

Refugee Action policy briefing October 2013

The Immigration Bill

Summary of the Bill

The Government published the Immigration Bill on 10 October 2013. It has four parts: removals, appeals, access to services and marriages and civil partnerships.

Not content to limit delivery of a hostile environment to the Home Office 'Go Home' vans, Home Secretary Teresa May has conceived of a Bill which introduces measures spanning six Government departments: justice, transport, business, health, local government, and work and pensions.

The Home Secretary thinks it's 'fair' to deny some people who are living the UK any access to basic services and facilities essential to the functioning of everyday life including healthcare, rented accommodation, a bank account, or a driving licence.

The hostile environment that the Government pursues with such vigour will not encourage people to leave the UK but will instead result in a significant proportion of people struggling to find somewhere to sleep, something to eat and the healthcare they need. This is not in the public interest, and it is not conducive to engaging with the complex decision of whether or not to leave the UK.

In our view, the proposals in this Bill are unjust, unworkable, expensive and potentially unlawful and will have the effect of further raising levels of hostility towards migrants and ethnic minorities in the UK.

These proposals will not achieve the outcome that the Home Secretary claims to be pursuing – the deterrence of new arrivals and the increased departure of irregular migrants, if indeed that is her goal. It's more likely that this whole exercise is a piece of political performance, designed to showcase the Coalition's hard stance on immigration in advance of the election in 2015.

The people denied healthcare, a home, or a right of appeal, not to mention the sanctity of the NHS and the principle of access to justice, are all just collateral damage in a war of hostile immigration rhetoric.

Why Refugee Action opposes the Immigration Bill

1) The Bill is unjust

The Bill removes rights of appeal in all cases except asylum and human rights cases. Those whose cases have been wrongly decided will have no right to appeal against the decision. All that a person can expect is an internal “administrative review” of the decision. Administrative review simply means a Home Office manager looking at the case again; there is no independent scrutiny and no redress.

Under these proposals human rights and asylum matters would always be decided first by the Secretary of State. If a matter is raised for the first time on appeal, the Secretary of State must consent to its being dealt with there and then.

The Bill introduces a new power to certify the appeals of foreign nationals who have been convicted of a criminal offence so that they can be removed from the UK while an appeal on a human rights claim is pending if to do so would not, in the opinion of the Secretary of State, cause him/her ‘serious irreversible harm’. The appeal is then heard while they are out of the country. In 2012-13, the Home Office lost 49% of appeals against refusals of leave to remain, i.e. in-country cases, for work and study, and 32% of deportation and similar cases. Such high success rates at appeal suggest that it is a vital safeguard against poor decision making.

The Bill also creates stronger guidance for the courts on the use of human rights laws to prevent deportation, particularly the right to family life. The proposals require a court, when considering Article 8 in an immigration case, to have regard to the public interest which, in cases relating to the deportation of foreign criminals, will only exceptionally be outweighed by the arguments against deportation. The interpretation of what public interest requires has been set out in detail in the Family Migration Rules, including the level of English language and the income threshold to be met. A person can be removed if it would not be unreasonable to expect a British child of the family, or a child who has been in the UK for more than seven years to leave, a much lower test than considering the best interests of that child.

2) The Bill introduces proposals that are unworkable

The Bill requires private landlords to check the immigration status of their tenants and makes provisions for a fine of up to £3,000 to be imposed on landlords who fail to do so. Despite the Government’s reassurances of ‘simple checks’, immigration status is not straightforward, not least of all because there are potentially 404 types of European identity documents. A code of practice and a free phone helpline will provide little meaningful assistance to the small scale landlord or host of a lodger, whose violations will go un-policed in the absence of an epic bureaucracy to enforce these proposals.

On the most basic level, these proposals, as with those relating to access to healthcare, are unworkable. Gatekeeping access to vital services and facilities on the basis of immigration status is risky and impractical as immigration status is complex and often subject to rapid change, particularly for asylum seekers. This is not a function that should be outsourced to unaccountable private individuals.

These proposals effectively constitute a system of identity checks for everyone in the UK, since it will be necessary for British citizens and those with permanent residence to prove that they are lawfully present in the UK if and when they are checked. It is hard to see how voters will accept such intrusive and heavy handed measures.

3) The Bill introduces proposals that will be expensive to implement

The Bill requires temporary migrants, such as overseas students, who have only a "time-limited" immigration status, to make a contribution to the NHS through a migrant levy paid as part of any application for leave to enter or remain. It also seeks to amend the definition of 'ordinarily resident' in the UK for NHS charging purposes.

Importantly, the detail of how such a charging regime would be implemented is absent from this Bill and will be introduced through Regulations at a later date. However, you can be sure that the bureaucracy required to support such a regime will be considerable and the administrative costs involved in running complex tracking and usage procedures at the patient level as well as parallel invoicing, reconciliation and bad debt processing will place a significant cost burden on the NHS.

As yet the Department of Health has not responded to their consultation on restricting migrants access to the NHS and nor have we seen the results of the independent audit of use by visitors and temporary migrants. In the absence, therefore, of any evidence of health tourism, it is hard to see the justification for this proposal. The intention to slip the detail in through secondary legislation is of huge concern as it will not be subject to the same public and parliamentary scrutiny as primary legislation.

4) The proposals will lead to practice that is unlawful

Obliging landlords to check status documentation before renting a property introduces a high risk of widespread discrimination, exploitation and racism. There is already evidence to suggest that estate agents in London are routinely discriminating against black people looking for a home in the private rental market.¹ These provisions will give landlords wishing to avoid ethnic minority tenants the ability to simply say they aren't satisfied with a tenant's identity documents and refuse them accommodation.

As a consequence, the proposals will lead to a real risk of increased homelessness including of families and the most vulnerable. In addition, slum landlords can continue to

¹ <http://www.theguardian.com/world/2013/oct/14/london-estate-agents-discriminate-black-people-bbc-investigation>

exploit and overcharge their tenants safe in the knowledge that they will not be caught, and their tenants will have no other recourse to rental accommodation.

Similarly the health proposals ignore the significant amount of evidence that members of protected characteristic groups, as well as the most vulnerable and disadvantaged in society, are already subject to greater levels of discrimination as a result of the existing charging regime.

Doctors of the World has identified inhospitable and sometimes hostile GP surgery staff, problems obtaining the documents required, a fear of being reported to the authorities and active denial of access by health professionals as being common barriers experienced by their clients. This will only worsen under these proposals.

Next steps

With the Bill progressing through Parliament so quickly we are calling on all supporters to joining us in writing to our local MPs and demanding they object to the Bill on the grounds raised above.

[Find out more and download our template letter to MPs here.](#)

More information

Please contact the Refugee Action policy team on policy@refugee-action.org.uk