

IMMIGRATION AND ASYLUM BILL

HUMAN RIGHTS COMPLIANCE

SUMMARY

1. This paper sets out provisions in the Immigration and Asylum Bill that raise problems of compliance with the European Convention on Human Rights (ECHR) and therefore may be in breach of the Human Rights Act 1998. It also points to provisions that may undermine protection under the 1951 Refugee Convention (1951 Convention).
2. In general, we are concerned about the number and scope of delegated powers in the Bill, which make it impossible to assume that it will operate in a way that is human rights compliant. **These powers should be more clearly set out in statute, and those that affect human rights should always require affirmative resolution of Parliament.**
3. In relation to ECHR rights in general, we consider that the following provisions raise clear questions of compliance with the Human Rights Act:

Detention (paragraphs 8.1 - 8.31)

- the provisions of Part III in relation to detention do not provide a clear legal basis for detention, or proper judicial control. These provisions do not meet the requirements of leading Counsel's Opinion already provided to the Home Office, or the recommendations of the UN Working Party on Arbitrary Detention. **Part III needs amendment to provide statutory grounds, and clear criteria in regulations, governing the use of detention; and to provide swift and continuous judicial control over its legality and length. Legal representation will be necessary at detention hearings.**

Removal of support (paragraphs 10.3 – 10.20)

- breaches of ECHR (as well as 1951 Convention) rights are likely to result from the removal of accommodation and support while an asylum claim is still under consideration or before the courts. **Destitute asylum-seekers should be supported while their claims to protection are under consideration or before the courts.**

Immigration officers' powers of entry, search and seizure (paragraphs 11.1 – 11.7).

- there is a lack of safeguards over immigration officers' new powers of arrest, search and seizure without warrant. **These powers should not be transferred without appropriate judicial and procedural safeguards.**

'Sham' marriages (paragraphs 5.1.-5.7.)

- the definition is so broad that it raises privacy issues; and the provisions apparently discriminate on religious grounds. **The provisions should be amended to remove discrimination and protect privacy.**

Penalties for carrying 'clandestine entrants' (paragraphs 7.7 – 7.17)

- the provisions of clauses 18-23, according to our advice, do not provide effective due process rights for carriers bringing in 'clandestine entrants'. **These clauses appear to create a criminal penalty, which would require much stronger judicial safeguards; even as a civil penalty, they appear to lack due process safeguards.**

Exchange of information (paragraphs 4.1 – 4.14).

- the purposes for which information, particularly sensitive information on asylum-seekers, can be exchanged under clauses 11 and 12 are too broad. **The purposes in these clauses, and the order-making powers to extend them, need to be more specific; the Data Protection Commissioner should be consulted.**

Level and kind of support (paragraphs 10.21 – 10.34)

- breaches of ECHR rights may occur as a result of the proposed new support and accommodation arrangements, particularly if they extend beyond the promised six month period. **No-choice accommodation, support in kind and the low level of support risk breaching ECHR rights if they extend beyond a limited period.**

4. We also note provisions in the Bill which appear to undermine protection rights guaranteed under the 1951 Convention and Article 3 ECHR. We point in particular to:

Fees for applications for protection (paragraphs 3.1 – 3.4)

- the ability to set fees for applications for protection. **There should be no power to impose fees for protection applications.**

Extension of deception offence and penalties (paragraphs 6.1 – 6.3)

- the extension of the offence of, and penalties for, deception, even in relation to well-founded cases. **Penalties should not be imposed on those who make a well-founded protection claim.**

Extension of carrier sanctions (paragraphs 7.1 – 7.17)

- the extension of carrier sanctions without clear exemptions for those who bring in people who are in imminent danger of persecution and who are later accepted as in need of protection. **There should be exemptions from penalties for those who carry people in imminent danger of persecution, torture or inhuman treatment.**

Certification of asylum claims (paragraphs 9.11 – 9.17)

- the continuing power to certify cases for fast-track treatment and deny access to the Immigration Appeal Tribunal. **Certification powers risk undermining protection and should be removed or narrowed.**

5. In addition, we draw attention to two matters which are fundamental to the effective protection of human rights:

Legal advice and representation (paragraphs 9.18 – 9.22)

- the existence of competent legal representation, if necessary free to those who cannot afford it. **There should be a single, comprehensive system for public funding of advice and representation in asylum and detention cases.**

Effective human rights jurisdiction in appellate system (paragraphs 9.2 – 9.6)

- the protection of human rights depends in the first instance on an appellate system with clear jurisdiction and procedures. **The Bill's present provisions are unclear and need amendment and clarification, as do the Secretary of State's powers to refuse an appeal. They also need to be complemented by a clear humanitarian jurisdiction.**

JUSTICE

March 1999