceptable price to pay for going some way to meet the Committee's genuine concern on this issue and for rejecting their main recommendations which, as I have indicated, would have led immediately to annual increases of 3,000.

As to timing, I am proposing that the White Paper should be published during the week beginning 1 November so that it can be taken into account during the debates on the changes in the immigration rules. It will be of some advantage that the rule changes and this White Paper should be seen as a package, since the rejection of the Committee's main recommendation on UKPH may help to offset any unfavourable reaction to our proposed relaxation of the marriage rules. To meet this timetable, the text of the White Paper must go to the printers very shortly. I shall therefore assume that colleagues are content unless I hear to the contrary by 8 October.

I am copying this minute to the Prime Minister, all members of H Committee and Sir Robert Armstrong.

Leon.

30 September 1982

E.R.

D R A F T

GOVERNMENT REPLY TO THE FIFTH REPORT FROM THE HOME AFFAIRS COMMITTEE
(SESSION 1981 - 82 HC 90 - I)

IMMIGRATION FROM THE INDIAN SUB-CONTINENT

1. The Government welcomes this report as a valuable contribution to the general understanding of the current trends in immigration from the Indian sub-Continent and for its practical proposals for improving the administration of the entry clearance system.

2. The Government accepts the broad lines of the Committee's analysis of the latest trends in immigration from India, Pakistan and Bangladesh: that the number of heads of households entering this country is now at a very low level and that the number of dependants (notably the wives and children of men settled here) has declined rapidly in recent years and will continue to decline. Although these trends vary slightly from one country to the next, mostly because of historical differences in the patterns of immigration to which the Committee has drawn attention, the general picture is one of declining queues and shorter waiting times, of a decrease in immigration which is likely to continue into the future. The Government does, however, have some reservations about certain detailed aspects of the Committee's analysis and these are set out in the observations on the individual conclusions and recommendations in the Annex to this White Paper. In particular, experience over the years of the changing nature of patterns of immigration, which can alter rapidly in the short term for reasons that are not always easy to predict or explain, makes the Government doubt the wisdom of relying as heavily as the Committee has done on the assumption that present trends are likely to continue into the future at a

E.R.

constant rate. The Government also considers that, in the Committee's analysis of the likely future immigration commitment, it may have given too little weight to the question whether men and women of Asian origin botn in this country will continue to seek spouses from the Sub-Continent.

3. The Government is grateful to the Committee for the support it has given in its report to the entry clearance officers on the sub-Continent who carry out a difficult job with skill and sensitivity. It is also grateful for the many constructive suggestions that the Committee has made for improving the administration of the entry clearance system. The Government has attempted to respond positively to these recommendations; only in a few cases, where the practical difficulties are overwhelming, has it found itself unable to accept them in full.

4. The Committee's major recommendations on United Kingdom Passport Holders in India rest upon the assessment in paragraphs 77-84 of its report that the majority of UKPH who want to settle in the United Kingdom are already in the queue, that under 10,000 people in the queue will come to the United Kingdom, that in future no more than 350 applications will be lodged each year and that that rate is likely to continue to decline.

5. The Committee has noted the unreliability - asknowledged by the Government - of the Foreign and Commonwealth Office's estimate of the number of UKPH in India who would be eligible for special vouchers. Estimates of how many of those who are

eligible will wish to come must be even more unreliable. The Committee suggests that applications have declined over the past four years to the present low level because most of those UKPH who are eligible to come and might wish to do so have already applied, but there is no firm evidence to support this. It is far from certain that applications would continue at the present rate if the Indian allocation were increased and at the same time a cut-off date were announced.

6. The Government considers it better not to rely on speculative estimates, but to focus on the rate at which people actually apply for vouchers and to try to balance the understandable wish of applicants to come here more quickly against the anxieties of the host population about too rapid an immigration. With these considerations in mind, the Government has kept the Indian allocation under review but considers that the present level should be maintained.

7. The Committee's recommendations would mean, on its own estimates, that 3,000 more people a year would be admitted to the United Kingdom under the voucher scheme in 1983 and 1984. The prospects for the longer term would depend on how many applicants came forward. For the reasons given above, the Government is not convinced that most of the UKPH in India who might wish to come here are already in the queue. The longer term prospects would also depend on the effectiveness of the Committee's proposed cut-off date. The Committee envisage that after 1987 applications would be accepted on the basis of criteria which, if applied to UKPH in India (who are not under individual pressure to leave and can acquire Indian citizenship if they wish) would mean that none would qualify to come to the United Kingdom.

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8. The Government doubts whether the proposed cut-off date could be made binding, and considers that it would be unfair to individual UKPH. The Committee have not suggested that UKPH should lose their citizenship after the cut-off date; and they could not be required to obtain Indian citizenship. But in practical terms the proposal would mean that after the cut-off date UKPH who had not applied for vouchers would become India's responsibility, even though they might not have become Indian citizens. If, on the other hand, it is envisaged that such UKPH should be accepted by the UK without a voucher, the cut-off date would have no value in limiting future immigration. Nor does the Government consider that the proposal would be fair to UKPH. It would curtail their rights in an arbitrary way, since some UKPH who were not eligible to come before the cut-off date, but became eligible later, would lose the right to apply for a voucher.

9. In the Government's view the Committee's recommendations do not constitute a workable package. They would lead to 6,000 more people being admitted for settlement from the Indian sub-continent in the next two years. Their long term effect is difficult to predict, but the Government thinks it more likely than not that they would add to what would otherwise have been the flow of immigrants from the Indian sub-continent. The Committee considers that this would be offset by a fall in other kinds of immigration because of the continuing downward trend in the settlement figures since the Government took office. Whether it would be offset or not is a matter for conjecture; but the Government considers it important to try to maintain the current downward trend, and does not accept that it means there is scope for trebling the quota for UKPH from India.

10. The Government has taken particular note of the Committee's recommendation on dependants. In the interests of family unity it has decided that children aged under 25 who would be able to qualify for a voucher in their own right should in future be admitted with the voucher holder. It is estimated that this could lead to an increase of between 50-100 a year in the number of UKPH admitted for settlement.

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ANNEX

OBSERVATIONS ON THE COMMITTEE'S CONCLUSIONS AND RECOMMENDATIONS

INFORMATION ON IMMIGRATION

(1) Subject to the annual publication of the Home Office information exercise, a register of dependants should not be established (paragraph 14).

As the Committee has pointed out, the Government has not yet brought forward firm proposals for the establishment of a register (which would require legislation) because priority has had to be given to changes in nationality law and in the immigration rules. The Government has indicated in the past that it foresees no early opportunity for legislation on the subject. It has meanwhile taken other measures to establish the scale and pattern of future immigration and thus fulfil the main purpose of a register. It has set up a new exercise for the collation of additional information from entry clearance applications, and the results of the first year of this exercise were published in Statistical Bulletin 5/1982 and are described in the Committee's report. The new exercise is likely to prove a valuable addition to our understanding of the future immigration commitment and the Government accepts the general conclusion of the Committee that it will after several years produce better information than any that a register could provide. The Government is now committed to continue the information exercise and the figures for 1982 and for subsequent years will be published in due course. In the light of this encouraging development, the Government has now concluded that there is no need to establish a register which would provide less useful information at a much higher cost. It therefore accepts the Committee's recommendation that a register of dependants should not be established.

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TRENDS IN IMMIGRATION

(2) The main remaining area of primary immigration by adult males is removal of time limit by reason of employment. Only 5.1 per cent - a tiny proportion - of work permit holders admitted in 1980 were from the Sub-continent (paragraphs 15 and 16).

The term "primary immigration" can be defined in more than one way but on the assumption that the Committee is thinking primarily of work permit holders and those with a United Kingdom born grandparent rather than, for example, special voucher holders, the Government would agree with this conclusion. The proportion is in fact even smaller than the Committee has suggested: the figure of 5.1% is for work permits issued in 1980; that for work permit holders admitted was 4.7% in 1980 and 4.3% in 1981.

(3) In the long term an increasing proportion of wives granted entry clearance in the Sub-continent will be women married to men settled here after four years of approved employment, and most will not have children. The actual numbers will decline (paragraph 19).

This conclusion is based upon the implicit assumption that the "second generation" effect (that is, the tendency for Asian men born in this country to look for wives abroad) is likely to be small. If that assumption is correct - and of that no-one can at present be certain - it would follow that an increasing proportion of wives would be married to work permit holders granted settlement after four years of approved employment. Since most work permit holders are adults, it cannot, however, be said for certain that "most of the wives will not have children" when they enter the United Kingdom let alone later. Many work permit holders may already be married at the time they enter the United Kingdom, and have families in the sub-Continent. There is no doubt, however, that if present policies continue the actual numbers of work permit holders, and hence their dependents, will decline.

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(4) The overall trend [of dependants granted entry clearance] is one strongly in decline, and will fall sharply after the clearance of the queues (paragraphs 22 and 26).

The Government agrees that the overall trend is one strongly in decline. The concept of the "clearance of the queues" may, however, be misleading. Given the nature of the entry clearance process, with the need often to seek further information before a decision can be taken, there will always be some people who have to wait while their application is processed. It may be more realistic to think of the queues reducing to a very low level at which most applicants have to wait for no more than two or three months for a decision. In referring to the "clearance of the queues", the Committee may perhaps have in mind the end of any significant waiting time to first interview, which is a more feasible proposition.

(5) The decline of immigration by wives in finite categories will accelerate the decline of application by children. An increasing proportion will have no children (paragraph 26).

The first part of this conclusion is true, but the second may not be if wives of men who used to be work permit holders become an increasing proportion of wives granted entry clearance (see the observations on conclusion (3)).

(6) The Home Office should in its information exercise comprehensively collate information on the proportion of female financees engaged to men settled here before 1st January 1973 (paragraph 28).

The Committee has pointed out that for a high proportion of wives who have entered the country as fiancees and subsequently been granted settlement on removal of time limit we do not know the date of the husband's first entry to the United Kingdom; and this makes it difficult to estimate accurately what proportion of fiancees were married to men settled here before 1st January 1973 and hence to predict the likely

future pattern of immigration in the fiancee category. In fact, for more than a third of the wives that were granted settlement on removal of time limit in 1981, we have no records of the date of the husband's entry because this information is not required for the purpose of granting settlement and the Home Office information exercise has until now been limited to the collation of information that happens to be already available on the papers.

Despite the absence of this information in a third of the cases, it is nevertheless possible to estimate the proportion of female fiancees in 1981 married to men settled before 1st January 1973 by making the reasonable assumption that the entry pattern of men whose wives were granted settlement on removal of time limit in 1981 after marriage in this country is similar to the entry pattern of men who were married abroad in 1980 or 1981 and whose wives were granted immediate settlement on arriving in this country. In all cases of immediate settlement, the date of the husband's entry to the United Kingdom is known from the record of the wife's entry clearance interview. If such an assumption were made, Table 8 of Statistical Bulletin 5/1982 would appear as follows :-

Wives granted settlement on removal of time Limit (1)

Indian sub continent 1981 — Number of wives

Year of entry to UK of spouse	Bangladesh	India	Pakistan	Total
Before 1963	-	60	130	190
1963-67	-	160	300	450
1968-72	10	320	610	940
1973 or later	10	700	280	990
UK born	-	130	40	180
Not recorded	-	10	40	50
Total	20	1,380	1,400	2,800

(1) Including wives granted patriality certificates.

Nevertheless, the Government accepts that the information exercise should be as

comprehensive as possible and where information for the date of the husband's entry does not exist it will be sought from wives applying for settlement on removal of time limit in future. Since, however the information is not required for a grant of settlement, no-one can be obliged to provide it, and the extent of the information received will therefore depend very much upon the voluntary co-operation of applicants.

(7) The Home Office should commission research on the extent to which men of Asian origin born here are marrying in this country, since this is of some importance in foreseeing long-term trends in immigration (paragraph 31).

The Government recognises the importance of establishing the likely extent of future immigration and is actively examining ways of obtaining the necessary information by research into existing sources, without the need for enquiries or special surveys.

ENTRY CLEARANCE

(8) If the present rates of fall in queue lengths are maintained there will be no queue in Pakistan by around the end of 1982, in Bangladesh by the middle of 1984 and in India by the middle of 1985 (paragraph 36).

As has been pointed out in response to conclusion (4), it is unrealistic to think in terms of no queues at all. Even if the current underlying trend were maintained, it is not in the Government's view possible to make any firm predictions about the timing of the virtual disappearance of the queues or, more realistically, of waiting times to first interview. It is, for example, already clear that the Committee's predicition of an end to the queue in Pakistan is premature. The Committee has assumed a constant rate of decline, but this is not certain. As the queues shorten, so the proportion of re-applications in the queue may become greater, and since these

E.R.

take on average longer to process (as they often result in refusals) than first applications, the rate of processing applications may decline even though staff resources and efficiency remain constant.

(9) <u>The Control of Immigration statistics should isolate the number of people in the queues awaiting their first interviews (paragraph 37).</u>

The Government recognises the possible importance of this additional information and has carefully considered the practicalities of its collection. As a result, the Government proposes to start collecting it, on an experimental basis, from the beginning of 1983.

(10) <u>Most applicants wait less than seven months for their first interviews. It is essential that the Government should not, after the clearance of the queues, allow a high level of delays to recur (paragraph 41).</u>

The Committee has rightly drawn attention to the considerable reductions in overall waiting times for first interview that have been achieved in the last three years;

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and to the high proportion of applicants who are seen more quickly in one of the priority categories. The Government welcomes this and hopes the trend will continue; it has no wish to return to the long waiting times of earlier years. Waiting times are, however, a product of the number of applicants to be seen and the resources that can be provided to process applications. Further comments on this point are contained in the observations on recommendations (44) and (45).

(11) Applicants do undoubtedly face problems in proving their relationships. ECOs and their seniors recognise this (paragraphs 48 and 49).

The Government welcomes the comments made by the Committee on the manner in which ECOs and those who supervise them carry out their work. It is to be hoped that these comments will encourage applicants to approach entry clearance issuing posts with full confidence that their applications will be fairly dealt with. Allegations of unfairness and of prejudice made against ECOs, in addition to being an injustice to ECOs themselves, help to confuse and mislead applicants, to their disadvantage.

(12) We commend the UKIAS research project to ECOs not because their attitude is wrong, but to improve further their ability to appreciate the difficulties of applicants (paragraph 49).

It is expected of all Diplomatic Service staff that they should seek to familiarise themselves with the customs and culture of the country in which they are serving, by reading, travel and meeting local people. Consistent with this, the report of the UKIAS research project is now shown to all new ECOs in Dacca for background

reading as part of their initial training. The evidence on individual cases provided by the project is being considered as new applications on those cases are made. The Government's general impression of this aspect of the project report is that some of the claims made for it may prove to be inflated.

(13) ECOs must assess the importance not of resolving conflicting evidence but of the implications of its existence. Their decision will inevitably cause controversy and - understandably - will at least occasionally be wrong. Some eligible people may therefore be kept out, but equally some who are not eligible will slip through the net. Neither result is the objective of those operating the system (paragraph 50).

The Government fully endorses these comments.

(14) ECOs should not refuse a whole family because they are suspicious of one member: a split decision is the right one (paragraph 53).

This recommendation is accepted and represents the current practice. Split decisions are taken when the ECO is satisfied of the bona fides of certain applicants. Entry clearance cannot, however, be granted to applicants in a false identity.

(15) All sponsors of people in the main queues should be advised that their presence at the interview, although not mandatory, would be helpful (paragraph 53).

It is already the practice to invite sponsors who are in the country at the time to attend the interview. Invitations to interview are sent out three months in advance, and posts are willing to include with the invitation a note to the effect that, whilst it is not a requirement for the sponsor to be present, it could be helpful to the applicant if he is in the country that he should attend at the same time. It will

E.R.

not normally be possible, however, to change the date of interview to accommodate a sponsor. Experience has shown that, however specifically worded, such advice is often misunderstood as a requirement (with consequent complaints from sponsors' representatives and MPs) and the practice might have to be changed if this proved to be the case. ECOs have no authority to give an assurance that there will be no prosecution for tax fraud. They can only say that they know of no instances of prosecution following a confession to an ECO.

(16) The FCO should sponsor a second UKIAS representative in Sylhet with proper clerical support for the sole purpose of advising applicants on filling in forms and on the acceptability of any documentation they have (paragraph 57).

The FCO recognises the useful work being done by the UKIAS representative attached to the Bangladesh Immigrants Advisory Service (BIAS) in Sylhet, who is largely funded by a Grant in Aid from the FCO. This grant was agreed in order to provide a representative to fulfil the functions for which the Committee recommends a second representative should now be provided. The problem would appear to be that UKIAS ask the representative to spend a good proportion of his time on work related to appeals (which involves outside visits) and which concerns UKIAS's work in this country. An increase in the FCO grant would not therefore be appropriate. Financial procedures do not permit (as the Committee recommends in paragraph 135) the FCO to transfer savings from an FCO staff post to supplement the grant to UKIAS.

(17) Field visits add greatly to the accuracy of the entry clearance procedures. More should be undertaken (paragraph 59).

The Government shares the view of the Committee on the usefulness of field visits,

both to help determine particular cases and to help familiarise ECOs with the background and circumstances of applicants. ECOs already set aside for enquiries in the field those cases where this is desirable and will continue to do so. Visits are, however, costly in time and resources and, although some increase in their frequency may be possible, the particular circumstances of a case must continue to be the criteria for undertaking such enquiries, which cannot become the norm. The Government does not think it would be right to amend the guidelines under which ECOs work to enable them to question young children or to carry out a minute examination of the contents of private homes in the way the UKIAS team claim to have done. Nor does the Government accept that the UKIAS approach, under which applicants are led to expect a visit, necessarily leads to a sounder conclusion.

(18) The Home Office should interview sponsors within three months of a case being deferred (paragraph 60).

(19) The Home Office should deal with cases referred to it for decision within three months (paragraph 61).

By their nature, both referred and deferred entry clearance applications often require the Home Office to arrange to interview a sponsor in the United Kingdom or to seek information from a third party such as the Department of Health and Social Security or the Inland Revenue. There will inevitably be cases which are delayed, perhaps because of difficulty in contacting a sponsor initially or the failure of a sponsor to attend an interview once arranged. Medical reports take time to be prepared and submitted to the Home Office. Some cases are highly complex and require more than one avenue of investigation; and as the Committee recognises, some ports do not have the capacity to carry out interviews with sponsors during the summer months. For all these reasons, it would be impossible to accept a fixed time limit for bringing

these cases to a conclusion. The Home Office is nevertheless conscious of the need to reduce the time taken in handling such cases and is currently considering a number of proposals which, while they may not overcome some of the major obstacles, such as the problem of immigration service resources in the summer months, should help reduce delays.

(20) Adjudicators should not put pressure on UKIAS to accelerate the hearing of appeals (paragraph 62).

In the last year there has been a marked reduction in delays in hearing appeals. Explanatory statements are now prepared within three months at all posts and the appellate authorities have reduced greatly the delays in hearing appeals, particularly in London.

The Government is anxious to maintain this improvement, which is clearly in the interests of appellants seeking to come to the United Kingdom from abroad.

The general practice of the appellate authorities, when they receive explanatory statements relating to an appeal against the decision of an entry clearance officer is to ask the sponsor or his representative to notify them when he is ready to proceed. He is told that the hearing will be set down if notification of readiness is not received within six months. This procedure is intended to reduce the number of adjourned appeals, which are wasteful of hearing-room time and mean that other appeals are delayed. Six months does not seem to be an unreasonable time for preparation but problems can, of course, arise if a sponsor does not approach UKIAS until the six months period has almost expired. Although there is a clear need to make the best use of the hearing facilities available, adjudicators are not unreceptive to the

problems which may face UKIAS. Where there has been special difficulty in certain areas, they have adjourned appeals at the request of the Service.

(21) The Home Office should consider whether extra resources should be made available to UKIAS in the short-term (paragraph 62).

UKIAS receives a grant in aid from the Home Office. This has been increased from £533,000 in 1980/81 to £652,000 in 1981/82, and the provision for 1982/83 is £721,000. These increases are exceptionally generous compared with the level of increases generally in the public sector. They have been made at a time of financial stringency because the Government recognised the particular difficulties faced by UKIAS and the value of the service it provides. The Government cannot offer to make extra provision over and above that already given.

(22) Too little information on the interview is made available to the appellants' representatives (paragraph 64).

(23) The FCO should conduct a further tape-recording experiment. In the meantime all appeal statements should include notes by the ECO of each question and answer (paragraph 65).

The earlier experiment was carefully conducted and the Government feels that the Committee has under-estimated the practical difficulties in local conditions of recording all entry clearance interviews, for possible use if an appeal is lodged. The procedure would, moreover, be likely to disconcert applicants. These doubts are shared by the appellate authorities. The recommendation is, however, accepted and a further experiment will be conducted using equipment that has recently been developed. The interim recommendation would amount to providing a complete written transcript of the

interview, which consists entirely of questions and answers. To do so would require considerable additional resources and generally delay entry clearance procedures. ECOs are already under instruction to provide a balanced record of the answers relevant to the decision taken. The guidance to ECOs on the preparation of appeal statements will, however, be reviewed in an endeavour to meet the points on which the Committee has expressed its concern.

(24) Adjudicators should come to their conclusions on the basis of the balance of probabilities even if they consider a discrepancy has not been resolved (paragraph 66

An adjudicator is independent and classed as a Tribunal under the provisions of section 12 of the Tribunal and Inquiries Act 1971. Since the appeals system was introduced, adjudicators have consistently applied the civil standard of proof based on the balance of probabilities, and the Immigration Appeal Tribunal has been vigilant in upholding this as the appropriate standard in appeals to it from adjudicators' decisions. It is not always possible to resolve discrepancies during hearings; but the weight given to any unresolved discrepancy by an adjudicator will depend on the nature of that discrepancy. A number of appeals are allowed in which discrepancies have not been resolved.

(25) In appointing adjudicators the Home Office should take account of the value of recent experience of the Sub-continent (paragraph 66).

The report of the Committee On Immigration Appeals (Cmnd 3387) suggested that the primary qualification for appointment as an adjudicator should be the ability to conduct hearings impartially and in a judicial spirit, with due regard both to the

law and policy which it is his duty to apply and to the right of an appellant to full consideration of his case. Due consideration is given to these factors and to the background and experience of applicants for the appointment of adjudicator. The Government accepts that some experience of the Indian sub-Continent is a relevant factor in the appointment of adjudicators, providing that the applicant is otherwise suitable. It is considering whether it might be possible to send one or two full-time adjudicators on a fact-finding visit to the sub-Continent. If this could be arranged, their subsequent report could be made available to other adjudicators.

(26) <u>The majority of UKPHs who wish to settle here are already in the queue. Many others have settled permanently in India (paragraphs 81 and 82).</u>

There is no firm evidence on what the future intentions of UKPH in India might be. The Committee's conclusion appears to be based on its estimate that in the 12 years ending in 1994, if present trends are maintained, rather less than 18,000 UKPH will be admitted for settlement in the United Kingdom. These calculations show how many people might be accepted for settlement by 1994; they are not "evidence which strongly supports our view that there are in India at most 18,000 UKPH who wish to settle here" as stated in paragraph 81 of the report. This depends on future intentions, which must remain a matter of speculation.

The Government considers it unsafe to assume, as the Committee does, that present trends will continue until 1994, and thereafter that no new applicants will come forward. Whatever the present views of UKPH may be (and the Government would not regard the evidence available to the Committee as being conclusive on that point) their future actions may be affected by a range of factors, economic, political and social, which cannot be predicted at all reliably. Changes in the way in which the voucher scheme is operated (see the observations on recommendation (33)) could

be expected to
also/lead to more UKPH applying for vouchers.

(27) Under 10,000 UKPHs in the queue will come to this country, and the rate of applications is likely, in practice, to continue to decline (paragraph 84).

The estimate of under 10,000 relates to applicants who are in the queue at the moment, and assumes that the proportion of applicants who refuse a voucher when it is offered (at present 20%) will remain the same in future years, but that the average number of dependants accompanying each voucher holder will decline.

What matters, however, is the total future commitment, which will depend not only on the numbers now in the queue, but on the numbers of new applicants who come forward in future years. For the reasons given in the observations on conclusion (26), the Government does not consider that it is possible to predict this with any certainty.

(28) UKPHs are in India because they have suffered pressures in East Africa at their most extreme (paragraph 88).

(29) In the long term public apprehension and immigration numbers would be reduced - by over 1,000 a year - by the absence of a UKPH queue in India (paragraph 94).

(30) The clearance of the queue should be accelerated (paragraph 96).

The Government believes that public apprehension would be exacerbated, not reduced, if the number of vouchers available in India were increased. The voucher scheme was introduced so that UKPH and their families - primarily those under pressure in East Africa - could be admitted at a controlled rate compatible with the capacity of the host society to absorb new immigrants. This remains the object of the scheme. The Government sees no reason to increase the number of vouchers available to UKPH in India who are not, and never have been, under individual pressure there.

The Government does not accept that immigration would be reduced by over 1,000 a year if there were no queue. The Committee's calculations are based on an erroneous assumption that if there were no queue every person issued with a voucher would be a single person with no dependants. Even allowing that some applicants marry while they are waiting in the queue who might otherwise have come as single men, the Committee overlooks the fact that many such men could be expected to marry wives in India, and these wives and their children would be eligible to join their husbands here. The removal of applications by children who failed the dependency test would not reduce numbers because the Committee envisages that such children would still be admitted as 'dependants'.

(31) UKPHs are "en route" to this country or have determined to settle in India. The pressures on them are lifted by coming here or taking up Indian citizenship (paragraph 96).

(32) The real level of applications, excluding failed dependants, is now under 300. The announcement of a cut-off date is unlikely to lead to a substantial increase in the rate of applications (paragraph 100).

(33) A cut-off date should be announced provided it is accompanied by a commitment to clear the queue more quickly. Thereafter UKPHs in India should be dealt with on the same basis as UKPHs in other countries outside East Africa (paragraph 101).

(34) We do not recommend a date by which all applications must be received and shortly after which all would be admitted. Rather, the Government should not accept applications on the present basis from UKPHs in India after the end of 1987 (paragraph 103).

For the reasons given in the observations on conclusion (26), the Government thinks it unsafe to assume that most UKPH who might wish to settle in the United Kingdom

E.R.

are already in the queue. In its view, it is likely that a decision to announce a cut-off date for applications would prompt many UKPH who are at present well settled in India to apply for a voucher before they lost their entitlement. Although the effect of such an announcement is impossible to quantify, it could result in a substantial increase in the number of new applicants. A cut-off date would also lead to difficulties for applicants who would become eligible for vouchers on present criteria after 1987, or who did not know of the cut-off date, or who simply failed to apply. It would not be enough that they should be free to take up Indian citizenship; they would have to be required to remain in India, or to return there, rather than coming to the United Kingdom.

(35) For 1983 and 1984 only an extra 1,200 vouchers should be issued each year in India. Presuming 20 per cent withdrawals, all those in the queue at present would be admitted by 1985 (paragraph 105).

As explained in paragraph 9 of the White Paper,
/the Government thinks it would be wrong to issue an additional 1,200 vouchers in 1983 and 1984, which would mean accepting about 3,000 additional entrants from India in each of those years.

(36) Our package is fair to UKPHs and to public opinion in this country without in any respect unreasonably affecting the rights of UKPHs in India. It would not lead to a net rise in immigration figures (paragraph 106).

Whether an additional 6,000 acceptances for settlement in the next two years would be offset by reduced immigration of other kinds is uncertain.
There would in any event be a substantial addition to what the settlement figures would otherwise have been. The Government considers that the present quota makes

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fair provision for UKPH in India, who are in their country of ethnic origin, not under individual pressure to leave and can acquire Indian citizenship if they wish.

(37) Any son or daughter under 25 at the time of the issue of a voucher should, if on the original application, be regarded as fully dependent. This will accelerate the clearance of the queue (paragraphs 118 and 132).

The Government has given particularly careful consideration to the Committee's comments on dependants. As the Committee recognises, the existing arrangements are generous in allowing children to be admitted as dependants up to the age of 25. The Government acknowledges, however, that this in itself leads to some anomalies when children have to wait for a voucher at an age when they are likely to wish to seek work and marry. The Government is also anxious as far as possible to avoid splitting families.

The Government could not accept any proposals which increased the number of people eligible to come under the voucher scheme. As the Committee's recommendation stands, it would appear - despite what is said in paragraph 130 - to have that effect. The Committee seems to intend that non-UKPH children who are no longer dependent, and married UKPH girls, neither of whom could qualify for vouchers in their own right, should be accepted as 'dependants'. The Government acknowledges a special responsibility towards UKPH and their dependants. But it does not consider that there is any reason of principle for admitting non-UKPH children, where those children are not dependent. Similarly, it cannot accept that daughters of UKPH who have married should be admitted to the United Kingdom.

The Government does, however, accept that there is a case for facilitating the entry of UKPH children who are no longer dependent, where those children would qualify for vouchers in their own right. It considers it would be desirable to allow such children to be admitted at the same time as the voucher holder (provided they were listed as dependants in his application) in order to avoid the splitting up of

families. This could be achieved by giving such children priority in the issue of vouchers over other applicants. The Government thinks it right, however, not to put other applicants at a disadvantage and it is anxious to be as helpful as possible to families.

The Government has therefore decided to accept the Committee's recommendation, in so far as it relates to children who would be able to qualify for a voucher in their own right. This will mean an increase of between 50 and 100 in the number of people admitted from India for settlement under the scheme each year.

(38) Panel doctors should be retained in major UKPH centres, and applicants should be free to use these or a panel doctor in Bombay (paragraph 122).

Arrangements are being made for the appointment of doctors at additional centres to carry out intermediate examinations. But it is preferable that the principal examination should be by a doctor on the panel in Bombay in whom the Deputy High Commission have full confidence.

(39) The Deputy High Commission in Bombay should cultivate the contacts established during our visit with UKPH organisations (paragraph 123).

The Government accepts this recommendation.

(40) At the beginning of each year applicants in the queue should be notified of the date of application of those then being issued with vouchers (paragraph 124).

Clerical resources do not permit this. Nor does the Government consider it

E.R.

desirable, since applicants may draw mistaken conclusions about the likely date of their own interview that could lead them to make arrangements which cannot be fulfilled. The Deputy High Commission will, however, as a feature of their closer contact with UKPH organisations, let those organisations know on a regular basis how movement through the queue is progressing.

(41) The Deputy High Commission should hold annual "surgeries" in each of the major UKPH centres (paragraph 125).

These will be tried out on an experimental basis. Continuation will depend on the response received.

(42) The problems faced by UKPHs as visitors is another reason to clear the queue more quickly (paragraph 127).

The Government acknowledges that there can be difficulties in ascertaining that UKPH who have applied for vouchers intend to return to India to wait for them after temporary periods in the United Kingdom as visitors. Early clearance of the queue would offer a solution, but for the reasons given above the Government does not consider this realistic. Entry clearance officers have been advised that they should not be unduly distrustful of the intentions of a UKPH who seeks entry to the United Kingdom for a visit only, but naturally the fact that a voucher has been applied for is a point they must take into account.

(43) Not one of our recommendations on UKPHs will result in the admittance of a single person not at present eligible to come (paragraph 130).

The Committee's proposals in recommendation (37) for children aged 18 to 25 would allo children to come who would not otherwise be eligible. As explained in the reply,

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the Government could not accept that aspect of the recommendation, but they have accepted the recommendation as it applies to children who would be eligible for a voucher in their own right.

The announcement of a cut-off date after which UKPH in India would in practice be unable to obtain vouchers would not make more people eligible for vouchers. It is, however, the effect on the number who choose to apply for vouchers which the Governmen has to consider.

(44) When ECOs become surplus in Pakistan they should be redistributed, to Bombay and then to Dacca, to implement our recommendations. One should be withdrawn to balance the cost of the extra UKIAS representative in Sylhet. Our main recommendations could therefore be implemented without any increase in spending (paragraph 135).

(45) Reductions in staffing should not be made too soon, as has been the case in New Delhi; they should be made only if all applicants in a post wait a maximum of three months for their first interview. Thereafter that waiting time should be maintained by the addition or subtraction of staff as necessary (paragraph 136).

The Government welcomes the progress that has been made in reducing both the queues and waiting times in the sub-Continent and will continue to provide posts with the best resources that can be made available to meet the demands made upon them. In its comments on past deployments, the Committee has perhaps not taken fully into account the efforts that have been made to keep entry clearance staffs in the sub-Continent at adequate strength during a period when the size of the Diplomatic Service has by Government policy been contracting. The staff in Islamabad was kept

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at a very high level until there was a clear downward trend in demand. Dacca has been shielded from any cuts at all. The decision to remove an ECO from New Delhi (which the Committee strongly criticises) was a particularly difficult one. Although it was decided early in 1980 that the post must be given up, it was not cut until the end of 1981. An additional ECO was given to Bombay, which was in greater difficulty than New Delhi, in 1980. There has been flexibility in providing short-term additional support when required, such as to Dacca in 1978/79 and to Bombay early this year.

For the future, the Government will try to keep staff at a level that should enable a continuing reduction in queues and waiting times. If, as the Committee recommends, staff are not to be redeployed until the maximum waiting time is three months, it will not be possible to release staff from Islamabad as quickly as the Committee envisages. The observations on recommendation (16) have explained that it would not in any case be possible to use the saving of an ECO post to fund an additional UKIAS representative in Sylhet. Changes in the immigration rules may result in the recent downward trend in applications being reversed, and so waiting times may stabilise or even increase unless increased resources are provided. A close watch will, however, continue to be kept on the situation so that the resources that can be provided continue to be used to best effect.

JO

Immigration

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The Rt Hon William Whitelaw CH MC MP
Secretary of State for the Home Department
Home Office
50 Queen Anne's Gate
LONDON
SW1

29 September 1982

D W. Willie,

IMMIGRATION RULES

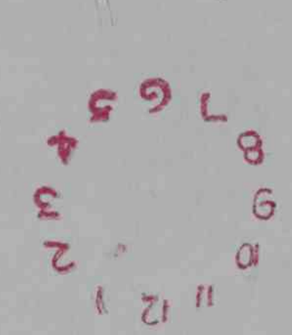
Thank you for your letter of 6 September. will repeat it required

I am glad that you are reasonably confident that you can justify the view that self-employed entertainers do require work permits and that it is right to exercise work permit control for such people.

I'm still inclined to think that ideally the work permit requirement for self-employed entertainers should be made explicit in the Immigration Rules, particularly since recent representations that such people should be permit-free will no doubt be repeated. However, I can understand your concern at the consequences of amending the rule in the way I suggested. Therefore I agree with your suggested amendment which means that the second sentence of paragraph 27 will read "Permits are issued by the Department of Employment in respect of a specific post".

As you say, my officials are taking steps to amend general literature about the work permit scheme and will circulate appropriate information to agents in the entertainments field.

I am sending copies of this letter to the recipients of yours.



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PRIME MINISTER

WORKING HOLIDAYMAKERS

You will recall that the Rayner scrutiny of the work permit scheme recommended curtailment of the working holidaymaker scheme. H Committee, however, concluded that this recommendation should not be accepted. The Australians have now decided to limit their own working holidaymaker scheme to a maximum of one year. In view of this, Mr. Tebbit is proposing that our own scheme should be similarly limited - see his letter at Flag A. The Home Secretary doubts the political wisdom of this since it would have to be included in the forthcoming Immigration Rules. He feels that such a provision would anger precisely those members who will be least happy with the other changes in the Immigration Rules. The Home Secretary has proposed that this issue should be discussed at H on 11 October (see his letter of 28 September at Flag B).

I agree strongly with the Home Secretary.

Many young Australians profit enormously from this longer scheme and it helps our relations with Australia

29 September 1982

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B

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SWIH 9AT

28 September 1982

Dear Norman,

RAYNER REVIEW OF THE WORK PERMIT SCHEME

Thank you for your letter of 22 September.

I appreciate your concern about the Australian changes in their working holidaymaker scheme, although I think there would be considerable political difficulty in the handling of changes in the Immigration Rules if we were to restrict the entry of working holidaymakers (most of whom come from the Old Commonwealth) from two to one years as you suggest. The effect of such a change would be to alter the general political balance of the package now proposed in the Immigration Rules (in which I think that it would have to be included) and probably to make it more controversial particularly with our own supporters. However, I would like this matter to be discussed at H Committee on 11 October. I suggest that you should circulate a paper by 4 October for that meeting and I will also arrange to circulate a paper setting out the considerations as I see them, together with a list of the precise changes which would need to be made to the Immigration Rules so that there need be no delays if your proposals prevail.

In the meantime I have arranged that the White Paper on the Immigration Rules should not be returned to the printer until 12 October. It is essential, however, that this one last point on the White Paper be settled by 12 October and that the White Paper should be published not later than 26 October so that there is adequate time for it to be considered by Parliament and the public before the Commons debate it on, say, 11 November.

I am content with your other comments on the Rayner report apart from that on recommendation 11, which says that enforcement would be virtually impossible. It would be unwise to make such a bald statement public since it could well arouse anxiety about enforcement generally. The remaining arguments in this section of our response are strong enough, and I would prefer the references to enforcement to be deleted both in the Appendix to the Action Document and in the general commentary. As regards timing, I am content that you should publish your Action Document a day or so after the White Paper on the Immigration Rules.

I am copying this letter to the Prime Minister (with copies of the earlier correspondence) and to the recipients of yours.

Yours ever,
Willie

The Rt. Hon. Norman Tebbit, M.P.

Treasury Chambers, Parliament Street, SW1P 3AG

Rt Hon Norman Tebbit MP
Secretary of State
Department of Employment
Caxton House
Tothill Street
London SW1H 9NA

27 September 1982

Dear Secretary of State,

Thank you for sending me a copy of your letter of 22 September to Willie Whitelaw.

I agree with you that, in the light of the Australian action, our own maximum permitted period of stay for working holiday-makers should be reduced to a year. Apart from this, I am content with the draft Action Report.

I am copying this letter to members of H, Francis Pym, Arthur Cockfield, Paul Channon and Sir Robert Armstrong.

yours sincerely

LEON BRITTAN

[Approved by the Chief Secretary and signed in his absence]

SP

CONFIDENTIAL

(copied) A

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The Rt Hon William Whitelaw CH MC MP
Secretary of State for the Home Department
Home Office
50 Queen Anne's Gate
LONDON SW1H 9AT

12 September 1982

Dear Willie,

RAYNER REVIEW OF THE WORK PERMIT SYSTEM

Thank you for your letter of 29 August and your agreement that the scrutiny report and our response to it can be published as soon as we are ready to do so.

You suggested that it would be helpful if colleagues in H Committee had the opportunity to comment on the proposed response to the scrutiny report before it is formally submitted to Sir Derek Rayner's office and I am now enclosing a draft Action Report.

Since the attached Action Document was written I have learnt that Australia has decided to change their own working holidaymaker scheme so as to limit entry to a normal maximum of one year (with a practical limit of rather less in the current economic situation), to adopt a more selective approach to applicants and to set unpublished quotas (with one of 7,000 for the UK in the first year). This rather makes a nonsense of our position of not altering our scheme out of respect for the Melbourne Communique and likely Commonwealth reactions and in recognition of the fact that Australia, from where the majority of working holidaymakers to this country come, had a broadly comparable scheme. Quite clearly Australia gives less importance to Commonwealth goodwill than self interest!

As you will remember Ministers put a good deal of weight on the argument that Australia gave very free access to people from UK. In the circumstances I think we really must reconsider our decision with a view to bringing our maximum permitted period of stay down to one year as well. It would now seem insupportably weak in the light of the Australian action and our own economic situation to turn down the Rayner recommendation altogether. I acknowledge that this late change might cause problems for you with your White Paper, but a decision to change the immigration rules concerning working holidaymakers could no doubt be announced in a supplementary statement. We would also, of course, need to ensure that we did not publish the Rayner report before your White Paper.

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I should very much like Sir Derek to have our response early in October so that the report can be placed in the House of Commons library and a PQ arranged soon after Parliament reassembles. Therefore I should be grateful for a swift response from you and Francis Pym in particular on the working holidaymaker question and for any other comments of detail anyone may have by 4 October.

I am copying this letter to members of H Committee, Francis Pym, Patrick Jenkin, Arthur Cockfield, Paul Channon and Sir Robert Armstrong.

Yours Norman

CONFIDENTIAL

Immigration HO/PO

SUBJECT.

Dr John Vereker

10 DOWNING STREET

cc. Market Sec

From the Private Secretary

15 September 1982

Dear John,

Immigration Rules on Marriage

The Prime Minister had a meeting with the Home Secretary on Monday 13 September, at 5.00 pm, to discuss the changes in the immigration rules on marriage approved by H Committee in June. The Chief Whip and the Minister of State for Home Affairs were also present.

The Prime Minister said that she was most unhappy about the proposed changes in the immigration rules. The whole thrust of Government policy at the present juncture had to be directed towards easing the problem of unemployment. The proposed changes in the rules went in the opposite direction. The outcome of admitting more husbands and male fiances would mean that there would be more new families, larger numbers on the unemployment register, and in the long run a requirement for the creation of more jobs. The UK had dealt far more generously than other European countries with its immigrants. In France, 10 years was necessary before citizenship was granted. Both the Germans and the Swiss had sent home large numbers of their Gastarbeiter, and in many cases had not admitted their families in the first place. There were, furthermore, sufficient numbers in the ethnic minorities in this country now to provide an acceptable range of choice for young women without the need for further young men to come to this country. It was traditional among many of the ethnic communities concerned that when a woman married, she would join her husband's home. The proposed changes in the rules ran counter to this tradition. They were also wholly inconsistent with the Manifesto, which had pledged that the Government would end the concession introduced by the Labour Government in 1974 to husbands and male fiances.

The Home Secretary said that the passage of the Nationality Bill had obliged us to introduce new immigration rules. It was regrettable that this issue had to be brought up again, but the substitution of the concept of British citizenship for the old concept of citizenship of the UK and colonies had made this unavoidable. The new rules had to include a fresh definition of those women whose husbands could join them here. It would be very difficult to defend a distinction between some British citizens who would be able to be joined by their husbands, and others who would not; no parallel distinction was being maintained for men and their wives. The European Commission considered the present rules contrary to our obligations under the Treaty of Rome, and

it was very likely that current cases would lead to adverse decisions at Strasbourg, and that the present rules might contravene the European Convention on Human Rights. These decisions would probably be made in summer or autumn of 1983, at a very awkward time politically. The Home Secretary said that he himself had no enthusiasm for these changes. He would much have preferred it if matters could have been left as they were. But he feared defeat in the Commons, or more certainly in the Lords, if we were to introduce new rules drafted in the way the Prime Minister preferred. If the Government were defeated in this way, it would be statutorily obliged to put down further rules for debate in the House. This would raise the issue yet again, and much political difficulty.

In discussion, it was noted that there would be controversy whatever the Government did. Some of the Government supporters, resting on the Manifesto, would oppose any changes. Others would expect the Government to make the changes the Home Secretary was proposing, and might be ready to vote with the Opposition on the issue. The proposed changes seemed likely to increase the number of immigrants by up to 3,000 a year. It would not be practical to introduce some halfway-house, such as a provision that husbands and male fiances should be admitted, but only after such date as unemployment had fallen to a specified figure. It was noted that the proposed new rules would not go back entirely (although they would go back substantially) to the pre-1980 position: the Government would be allowing only British citizen women to bring in husbands, whereas the previous rules allowed all settled women, whatever their citizenship, to do so. Furthermore, the Home Office would apply stringently the conditions that marriages should not be for the purpose of immigration, and that the couples should have met.

The Prime Minister said that she recognised that, on the general immigration background, there had been a reduction in the numbers of immigrants accepted for settlement since 1979, and that the numbers applying for entry clearance in the sub-continent had dropped sharply. Furthermore, the extent to which applications would lead to an immediate increase in the numbers accepted for settlement depended on what changes, if any, the Home Office made in the number of entry clearance officers available to deal with the applications. She continued to be concerned about the discrepancy between what was proposed and the Manifesto. Nevertheless, in the light of the considerations which had been advanced, she agreed that the Home Secretary should proceed as he proposed.

I am sending copies of this letter to Murdo Maclean (Chief Whip's Office) and Richard Hatfield (Cabinet Office).

Yours sincerely,

Michael Scholar

John Halliday, Esq.,
Home Office.

Immigration
Prime Minister (2)

Mrs 10/9

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SWIH 9AT

Ans 9 September 1982

Dear Ian

Thank you for your letter of 17th August about the draft Immigratio Rules.

You asked about the intention of paragraph 58C, which relates to children born in the United Kingdom who because neither of their parents is a British citizen or settled at the time of their birth, are not British citizens. Under paragraph 58C if such children have not been absent for more than two years, they may be given leave to enter without having to satisfy the normal requirements in the rules relating to maintenance and accommodation and the presence here of both parents. The normal entry clearance requirements are also waived if such children are travelling alone, or with parents or a parent who do not require entry clearance (but visa nationals will have to have a visa).

These are special concessions for children who have not been away for more than two years. Children who have been away too long to benefit from paragraph 58C will still be able to obtain leave to enter, but they will have to comply with the normal requirements in the rules, as envisaged in paragraph 58G. Thus, in the example you give the child would have to qualify under paragraphs 42, 43, 46 and 47 of the rules. Adequate maintenance and accommodation would have to be available; both parents would have to be present in the United Kingdom, and prior entry clearance would be required.

I hope this clarifies the intention in this part of the rules. It seemed reasonable to facilitate the entry of children who were born here, as long as they retained strong links with this country, and two years seemed an appropriate cut off period for this purpose. It also corresponds with the period within which a person who is resident here without a time limit on his stay must return if he wishes to benefit from the concessions for returning residents.

I am sending copies of this letter to the recipients of yours.

Yours

Sir Ian Percival Q.C. M.P.

Prime Minister (4)

MCS 7/9

Caxton House Tothill Street London SW1H 9NA

Telephone Direct Line 01-213 6400

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The Rt Hon William Whitelaw CH MC MP
Secretary of State for the Home
Department
Home Office
50 Queen Annes Gate
LONDON SW1

6 September 1982

MS

Dear Willie,

IMMIGRATION RULES

Thank you for sending me a copy of the draft Immigration Rules under cover of your letter to Quintin dated 10 August.

I have one small amendment to suggest. Paragraph 27 is accurate in as much as work permits are in most instances issued in respect of a specific post with a specific employer, but it is also misleading to the extent that it implies that this is the only circumstances in which a permit is issued. The fact is that work permits are also required for certain types of self-employment. The most common example is for a concert artist giving an "own risk" recital, but there are also instances in commerce and industry where the control is exercised.

I see advantages in making the position explicit, rather than implicit and would suggest the following addition at the end of the second sentence of paragraph 27:-

> ".....[, or employment in a specific capacity /whether under a contract of service or otherwise/]. Self-employed entertainers, including musicians, dancers and actors coming to seek or to fulfil engagements require work permits. ....."

The section in square brackets is perhaps rather legalistic and although I would prefer to see it in am content to defer to your views. Otherwise, I hope you will be able to agree to this small but useful amendment.

I am sending copies of this letter to the recipients of yours.

Yours
Norman

RESTRICTED

Immigration
PPS

1

Prime Minister

Agree to see the Home Secretary, Chief Whip, and Tim Raison? Mrs Whitelaw is anxious to explain personally the reasoning behind these proposals.

1700
Monday 13th Sept.
CS. 6/9

PRIME MINISTER

Yes MT

IMMIGRATION RULES ON MARRIAGE

Your Private Secretary's letter of 26 August to mine said that you were unhappy about the changes in the Immigration Rules on marriage that H Committee agreed on my recommendation in June. This minute summarises the reasons why we concluded that a change must be made, and made now, and discusses some aspects of the presentation of the new Rules.

At present, as you know, we define the category of women who may be joined by their husbands in this country as those citizens of the United Kingdom and Colonies who were born here or had a parent born here. One of the main purposes of our recent Nationality Act was to get rid of the category of citizens of the United Kingdom and Colonies and to define for the first time a new category of British citizens whose full loyalty would be to this country. The new Rules have to include a fresh definition of those women whose husbands can join them here and there are strong arguments in principle for saying that any woman who is a British citizen has this entitlement.

This is not solely a question of domestic law. The European Commission consider the present rule as contrary to our obligations under the Treaty of Rome and it is very likely that current cases will lead to decisions at Strasbourg that the present rule also contravenes the European Convention on Human Rights. I would prefer to make the change now, when it can be presented as part of our reform of the nationality law, rather than have to do so later as a consequence of an adverse decision in Europe. (I must add that we cannot be sure that what we propose will dispose of all the cases pending at Strasbourg though it will fully meet our Community obligations.)

There will be controversy whatever we do. Some of our supporters will oppose any changes; others who put their names to Early Day Motion No.370 on the subject will expect the Government to make the changes I have in mind and might be ready to vote with the Opposition on the issue. Certainly I could not guarantee that the new Rules would secure a majority in both Houses unless we make some alteration in the present position. In the course of the Parliamentary debates I would emphasise that we are not going back entirely to the pre-1980 position. We should allow only British citizen women to bring in husbands, whereas the previous Rules allowed all settled women, whatever their citizenship, to do so. And the condition that marriages should not be for the purpose of immigration, and that the couple should have met, will remain.

RESTRICTED

As to the general immigration background, there has been a reduction in the numbers of immigrants accepted for settlement since we took office. The settlement figures in 1981 were the lowest since 1973. The numbers applying for entry clearance in the sub-continent have dropped sharply and the queues there are now shorter. Moreover, although the changes we propose will increase the number of applications in the sub-continent because people not previously eligible to come will now apply, the extent to which applications lead to an immediate significant increase in the numbers accepted for settlement depends on what changes, if any, we make in the number of entry clearance officers available to deal with the applications.

The decision about the content of the new Rules is not an easy one and I reached my conclusions only after a good deal of thought and discussion with colleagues. I should welcome an opportunity to discuss this further with you, however, before we are irrevocably committed. It would be helpful, I suggest, if Michael Jopling and Tim Raison were to join us.

Yours

2 September 1982

FCS/82/123

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Immigration Rules

1. Thank you for sending me a copy of your letter of 10 August to the Lord Chancellor, enclosing a draft of the proposed White Paper on changes to the Immigration Rules.

2. Apart from a few minor points concerning possible effects on Community law which my officials are discussing with yours, I am content with the changes proposed, and with the terms of the White Paper. I am also happy with your proposals on timing. My officials are already in touch with yours about guidance to our overseas posts, who will need to be able to explain the proposals locally as soon as they are made public in the White Paper, and also about instructions to entry clearance officers, so that we can be ready to apply the revised Rules on 1 January.

3. I am sending copies of this to the recipients of your letter.

(FRANCIS PYM)

Foreign and Commonwealth Office
2 September 1982

PART 1 ends:-

TF to Home Ossie 26/8

PART 2 begins:-

FCS to Home See 2/9