



Parliamentary Briefing:

## Immigration, Asylum & Nationality Bill Counter Terror Clauses

Lords Grand Committee

January 2006

### KEY POINTS

- The Immigration, Asylum and Nationality Bill 2005 implements many of the measures outlined in the government's five-year plan on asylum and immigration.
- The Government introduced a number of new counter-terrorism clauses to the Bill at Standing Committee in the Commons. We have concerns about all of the new clauses and support amendments proposed by the Immigration Law Practitioners' Association (their briefing can be found at [www.ilpa.org.uk](http://www.ilpa.org.uk)).
- This briefing focuses on Clause 52 (Refugee Convention: Construction) which is of greatest concern to refugees and asylum-seekers.
- Clause 52 extends the grounds on which the government can exclude people from asylum.
- Taken in conjunction with the broad definitions of terrorism in the Terrorism Act 2000 and the Terrorism Bill 2005, this 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), the Association of Chief Police Officers (ACPO), the Joint Committee on Human Rights and the House of Lords Constitution Committee have all advised against the measure.

### SUMMARY

**Clause 52 of the Immigration, Asylum and Nationality Bill is not necessary to exclude terrorists from being granted asylum. The Government has not said why the clause is needed. The clause could deny asylum to political activists who flee from persecution and apply for protection in the UK. The United Nations High Commission for Refugees has condemned Clause 52.**

## **REFUGEE CONVENTION: CONSTRUCTION (Clause 52)**

This clause seeks to define the construction and application of Article 1F (c) of the 1951 Refugee Convention. Article 1F reads as follows:

*1F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:*

- (a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision 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.*

Clause 52 of the Immigration, Asylum and Nationality Bill states that 1F(c) should be constructed so as to include:

- a. Acts of committing, preparing or instigating terrorism (whether or not the acts amount to actual or inchoate offences), and*
- b. Acts of encouraging or inducing others to commit, prepare to instigate terrorism (whether or not the acts amount to an actual or inchoate offence).*

The definition of terrorism is taken from the Terrorism Act 2000:

- 1. - (1) In this Act "terrorism" means the use or threat of action where-*
  - (a) the action falls within subsection (2),*
  - (b) the use or threat is designed to influence the government or to intimidate the public or a section of the public, and*
  - (c) the use or threat is made for the purpose of advancing a political, religious or ideological cause.*
- (2) Action falls within this subsection if it-*
  - (a) involves serious violence against a person,*
  - (b) involves serious damage to property,*
  - (c) endangers a person's life, other than that of the person committing the action,*
  - (d) creates a serious risk to the health or safety of the public or a section of the public, or*
  - (e) is designed seriously to interfere with or seriously to disrupt an electronic system.*
- (3) The use or threat of action falling within subsection (2) which involves the use of firearms or explosives is terrorism whether or not subsection (1)(b) is satisfied.*
- (4) In this section-*
  - (a) "action" includes action outside the United Kingdom,*

*(b) a reference to any person or to property is a reference to any person, or to property, wherever situated,*

*(c) a reference to the public includes a reference to the public of a country other than the United Kingdom, and*

*(d) "the government" means the government of the United Kingdom, of a Part of the United Kingdom or of a country other than the United Kingdom.*

*(5) In this Act a reference to action taken for the purposes of terrorism includes a reference to action taken for the benefit of a proscribed organisation.*

Clause 1 of the Terrorism Bill 2005 expands the definition of terrorism in UK law still further by creating a number of new criminal offences including the following:

### **1. Encouragement of terrorism**

*(4) For the purposes of this section the statements that are likely to be understood by members of the public as indirectly encouraging the commission or preparation of acts of terrorism or Convention offences include every statement which—*

*(a) glorifies the commission or preparation (whether in the past, in the future or generally) of such acts or offences; and*

*(b) is a statement from which those members of the public could reasonably be expected to infer that what is being glorified is being glorified as conduct that should be emulated by them in existing circumstances.*

*(6) It is irrelevant for the purposes of subsections (1) to (4)—*

*(a) whether the statement or how it is likely to be understood relates to the commission, preparation or instigation of one or more particular acts of terrorism or Convention offences, of acts of terrorism or Convention offences of a particular description or of acts of terrorism or Convention offences generally; and,*

*(b) whether any person is in fact encouraged or induced by the statement to commit, prepare or instigate any such act or offence.*

## **OUR CONCERNS**

We believe that rather than a construction of 1F(c), Clause 52 represents a significant extension of the grounds for denying international protection to refugees. The cumulative effect of the 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.

### **Clause 52 is unnecessary to tackle terrorism**

We believe that the 1951 Convention, alongside UK criminal law, already provides the necessary tools for protecting national security. At Standing Committee stage, the Minister was pressed as to which cases Clause 52 would cover that are not covered by existing powers:

*“Mr. Neil Gerrard (Walthamstow) (Lab): The introduction of the interpretation of article 1(F) implies that the Minister believes that its current use is causing problems. It would help the Committee if he indicated what sort of cases there are or how many cases there have been in which the absence of new clause 7 [Clause 52 in the amended Bill] from the current law has caused a problem? Its absence has*

*presumably led to someone being given asylum whom the Minister feels should not have been granted it.*

**Mr. McNulty:** *It is an entirely fair point. I say quite candidly that that question is difficult to answer, simply because we do not know the answer. I must stress that the new clause has not only been introduced as a result of 7 July, although those events obviously brought things into stark focus. We start from the premise that there will potentially be instances of people being granted asylum who perhaps should not have been granted it, but we are talking about a small number. It is not a blanket measure, but the legislation does require tightening up.*<sup>1</sup>

The United Nations High Commissioner for Refugees' (UNHCR) *Guidelines on the Application of the Exclusion Clauses* make it clear that terrorists are excluded from protection under the 1951 Convention:

*"The rationale for the exclusion clauses... is that certain acts are so grave as to render their perpetrators undeserving of international protection as refugees. Their primary purpose is to deprive those guilty of heinous acts, and serious common crimes, of international refugee protection and to ensure that such persons do not abuse the institution of asylum."*<sup>2</sup>

*"Despite the lack of an internationally agreed definition of terrorism, acts commonly considered to be terrorist in nature are likely to fall within the exclusion clauses even though Article 1F is not to be equated with a simple anti-terrorism provision."*<sup>3</sup>

And the UNHCR Guidelines make allowances for extraordinary and changing situations:

*"Where facts which would have led to exclusion only come to light after the grant of refugee status, this would justify cancellation of refugee status on the grounds of exclusion... where a refugee engages in conduct falling within Article 1F(a) or 1F(c), this would trigger the application of the exclusion clauses and the revocation of refugee status, provided all the criteria for the application of these clauses are met."*<sup>4</sup>

Consequently we believe that the 1951 Refugee Convention already provides the necessary framework for denying refugee protection to those who engage in acts of terrorism. The Government has not provided any evidence to the contrary.

### ***UNCHR cautions against extension of the exclusion clauses***

UNHCR Guidelines caution against broadening the scope of the exclusion clauses, placing particular emphasis on the need to read 1F(c) with care as *'the scope of this category is rather unclear and should therefore be read narrowly'*.<sup>5</sup>

In relation to acts of terrorism, the guidelines further state that:

*"a correct application of Article 1F(c) involves an assessment as to the extent to which the act impinges on the international plane – in terms of its gravity, international impact, and implications for international peace and security"*.<sup>6</sup>

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<sup>1</sup> *Report of Proceedings*, 8<sup>th</sup> Sitting of the Standing Committee of the Immigration, Asylum and Nationality Bill, 25 October 2005, Column 284-286

<sup>2</sup> *UNHCR Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, (2003), paragraph 2

<sup>3</sup> *UNHCR Guidelines: Application of the Exclusion Clauses*, paragraph 25

<sup>4</sup> *UNHCR Guidelines: Application of the Exclusion Clauses*, paragraph 6

<sup>5</sup> *UNHCR Guidelines: Application of the Exclusion Clauses*, paragraph 17

<sup>6</sup> *UNHCR Guidelines: Application of the Exclusion Clauses*, paragraph 17

The UNHCR Guidelines place a strong emphasis on the need to protect those fleeing persecution even when considering exclusion in the interests of national security:

*“... given the possible serious consequences of exclusion, it is important to apply them [the exclusion clauses] with great caution and only after a full assessment of the individual circumstances of the case. The exclusion clauses should, therefore, always be interpreted in a restrictive manner... the exclusion clauses in the 1951 Convention are exhaustive...”*<sup>7</sup>

The UNHCR has issued a strong condemnation of Clause 52:

*“Clause 51 [now clause 52] is a piecemeal attempt to interpret one subsection of a provision which should be read as a whole and in context. UNHCR is concerned that the adoption of Clause 51 [now clause 52] will result in a skewed and imbalanced application of the exclusion clauses in the UK.”*<sup>8</sup>

### ***Dangerous consequences for those seeking asylum from political persecution***

Taken together, Clause 52 of the Immigration, Asylum and Nationality Bill and existing and proposed terror legislation give rise to a genuine possibility that engaging in any kind of political opposition involving armed struggle, non-violent direct action or even simply revolutionary speech (anywhere in the world)<sup>9</sup> might exclude an individual from seeking protection in the UK. This directly undermines one of the core purposes of the 1951 Refugee Convention: to provide refuge for people seeking asylum on grounds of political persecution.

Asylum-seekers suspected of acts covered in terror legislation under Clause 52 could apply for asylum, and be rejected by the Secretary of State wholly or partly on the grounds that the exclusion clauses apply. At appeal, the Asylum and Immigration Tribunal, or the Special Immigration Appeals Commission, would only consider the validity of the exclusion and not the substance of the asylum claim. If the exclusion is upheld at appeal as being valid, the asylum claim cannot proceed any further.

### ***Who would be affected?***

#### **Terrorism Act 2000**

The Terrorism Act 2000 covers those engaged in serious violence against a person, serious damage to property and disruption to electronic systems.

#### **i) Serious violence against a person**

This would exclude those who had engaged in armed struggle and would have covered movements such as the African National Congress (ANC) in South Africa if it had been in force at the time.

#### **ii) Serious damage to property**

This would exclude those who undertook action to damage property without endangering life – for instance those Bolivians protesting against the World Trade Organisation in 2001 - where damage to property is caused but there is no threat to life.

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<sup>7</sup> UNHCR Guidelines: Application of the Exclusion Clauses, paragraph 2

<sup>8</sup> UNHCR's Comments Specific to Clause 51 of the Immigration, Asylum and Nationality Bill 2005, UNHCR London, November 2005

<sup>9</sup> Although the Government has introduced an amendment to Clause 17 of the Terror Bill which *prima facie* limits the offences which can be committed outside of the UK this amendment does not provide sufficient protection to allay our concerns.

iii) **Disruption to electronic systems**

This would exclude anyone who had tried to disrupt electronic or broadcast systems as an act of resistance against a totalitarian state.

The proposed construction of Article 1F(c) in the Immigration, Asylum and Nationality Bill will cause difficulties when applied in conjunction with the Terrorism Act 2000. The problem will be much worse when it is applied with the proposals contained in the Terrorism Bill 2005.

*Terrorism Bill 2005 and counter terror clauses in this bill*

The new Terrorism Bill widens the definition of terrorism still further and means people could be denied asylum on the basis that they had encouraged terrorism by making a statement which:

*“glorifies the commission or preparation (whether in the past, in the future or generally) of such [terrorism or Convention] acts or offences.”*

As numerous MPs pointed out in the Terrorism Bill 2005 second reading debate, the scope of the new measures is very broad; people engaged in political opposition movements could be affected:

**John Denham, Southampton Itchen:**

*“If an Uzbek living in Uzbekistan supported the destruction of a statue as a symbol of opposition to the tyrannical regime in his country, he would be guilty of an offence under clause 17, and liable to prosecution and seven years' imprisonment, should he come to this country. Is it really our intention to do the dirty work for some of the most oppressive and tyrannical regimes in the world?”*

**Michael Meacher, Oldham West and Royton:** *“Moreover—almost everyone has mentioned this—the definition of terrorism under clause 1 is so wide that, contrary to what I think the Home Secretary was saying, it would criminalise calls to overthrow oppressive regimes where democratic means do not exist. In my reading of the definition, it would have caught those supporting the African National Congress and its methods in the fight against the apartheid regime. It would also have caught those calling for action involving, for example, violence against property, even if not violence against the person, against such regimes as North Korea, or Burma—that has been mentioned—or Ceausescu's regime in Romania, and would have criminalised those who called for action against the Nazi regime in Germany.”*

Although the Terrorism Bill has undergone subsequent amendments to introduce a recklessness test to Clause 1 offences, we remain concerned that the breadth of definition of terrorism in UK law and the Terrorism Bill 2005 will not only lead to potential prosecutions, but to potential exclusion from refugee protection.

**OTHER COMMENTS ON CLAUSE 52**

Clause 52 has received widespread criticism throughout the Parliamentary debate on the Immigration, Asylum and Nationality Bill.

In its recent report on Counter-Terrorism and Human Rights, the Joint Committee on Human Rights criticised Clause 52 and the broad definition of terrorism:

*“The Committee considers that in order to be compatible with the Refugee Convention, and to give effect to the Government’s stated purpose of merely making explicit what Article 1F(c) implicitly requires, the clause would need to be amended to decouple it from both the broad definition of “terrorism” in the Terrorism Act 2000 and the published list of unacceptable behaviours in its present form.”<sup>10</sup>*

The House of Lords Select Committee on the Constitution wrote to Baroness Ashton of Upholland and the Home Secretary on 13<sup>th</sup> December 2005 expressing their concern at the interpretation of Clause 52:

*“We share the views of others that it is not appropriate for Parliament acting unilaterally as a national legislature to reinterpret in this way an international treaty to which the UK has become a party.”<sup>11</sup>*

It has been reported that the Association of Chief Police Officers (ACPO) has expressed concern at measures which have the effect of:

*“automatically refusing asylum to anyone linked to terrorism anywhere.”<sup>12</sup>*

And as Terry Davis, the Secretary General of the Council of Europe has stated in relation to the new Terrorism Bill:

*“Fighting terror with measures which neglect human rights can be compared to treating a chronic disease with painkillers - they may offer short-lived relief, but they risk making matters worse in the long term. Respect for human rights is not only a moral imperative, but also a matter of common sense.”*

## **SUMMARY**

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### **FURTHER INFORMATION:**

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<sup>10</sup> Joint Committee on Human Rights, *Counter-Terrorism Policy and Human Rights: Terrorism Bill and Related Matters*, p. 6

<sup>11</sup> *Letter from Lord Holme of Cheltenham (on behalf of the House of Lords Select Committee on the Constitution) to Baroness Ashton of Upholland and Rt. Hon. Charles Clarke MP*, 13<sup>th</sup> December 2005, p. 3

<sup>12</sup> ‘Lords threaten rough ride for anti-terror bill - Senior police oppose four key clauses’, *The Guardian*, 21<sup>st</sup> November 2005, p. 1