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QUEEN ANNE'S GATE LONDON SW1H 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.

Young,  
Douglas

The Rt Hon John Biffen, M.P.

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.

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 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

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 consulted the constituency 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.

