



Immigration, Asylum and Nationality Bill: key issues and concerns

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Introduction

On 9th January 2006, the Immigration, Asylum and Nationality Bill will begin its Committee Stage in the House of Lords. This briefing summarises the main changes that will affect asylum seekers, and outlines the Refugee Council’s key concerns.

The bill implements many of the measures outlined in the government’s five year plan on asylum and immigration, *Controlling our borders: making migration work for Britain*. The Refugee Council has welcomed the five-year strategy’s firm commitment to the 1951 Refugee Convention, as well as the Prime Minister’s promise to make sure that we don’t slam the door on refugees fleeing death and persecution.

However, the strategy also contains worrying proposals to toughen the UK’s borders, fast-track asylum applications, and to control and detain asylum seekers, without addressing the more fundamental issues of poor quality asylum decision-making.

Many of the asylum elements of the strategy do not require primary legislation and will be implemented through the Home Office's new asylum model, but some elements will be implemented by the 2005 bill.

Most of the 2005 bill's provisions reflect the immigration and nationality measures of the five-year plan and do not concern asylum. However, measures with implications for asylum seekers include:

- the intention to stop granting indefinite leave to remain (ILR) to recognised refugees
- measures to further strengthen border controls by fingerprinting all visa applications and carrying out electronic checks on people entering and leaving the country
- the introduction of an integration loan to replace the integration grant for those recognised as refugees
- the introduction of counter terror measures that could exclude people from refugee protection

The Refugee Council's overarching concern is that this bill will not assist in establishing an asylum system that helps refugees in fear of their lives and deals effectively with those whose claims have been fairly rejected. We believe that the best way to establish a fair and efficient system is to get more decisions right first time. We are concerned that the government has failed to tackle problems with the quality of initial asylum decisions.

We are particularly concerned about the impact of counter terror measures that were inserted into the Bill during its Commons stages. The Refugee Council has produced a joint briefing with Amnesty International, Refugee Action, Welsh Refugee Council and Scottish Council which articulates our concerns that many political activists could be excluded from refugee protection under the new measures. You can find the briefing at:

http://www.refugeecouncil.org.uk/infocentre/asylumlaw/parliamentary_briefings.htm

Content of the bill

The bill is split into six parts:

- Appeals
- Employment
- Information
- Claimants and applicants
- Miscellaneous
- General

1. Appeals (clauses 1-14)

Temporary leave for refugees (clause 1)

The government announced in its five-year plan that recognised refugees would only be granted temporary leave to remain in the UK. Refugees will be able to stay in the UK for up to five years with the possibility that their status may be revoked at any moment. This policy change does not require legislation and was implemented on August 30th 2005. Clause 1 of the bill amends previous law allowing refugees to appeal against a decision to remove or refuse to extend their right to remain in the UK.

Comments and concerns

Whilst we welcome the introduction of a right of appeal against removal of a refugee's right to stay in the UK, we fundamentally oppose the government's decision to stop giving successful refugees ILR in the UK. It is unacceptable that someone who has been recognised as a refugee will have to live through five years of uncertainty before the government will confirm that they can remain here permanently.

Despite the government's stated commitment to help refugees integrate in the UK, the Refugee Council believes that the decision to provide temporary leave to refugees will undermine the government's own integration strategy. For example, we are concerned that the new measure may act as a disincentive to employers to employ a refugee if he or she is subject to being removed from the UK. This particularly applies to refugees from professional backgrounds, such as doctors and teachers.

We believe that it is reasonable and fair to allow traumatised refugees to be able to get on with their new lives and not to be left in an uncertain situation. Refugee integration will be hampered where refugees are placed in limbo, unable to rebuild their lives for fear of having their refugee status withdrawn.

The government has provided no information about the criteria that will be used to decide whether a country is safe enough for a refugee's status to be revoked. The United Nations High Commissioner for Refugees (UNHCR) has expressed concern about this new measure, pointing out that "the change which has taken place in the country must be fundamental – not a mere transitory change in the facts surrounding the individual refugee's fear."

Whilst clause 1 includes appeal rights for those whose refugee status may be removed after five years, there is no explicit right of appeal for those who lose humanitarian protection (HP) or discretionary leave (DL) on review. Clause 1 allows

for the Secretary of State to make an order of classes of case that may have a right of appeal, but there is no direct mention of HP and DL.¹

This is a matter of enormous concern – it cannot be right that people should have their leave revoked after five years (six in the case of DL) without any right of appeal, especially in the light of continuing problems with the quality of decision-making on asylum claims. The Refugee Council believes that the entitlement to appeal against revocation of HP and DL should be explicitly stated in the text of the bill, that the appeal should be in-country and that entitlement to benefits and employment should be retained during the appeal.

2. Employment (clauses 15-26)

The employment clauses seek to strengthen powers to combat illegal working. The bill reinforces existing government powers to prosecute and penalise employers for employing people that are not allowed to work. The new powers include a civil penalty for employers of up to £2,000 for each illegal worker employed.

Comments and concerns

The Refugee Council has long called for the reintroduction of the right for asylum seekers to work and we are disappointed that this reform is not in the bill. Further, we are concerned that the new wide-ranging powers to fine and prosecute employers may damage employment opportunities for refugees with status who are allowed to work. We are concerned that some employers will misunderstand the law and not employ refugees with status for fear of being prosecuted.

3. Information (clauses 27-42)

The information clauses create new or extended powers, which are intended to strengthen the UK's border controls. Powers include those to:

- check individuals' identity where they have a biometric passport or visa;
- require individuals to provide their fingerprints within tighter time scales (within three days for asylum seekers);
- obtain information about the identity of passengers on board ships and flights travelling to the UK; and
- increase sharing of information between border agencies, the Immigration Service, police and HM Revenue and Customs.

Comments and concerns

¹ In Quarter 2 of 2005 6% of cases were granted asylum at initial decision; 11% were granted HP or DL. In the first two quarters of 2005, 935 people were granted full refugee status, 85 were granted humanitarian protection and 1,485 were granted discretionary leave.

The government intends these measures to further strengthen border security. They will contribute to the implementation of the governments e-Borders programme to develop more stringent checks on people leaving and entering the country.

Whilst the Refugee Council recognises the government's right to control the UK's borders and decide who enters the territory, we are concerned that increasingly stringent border controls are preventing refugees from reaching safety. We believe that any measure to combat illegal immigration must honour the UK's commitment to the right of asylum and recognise that many refugees have to resort to irregular methods of entry to reach the UK. We support UNHCR's concern that the protection offered to refugees under the 1951 Refugee Convention may be 'rendered meaningless' if refugees are unable to reach, and then claim asylum in, countries party to the Convention.

4. Claimants and applicants (clauses 43-50)

Accommodation (clause 43)

This clause seeks to amend the law so that local authorities will be able to provide section 4 'hard case' accommodation to asylum seekers whose applications have been rejected but who cannot leave the country. Currently, section 4 support is only available in areas where private providers have accommodation. The bill seeks to make section 4 support more widely available.

Comments and concerns

The Refugee Council welcomes this initiative to provide additional support for the growing number of asylum seekers whose claims have been rejected but who are unable to return to their country of origin. However, we remain concerned by the extremely low level of support received by those on section 4 support. Further, we believe that people who cannot be returned to their country of origin in the immediate future should have this reality recognised by the government and receive a temporary status which would also allow them to work.

Integration loans (clause 44)

People who are recognised as refugees in accordance with the 1951 Refugee Convention and granted temporary leave will now be eligible for a refugee integration loan. This loan replaces the former system, which provided refugees with backdated payments that had been withheld while their asylum application was being determined.

Comments and concerns

The Refugee Council believes that the replacement of a grant with an integration loan is a retrograde step. The loan will burden refugees with debt at a time when they need unencumbered help to rebuild their lives. Thousands of people who have

waited months and years for their asylum application to be decided will be placed in debt, rather than provided with practical help. The Refugee Council urges the government to provide a grant rather than a loan, and to extend the grant to cover people granted humanitarian protection and discretionary leave.

Inspecting detention centres (clause 45)

The detention inspection regime is to be strengthened in relation to inspections of escort arrangements and short term holding facilities. To date, the inspectorate has only had oversight of short term holding facilities and escort arrangements on a voluntary basis. The bill makes this oversight statutory.

Comments and concerns

The Refugee Council welcomes this move. We have long had concerns about the mistreatment of detainees and hope that this measure will bring some improvements in relation to short term holding facilities and escort arrangements.

Removal: cancellation of leave (clause 46)

Currently, a person's leave to enter or remain in the UK is terminated at the time of removal directions being issued. Clause 46 proposes to move termination of leave to the point at which the person is notified of a decision to remove them. From that point, people will have no access to benefits that are dependent on their leave to remain or enter.

Comments and concerns

The proposal to withdraw access to support from people who have been informed that they will be removed is of grave concern. People may wish to challenge the termination of their leave and be left destitute in the meantime.

Penalties for not following procedures (clause 48)

Clause 48 enables the Secretary of State to require that applicants must follow particular procedures when making an immigration-related application or claim, with unspecified repercussions for those who do not comply.

Comments and concerns

We are concerned that penalties may be imposed on asylum seekers. If this is the case it is likely that some people, such as those for whom English is not a first language, may be unfairly penalised if they do not fully understand what is required of them.

Miscellaneous (clauses 51-56)

Refugee Convention: construction (clause 52)

Clause 52 extends the grounds on which the government can exclude people from asylum. The 1951 already allows governments to refuse refugee protection to those engaged in terrorism, but clause 52 is an attempt to define this in UK law. The cumulative effect of the broad definition of terrorism in the Terrorism Act 2000 and the proposed new offences in the Terrorism Bill is the creation of a legal framework where engaging in a political opposition movement is potentially an act of terrorism and where any political refugee is at risk of being denied protection in the UK.

Comments and concerns

Clause 52 directly undermines one of the core purposes of the Refugee Convention: to provide protection for people seeking asylum on grounds of political persecution.

We believe that the 1951 Refugee Convention and UK criminal law already provide the necessary statutory framework for ensuring that refugees can be protected and the imperatives of national security met.

The Government already has wide-ranging powers to deal with threats to national security so it is unclear why additional powers are needed which risk seriously undermining the integrity of the UK's asylum system.

The United Nations High Commission for Refugees (UNHCR) and the Association of Chief Police Officers (ACPO) have both opposed the measure.

For an in-depth briefing on this clause see:

http://www.refugeecouncil.org.uk/infocentre/asylumlaw/parliamentary_briefings.htm

FURTHER INFORMATION:

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