

## Immigration Bill September 2015

### Response and Recommendations from Asylum Welcome 24.9.2015

The Immigration Bill published on 17<sup>th</sup> September will be debated in parliament on the 13<sup>th</sup> October. To inform that debate, Asylum Welcome highlights aspects of the Immigration Bill and makes recommendations.

#### About Asylum Welcome

Asylum Welcome is an Oxford based charity providing a range of services. It is unusual in that for over 20 years it has worked both with immigration detainees (at Campsfield House) and with asylum seekers and refugees living in the community. Asylum Welcome is also unique in the strength of its volunteer workforce. The organisation has approximately 120 volunteers, all of whom donate several hours of time each week. It has an even wider network of local members, donors and supporters: it is well established and well supported in Oxford. This paper is on behalf of that network of Oxford people who support Asylum Welcome.

#### 1. Appeals: Clause 31 Appeals within the United Kingdom: certification of human rights claims

An amendment to the Nationality, Immigration and Asylum Act 2002 was introduced in 2014 - Section 94B - this gave the Secretary of State the power to remove from the UK a person appealing against a refused human rights claim if it is following a conviction or if it is deemed conducive to the public good. Clause 31 of the Immigration Bill 2015 proposes to amend Section 94B to give the power to remove any person appealing against a refused human rights claim so long as it would not cause them 'serious and irreversible harm'. An appeal would then need to be made after having been returned to the country of origin.

**Response:** Asylum Welcome values the right of appeal and believes it should not be curtailed. Asylum Welcome is opposed to this amendment and believes applicants for Leave to Remain under human rights law should be allowed to remain in the UK while they lodge an appeal.

An "in country right of appeal" is in line with the principle of non-refoulement, i.e. the prohibition of sending, expelling, returning or otherwise transferring (refoulement) a refugee to "territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group". This principle is guaranteed in Article 33(1) of the 1951 UN Convention on the Status of Refugees, its 1967 protocol and also enshrined in numerous international instruments. The principle of non-refoulement is considered to apply in a human rights context to prohibit the forcible sending, or returning or in any other way transferring a person to a country where he or she may face an abuse of their human rights. It is a principle recognised as a non-derogable and applicable in all circumstances, regardless of immigration status, and relates not only to the country to which the person faces immediate return but extends to 'any other country where he runs a risk of being expelled or returned'.

Asylum Welcome sees many people who have tremendous fear of return to countries of origin, who have asylum and or Article 2 and or 3 ECHR claims certificated as clearly unfounded, further submissions/fresh claims refused etc. whose only recourse to challenge such certification is by way of the complex and costly procedure of Judicial

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Review. A proportion of our clients' cases are won at appeal, underlining the importance of an appeal process whilst the person is still in the UK.

The concerns about the impact of the Immigration Act 2014 in curtailing appeal rights, and the much more limited protection given by Judicial Review, are already well documented by experts in the immigration and asylum fields. Now the proposed Immigration Bill 2015 extending the 'deport first appeal later rule' will work, in effect, as a blanket rule to implement a decision to deport before the final outcome of the legal challenge is known, putting lives at risk.

Asylum Welcome is particularly concerned about young people from dangerous countries who arrived in the UK as unaccompanied asylum-seeking children. When their temporary leave ends at age 18 or 19 they are ill-equipped to provide evidence to pursue their case for asylum, but are able to show evidence that they have become integrated and respected members of the community to support a claim for Leave to Remain under Article 8 of the European Convention on Human Rights (right to family and private life). In such cases it is practically impossible to exercise the right to appeal once they have been returned to their country of origin.

In addition to those cases where we believe many of our clients' lives could be put at risk, we are also very concerned about the human cost on families, children and individuals of the provisions that an Article 8 Human Rights claim against removal will no-longer be 'suspensive' and will have to be brought out of country. There will still be an appeal but the person(s) removed will not be able to attend in person to try and convince the judge, which will make it much harder for them to succeed. The family and children are likely to suffer all manner of hardships, including the potential loss of any job, together with separation of family and children for the duration of the appeal. Appeals are said to be currently taking over 18 months to be heard and further time for decisions to be issued and implemented. A child being separated from a parent for the duration of the appeal process is not a barrier to removal, nor is being prevented from participating in family proceedings.

**Recommendation:** Asylum Welcome recommends that the right to appeal from within the UK be retained for those seeking Leave to Remain on all human rights grounds.

## 2. Asylum Support: Clause 34 Support for certain categories of migrant, Schedule 6

Clause 34 explains that support for migrants is set out in detail in Schedule 6. Schedule 6 abolishes Section 4 of the Immigration and Asylum Act 1999, which currently provides support and accommodation in certain circumstances for those who have been refused asylum. Instead Schedule 6 proposes amending Sections 94, 95 and 98 of the 1999 Act.

Section 94 is amended to include in the definition of an asylum seeker a person who has made 'further qualifying submissions' that their removal from the UK would breach obligations, and these submissions have recorded by the Secretary of State but not yet determined.

Section 95 of the 1999 Act which relates to support for asylum seekers will have an additional section Section 95A relating to 'support for failed asylum-seekers, etc who are unable to leave the UK'. Under Section 95A the Secretary of State may provide support if the person is a failed asylum seeker or their dependant, is destitute, faces a genuine obstacle to leaving the UK and 'meets such requirements as may be prescribed'. The definition of 'genuine obstacle' and other conditions are to be set out in regulations. Payment of support may depend on participation in community activities. Support under Section 95A may be in the form of vouchers. Section 98 of the 1999 Act which also provides for support to asylum seekers is to have a similar Section 98A inserted.

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Guidance notes<sup>1</sup> for the Immigration Bill 2015 state that families with dependent children at the time that their asylum claim and any appeal are rejected will not normally continue to receive accommodation and support.

**Response:** The current system of support for those refused asylum will end and the details of the new framework are unclear. The consultation paper issued by the Home Office in advance of the Immigration Bill 2015 gave some indication of the proposed changes, including removing access to Home Office accommodation for those seeking to leave detention. Asylum Welcome's response to the consultation can be viewed here [http://www.asylum-welcome.org/images/aw\\_files/Asylum-Welcome-response-asylum-support-consultation-Sept-2015.pdf](http://www.asylum-welcome.org/images/aw_files/Asylum-Welcome-response-asylum-support-consultation-Sept-2015.pdf)

**Recommendation:** Asylum Welcome recommends that the Home Office provision of accommodation and support should be compatible with safeguarding the welfare of children and the welfare of refused asylum seekers who continue to pursue their claims for asylum due to fear of return to countries where they are subject to danger.

The rights of children in particular should be respected in accordance the UK government formal and binding commitment under the United Nations Convention on the Rights of the Child (UNCRC) which the United Kingdom ratified on 16 December 1991. Under Section 55 of the Borders, Citizenship and Immigration Act 2009 (UK Borders Act), the Secretary of State has a duty to make arrangements for ensuring that immigration and asylum functions are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom. Removing accommodation and support for children claiming asylum is therefore contrary to Section 55 of the UK Borders Act.

The provision of asylum support should also enable the release from detention of those who do not need to be detained. Further detail is needed in the legislation and guidance notes to understand the changes proposed and to give assurances about the welfare of children, refused asylum seekers and detainees.

### 3. Tenancies: Clause 12 Offence of leasing premises, Clause 13 Eviction, Clause 14 Order for possession of dwelling-house

Clause 12 amends the Immigration Act 2014 to insert Section 33A which states that a landlord commits an offence if premises under a residential tenancy agreement are occupied by an adult disqualified due to immigration status. This includes 'post –grant contravention'. Section 33B states that the landlord's agent can also be considered to have committed an offence. Either a landlord or an agent who is guilty of an offence is liable on indictment to imprisonment not exceeding 5 years, and/or a fine, or a summary conviction not exceeding 12 months and/or a fine (Section 33C). Clause 12 (6) also amends Section 28A of the Immigration Act 1971 to insert subsection 9C stating that an immigration officer can arrest without warrant a person reasonably suspected of committing or attempting to commit these offences.

Clause 13 inserts into the Immigration Act 2014 Section 33D stating that the landlord, if notified by the Secretary of State that the occupier is disqualified, may give notice to quit in writing with no less than 28 days notice to

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<sup>1</sup> IMMIGRATION BILL EUROPEAN CONVENTION ON HUMAN RIGHTS MEMORANDUM BY THE HOME OFFICE Home Office 17 September 2015

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/462206/Immigration\\_Bill\\_ECHR\\_Memo.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/462206/Immigration_Bill_ECHR_Memo.pdf) and Immigration Bill 2015/16 Factsheet – Support for certain categories of migrants (clause 34)  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/461704/Asylum.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/461704/Asylum.pdf)

anyone occupying the property. Section 33E says it should be considered an implied term of a residential tenancy agreement that the agreement may be terminated if occupied by a person disqualified due to immigration status. Clause 14 amends the Housing Act 1988 Part 1 Schedule 2 and amends the Rent Act 1977 Part 1 Section 15 to set out that, if the Secretary of State has notified the landlord that one or more of the tenants or occupiers is disqualified, then the court may order possession of a dwelling-house.

In sum: the Bill aims to introduce a new criminal offence for landlords and agents when they do not inform the Secretary of State that they know or have 'reasonable cause to believe' that the property under their control is occupied by someone who is 'disqualified' to rent due to their immigration status.

**Response:** Asylum Welcome is concerned at the impact of these changes on the private rented accommodation sector.

Landlords, required to be agents of immigration controls without expertise in immigration law, will be disinclined to rent property to anyone who is unable to quickly produce documentation that satisfy them beyond doubt that they have a valid immigration status: prospective tenants may be turned away and existing tenants evicted. Tenants who have valid immigration status will also risk losing their accommodation if they allow family and friends to stay unless those persons can also produce documentation that satisfies the landlord of their valid immigration status. Asylum Welcome is concerned for the impact on those people who have been refused asylum and are hoping to continue to argue their case to remain in the UK. There are also likely to be unintended consequences for legal migrants and ethnic minorities, including those granted Refugee Status or Leave to Remain and as a result we create less tolerant and cohesive communities. This is borne out by the results of the pilot scheme conducted in Birmingham. Oxford already has intense pressure at the lower end of its rental market, so is likely to see a marked impact.

**Recommendation:** Asylum Welcome recommends that the Home Office withdraw this proposal and does not require landlords to act as agents of immigration controls.

#### 4. Other proposals

The Immigration Bill 2015 sets out the Home Office intention to create a harsher environment and this extends to introducing new crimes relating to illegal working, driving a vehicle and holding a bank account. There will also be new powers for immigration officers, and there will be tagging of immigration detainees released on bail. Asylum Welcome is concerned about measures which will criminalise illegal migrants but is not commenting further on those proposals at this stage.

#### 5. Omission: ending indefinite detention

The Bill does not reflect the central recommendation of the 2014 report of the cross-party parliamentary inquiry into the use of immigration detention<sup>2</sup>, that the practice of unlimited detention is ended, and that anyone taken into detention is told the duration of time that they will be held. There has been such widespread support for putting a time limit on detention that it seems undemocratic not to reflect this in the proposed Bill.

**Recommendation:** Asylum Welcome recommends that the Immigration Bill 2015 include a clause on setting time limits for immigration detention.

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<sup>2</sup> <http://detentioninquiry.com/>