



## More Legislation?

1 The final report of John Vine, the recently retired Chief Immigration Inspector, published at the end of 2014, notes that British citizenship has been granted to many applicants for naturalisation without proper checks being made. In some cases citizenship has been granted to illegal immigrants and in others grants have been made to people with criminal records, no checks having been made.

2 The reaction of Yvette Cooper, New Labour's shadow Home Secretary to the report on the Andrew Marr Show on 14 December 2014 was that fresh legislative powers were needed to ensure that foreign criminals could not become naturalised British citizens. In particular she said that a future Labour government would legislate for an additional legal requirement that applicants for naturalisation should be obliged to produce the equivalent of a CRB check from their countries of origin.

3 The requirements for naturalisation are set out in considerable detail in Schedule 1 of the British Nationality Act 1983, taking up 10 closely printed pages of the Immigration Law Handbook. Apart from requirements of previous residence, paragraph 1 of the Schedule an applicant must show that he is (i) of good character, (ii) has sufficient knowledge of English, Welsh or Scots Gaelic, (iii) has sufficient knowledge about life in the United Kingdom and (iv) intends that the UK should be his principal home. Paragraph 1(2) sets out the previous residence requirements, including a very specific requirement that the applicant must not in the qualifying period have been in breach of the immigration laws.

4 It is clear from the Chief Inspector's report that the caseworkers who cleared many of the naturalisation applications failed to comply with the requirements of Schedule 1. The good character requirement obviously ought to exclude convicted criminals, but many have been allowed to slip through the net. Precisely what is meant by "good character" is not defined but it can reasonably be assumed that the Home Office has issued guidance to caseworkers instructing them to check criminal records and other evidence of the previous history of applicants. Similarly illegal immigrants should be debarred by the operation of paragraph 1(2) but this has not happened. Yvette Cooper's proposed new statutory requirement would be difficult to meet in many cases and the cooperation of foreign governments cannot be taken for granted, so provision would have to be made for exempting applicants from this requirement in appropriate cases. But the main point I wish to make is this: if caseworkers already disregard existing statutory requirements on a large scale, through ignorance, negligence, overwork or for whatever reason, what is the value of adding new requirements knowing that they may also be disregarded?

5 I am not making a party political point in referring to Yvette Cooper. A similar point can be made about some of the provisions of the Immigration Act 2014, an Act brought in by the present Coalition government, such as the duty now to be imposed on lessors of property to check the immigration status of tenants. There is a recent case of a Conservative MP wasting parliamentary time with a private member's Bill on mandatory deportation, all of the provisions of which were readily shown to be contained in much more effective form in existing legislation going back to the Immigration Act 1971. David Cameron in the run up to the 2015 General Election is now talking of repealing

the Human Rights Act and replacing it with a Bill of Rights. I have already in Legal Paper MW 237 made my clear my views on the futility and undesirability of such a Bill. Ed Milliband has recently promised that a future Labour government will legislate to ensure that British workers are protected against competition from workers from other EU Member States who are prepared to work at lower rates. There is no limit to the ways in which new controls designed supposedly to improve immigration control can be invented.

6 The instinct of politicians is often to look for legislative remedies for particular problems and such remedies are often necessary or desirable. But in the case of immigration we seem to have gone as far as or perhaps farther than is humanly possible in practical terms. Since 1971 there have been eleven substantial Acts of Parliament dealing specifically with immigration and asylum and a huge increase in the volume of the Immigration Rules. Domestic and European Union legislation and United Nations treaties relevant to immigration, asylum and nationality law now occupy just over 1900 closely printed pages of the Immigration Law Handbook. But in spite of all this legislative effort the day to day management of immigration is failing. There are regular reports and admissions now of increasing backlogs of applications, running into hundreds of thousands which will never be cleared. The present government regularly lays the blame for present shortcomings on the past incompetence of its predecessor Labour government while politicians now in opposition blame the incompetence of the present government. It is a constitutional convention that politicians must always take responsibility and unfortunate that this convention means that the real problem tends to be overlooked or inadequately appreciated. By that I mean that the task of coping with huge bureaucratic exercises involving hundreds of thousands of individual applications for visas, extensions, asylum, citizenship etc. has to be performed by large numbers of relatively junior civil servants, many of them not perhaps very bright or capable of understanding the detail and complexity of the huge quantity of legislation that they are expected to implement. The Home Office, in common with other government departments, has had to accept cuts which have resulted in a reduction of the manpower available at a time when the burden of the work and numbers of applications are constantly increasing.

7. The problem of huge backlogs is a matter which was recently considered by the Court of Appeal in *SH(Iran) and another v. Secretary of State for the Home Department* [2014] EWCA 1469 discussed in Legal Paper MW 349. The backlog was one of over 100,000 asylum applications and the Court held that delays of years in disposing of individual applications did not entitle the appellants to a decision by default in their favour. It is possible that if cases on similar facts again come before the Court of Appeal or Supreme Court, the judges may feel disposed to invent a remedy which will avoid the present unsatisfactory state of affairs, which results in many thousands of people with pending cases remaining for years in legal limbo.

8 I have no magic solutions to offer, just a plea to politicians to refrain from more legislation as far as possible and to try to ensure that resources available for carrying out tasks created by existing legislation are adequate for the magnitude of those tasks. I would also make a plea for consolidation of the eleven Acts now on the statute book and of the chaotic muddle of the Immigration Rules.. Consolidation does not involve any changes to the law and has the advantage of taking up little parliamentary time. It would make the law more readily accessible for civil servants, lawyers, judges and other users and simplify the task of what they are looking for. It could also be a result of these two exercises that it might be found possible to get rid of some legislation which is now redundant, so consolidation might produce the bonus of a modest degree of simplification.

Harry Mitchell QC  
Honorary Legal Adviser  
Migration Watch

17 February 2015

