

**LIBERTY**

PROTECTING CIVIL LIBERTIES  
PROMOTING HUMAN RIGHTS

**Liberty's Report Stage briefing on the  
Immigration Bill**

**November 2015**

## **About Liberty**

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

## **Liberty Policy**

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at

<http://www.liberty-human-rights.org.uk/publications/1-policy-papers/index.shtml>

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## Introduction

Report stage consideration of the Immigration Bill in the House of Commons will take place on **Tuesday 1<sup>st</sup> December**. Following a speech in which the Home Secretary told Conservative Party Conference that the pace of immigration was damaging social cohesion, the House of Commons is being asked to consider a package of proposals which will facilitate discrimination. Both Government and independent evidence now shows that the ‘right to rent’ scheme, backed up by criminal sanction in this Bill and set to be rolled out nationally, has led to discrimination. A new illegal driving offence including extensive search and seizure powers will exacerbate concerns about the discriminatory impact of current vehicle stop powers. The Prime Minister is right to say that *“you can’t have true opportunity without real equality”*, but a pledge to *“end discrimination and finish the fight for real equality”* is hollow when issued against the backdrop of a Bill which will fundamentally damage race relations.<sup>1</sup>

This Bill will certainly help to create the ‘hostile environment’ the Government craves, with undocumented workers criminalised and pushed into abusive and exploitative employment and mainstream asylum support provision removed from many families with small children. At the same time, scrutiny of notoriously poor Home Office decision-making would be reduced by plans to scrap appeal rights against the removal of basic support and the removal of in-country appeal rights in immigration matters.

Despite the growing cross-party consensus on the need for a time-limit on immigration detention, no such provision is included in the Bill. Liberty believes that the use of limitless detention – unashamedly for administrative convenience and far removed from the enforcement of removal decisions – represents one of the greatest stains on this country’s human rights record in recent decades. This Bill provides an opportunity to address this grave injustice.

This briefing sets out suggested amendments addressing a number of Liberty’s core areas of concern.

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<sup>1</sup> The Independent, *Tory Party Conference 2015: David Cameron’s speech in full*, 7<sup>th</sup> October 2015. Available at: <http://www.independent.co.uk/news/uk/politics/tory-party-conference-2015-david-camerons-speech-in-full-a6684656.html>.

## Part 1 – remove illegal working offence

Page 5, line 1, leave out clause 8.

### Effect

This proposed amendment would remove provision for a stand-alone offence of illegal working.

### Briefing

Clause 8 of the Bill creates a stand-alone offence of illegal working for anyone who works while unlawfully resident, or works in contravention of a requirement of leave which prohibits employment. There are already a range of criminal offences on the statute book to deal with those who enter the country illegally, overstay or breach conditions. The Chief Inspector of Borders and Immigration has remarked on the lack of enforcement activity:

Section 24 of the Immigration Act 1971, under which those without leave to remain may be prosecuted as overstayers, is seen as ineffective by enforcement staff and is very rarely used: annual convictions for overstaying, for example have been in single figures for the last five years. <sup>2</sup>

The Immigration Minister confirmed, during Committee consideration of the Bill, that the primary response to the discovery that an individual is in the UK illegally is to seek remove rather than to pursue a prosecution. An offence criminalising working is therefore an unnecessary distraction from the fair and lawful pursuit of removal, in addition to heightening vulnerability to exploitation and abuse.

In a 2014 Report discussed extensively during Committee consideration of the Bill, the Migration Advisory Committee emphasised the extent of the exploitation of migrant workers:

We were struck on our visits around the country by the amount of concern that was expressed by virtually everyone we spoke to about the exploitation of migrants in low-skilled jobs...During our visits to places which had experienced relatively

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<sup>2</sup> Independent Chief Inspector of Borders and Immigration, *'An Inspection of Overstayers: How the Home Office handles the cases of individuals with no right to stay in the UK'*, May-June 2014. Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/387908/Overstayers\\_Report\\_FINAL\\_web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/387908/Overstayers_Report_FINAL_web.pdf). 9.7.

high levels of migrants the point that migrant workers are more likely to be exploited than resident workers as they are not aware of their rights and are afraid they may be sacked/evicted/deported if they complain was raised on a number of occasions.<sup>3</sup>

Clause 8 carries deeply disturbing consequences for victims of trafficking and other forms of exploitation. The Government argues it is committed to tackling modern day slavery, but Focus on Labour Exploitation has made clear that proposals to criminalise vulnerable workers will create *“the perfect conditions for the exploitation of migrant workers to thrive. We know that exploitation depends on worker vulnerability, marginalisation and fear – which will be the consequence of these new measures.”*<sup>4</sup>

For the employers willing to take the risk for the financial benefits of an illegal workforce, criminalisation of the worker plays into a narrative of coercion and control. Their hand will be strengthened by the introduction of a new criminal offence targeting working in particular, which will add force to threats that individuals must accept dire conditions or face not only removal but also criminal sanction.

## **Part 2 - repeal right to rent in the 2014 Act**

Page 9, line 1, leave out clauses 13-16.

Insert the following new clause -

**“Residential tenancies: repeal of provisions of the Immigration Act 2014**

(1) The Immigration Act 2014 is amended as follows.

(2) Omit sections 20- 37, 74(2)(a) and Schedule 3.”

### Effect

This amendment would repeal the right to rent scheme as contained in the 2014 Act.

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<sup>3</sup> *Migrants in low-skilled work*, Migration Advisory Committee Full Report July 2014, paragraphs 6.68 and 6.72. Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/333083/MAC-Migrants\\_in\\_low-skilled\\_work\\_\\_Full\\_report\\_2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/333083/MAC-Migrants_in_low-skilled_work__Full_report_2014.pdf).

<sup>4</sup> Focus on Labour Exploitation, *‘UK IMMIGRATION BILL COULD CREATE PERFECT CONDITIONS FOR MODERN SLAVERY WARNS FLEX’*, 25th August 2015. Available at: <http://www.labourexploitation.org/#!/UK-IMMIGRATION-BILL-COULD-CREATE-PERFECT-CONDITIONS-FOR-MODERN-SLAVERY-WARNS-FLEX/chyn/55dc340e0cf20831ee3da673>.

## **Part 2 - remove escalation of right to rent in the Bill**

Page 9, line 1, leave out clauses 13-16.

### Effect

This amendment would remove provisions in the current Bill which escalate the right to rent scheme by introducing the threat of criminal sanctions for landlords and estate agents and creating dangerous summary eviction powers.

## **Part 2 – remove the possibility of summary eviction**

Page 12, line 3, leave out lines 3-37.

Page 13, line 18, leave out “Sections 33D and” and insert “Section”.

Page 13, line 24, leave out line 24.

Page 13, line 26, leave out lines 26-32.

Page 13, line 33, leave out lines 33-46.

Page 14, line 1, leave out lines 1-3.

### Effect

This amendment would remove provisions in the current Bill which create deeply concerning powers of summary eviction on the basis of a Home Secretary notice and without oversight by the courts.

### Briefing on right to rent

The Bill inserts four new criminal offences into the right to rent scheme set out in the Immigration Act 2014. The scheme in its current form is yet to be rolled out nationally. Two offences cover circumstances where a landlord or agent enters into a tenancy with a disqualified person with knowledge or the reasonable belief that the tenant was so disqualified. A further two occur where the tenant becomes ineligible to rent during the course of the tenancy and the landlord knows, or reasonably believes this to be the case, but fails to notify the Secretary of State as soon as reasonably practicable. Both sets of offences carry a maximum custodial sentence of 5 years.

Clause 13 allows for summary eviction of a tenant on the basis of a Secretary of State notice enforceable in the same way as a High Court Order. This provides for eviction in the absence of a court order for possession, removing a crucial due process requirement which acts as a protection against erroneous decision making. Clause 16 allows for the extension of any or all of the provisions on residential tenancies set out in the Bill, or provisions with “similar effect” to be extended Wales, Scotland or Northern Ireland by secondary legislation.

The Home Office published the results of research evaluating the impact of the pilot implementation of the 2014 right to rent scheme (“the evaluation”) on the first day of Committee consideration of the Bill.<sup>5</sup> Through a combination of surveys, interviews and a ‘mystery shopping’ exercise, the evaluation sought to address implementation of the scheme, awareness of its requirements, enforcement outcomes, impacts on tenants - including discrimination, impacts on the housing sector and impacts on local authorities and the voluntary and community sector (VCS).

### *Discrimination*

The pilot was carried out over a short, sixth month period, at a quiet time in the rental market. The rental market in the pilot area is further less competitive than that in other areas of the country, most notably London. This notwithstanding, evidence of discriminatory impacts was gleaned.

The quantitative results produced by the survey are seriously undermined by the fact that the tenant group was largely comprised of students. The evaluation acknowledges that students are “*a group whose right to rent tended to be seen as relatively easy to check*” and who are likely to have support in accessing the rental market.<sup>6</sup> They are therefore less likely to be affected by, or concerned about, the implications of right to rent. The sample group of 68 tenants is therefore entirely unrepresentative and as the Home Office acknowledges “*should be read as primarily reflecting the views of the student community, rather than being generalised to the wider tenant group*”.<sup>7</sup> Further of the 68 tenants surveyed 71% were UK citizens and 66% were White. Such respondents are obviously less likely to be concerned about the implications of the scheme for them. They are hardly the main focus of concern about discriminatory impacts. This notwithstanding, 15% of tenants expressed concern that they would be treated unfairly under the right to rent scheme and 9% expressed concern that they would be unable to secure accommodation due to not having correct documentation.

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<sup>5</sup> All documents available at: <https://www.gov.uk/government/collections/migration-research-and-analysis>

<sup>6</sup> Evaluation of the Right to Rent scheme, p. 24.

<sup>7</sup> Research with landlords, letting agents and tenants, p. 11.

The evaluation accepts that risks of discrimination were identified in focus group discussions which spanned *“attitudes towards potential tenants with time-limited leave to remain, with one apparent instance of a tenancy being refused for this reason; a preference for tenants whose right to rent was easy to check...a preference for ‘lower risk’ tenants (for example people with local accents) for whom landlords felt they need not carry a Right to Rent check.”*<sup>8</sup> One landlord expressed the view that *“if the applicants were White and had a ‘Brummie’ accent, they didn’t need to put them through the [Right to Rent] process”*<sup>9</sup> and focus groups of landlords found *“a lack of understanding among some landlords (but not letting agents) around the right to rent of prospective tenants with limited leave to remain in the UK”*.<sup>10</sup> Some of the landlords included in the focus groups suggested that they would not rent to potential tenants with limited as opposed to permanent leave to remain in the UK, including one who gave an example of turning down a tenant because he had eight months leave to remain left on his visa.<sup>11</sup> A focus group of letting agents produced evidence that some landlords had instructed them not to let to non-EEA nationals or to any ‘foreigners’.<sup>12</sup>

Respondents involved in interviews and focus groups identified the concern that British citizens who have limited documentation and don’t, for example, have a British passport could find it harder to access rented accommodation. These concerns should be viewed in the context of findings that demonstrate a significant increase in the extent to which photo ID is requested by landlords under the right to rent scheme.<sup>13</sup> Of those tenants surveyed, only 8 in 23 were subject to a right to rent check, but 2 out of the 8 found it difficult to provide the required documentation. The evaluation accepts that this indicates that *“some prospective tenants may struggle to find acceptable documentation easily”*.

A ‘mystery shopper’ exercise was also conducted to assess the discriminatory impact of the scheme. This part of the evaluation provided for 322 encounters to take place. These were split between pilot and comparator areas. Pairs of participants comprised Black and Minority Ethnic (BME) participants with accents *“typical of the country of origin”* and White participants with a *“British accent”* (WB).

On a number of occasions the Home Office comments on the limited reliability of the mystery shopper survey due to insufficient sample sizes. At the outset we are told that *“statistical significance testing was not conducted on the data due to the relatively modest number of*

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<sup>8</sup> Evaluation of the Right to Rent scheme, p. 24.

<sup>9</sup> Research with landlords, letting agents and tenants, p. 22.

<sup>10</sup> Research with landlords, letting agents and tenants, p. 22.

<sup>11</sup> Research with landlords, letting agents and tenants, p. 23.

<sup>12</sup> Research with landlords, letting agents and tenants, p. 22.

<sup>13</sup> Evaluation of the Right to Rent scheme, p.25.



*individual mystery shops completed at a sub-group level*".<sup>14</sup> In relation to the follow-up encounters, we are told "*small sample sizes inhibit the ability to draw robust conclusions around subsequent provision of property details, the source of any property details provided and offers of viewings*".<sup>15</sup> Unlike with an optional survey-type scenario, it was entirely clear to the Home Office from the outset how many participants there would be and how they would be subdivided, it must also have been relatively clear that follow-up contact with estate agents would occur in a far smaller section of the whole.

The Home Office claims of this exercise that it is designed to follow the shopper's "*journey through a typical tenant enquiry scenario*",<sup>16</sup> but the research does not assess outcomes, failing to address the crucial question: are BME individuals less able to secure a tenancy than their WB counterparts under right to rent? Instead the mystery shopping exercise considers the experience of 'shoppers' when making initial inquiries with estate agents and landlords; the experience of being questioned about or required to present documentation going to the question of immigration status, or more broadly qualification to rent; offers to view properties and follow up contact by estate agents.

The broader evaluation asserts, of the mystery shopping exercise, that: "*no major differences in tenants' access to accommodation*" were found as between the pilot area and a comparator area outside the pilot scheme. Where less favourable treatment for the BME group was found, this was explained away by reference to other factors. For example, where BME participants were found to be less likely to receive a prompt response to an initial email inquiry in the pilot area (a discrepancy not repeated in the comparator area, where BME groups were marginally more likely to receive a prompt response), the evaluation report comments that this "*could imply a difference linked to the scheme. However, this may not be due to ethnicity as shoppers contacted the agents at different times over the fieldwork period, so it may instead reflect a change in available stock.*"<sup>17</sup>

Even more striking is the reasoning employed around questions asked to assess qualifications for renting (outside of the issue of immigration status). Higher proportions of the BME group were asked about a guarantor, a referee and their employment than was the case for the WB groups. This disparity between BME and WB participants was significantly

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<sup>14</sup> Mystery shopping to test the potential for discrimination within the private rental sector, p. 9.

<sup>15</sup> Mystery shopping to test the potential for discrimination within the private rental sector, p. 27.

<sup>16</sup> Mystery shopping to test the potential for discrimination within the private rental sector, p. 11.

<sup>17</sup> The evidence, such as it is, shows some discrepancies between BME and WB categories in the pilot area, some of which are replicated in the control area (outside of the pilot area). In the pilot area, the WB group were a third less likely to receive a prompt to their initial email enquiry (60% of the WBA group compared to 40% of the BME group), in the comparator location the BME group were marginally more likely to receive a prompt response to their email enquiry than the WBA group (47% and 43% respectively).

greater in the pilot area. The report considers that there are two possible explanations for this: (i) an expression of greater interest in the BME group and a decision to take their cases more seriously; or (ii) a desire to place greater obstacles in the path of this group. The former is picked *“as these are questions that would ultimately need to be asked of all potential tenants before a property is rented, it seems likely that, rather than being discriminatory, these questions are being asked earlier in the rental property search process for BME shoppers in order to ascertain eligibility.”* Surely an equally valid reading of this data is that the BME group is less trusted in the pilot area and therefore asked for reassurance about financial position and broader references before the enquiry is progressed.

Across the comparator and pilot areas, BME groups were disproportionately questioned about nationality and residency status. In the pilot area BME enquirers were less likely to be told that suitable rental property would become available in future where they were not given the opportunity to view a property and were more likely to be told about additional fees linked to renting than their WB counterparts. The ‘right to rent’ scheme was only specifically mentioned to 6 ‘shoppers’ all BME and all in the pilot area. There were also clear reports of discrimination, including an incident where a shopper was told that if he was *“under the scheme”* the landlord was *“not going to bother because he had a local person who wanted the property and it was much easier to rent to them”*.<sup>18</sup> It is a bold landlord who is willing to explain such reasoning to a tenant, it is at least arguable that a significantly larger group of landlords would think this but not say it, perhaps finding some other reason for ultimately picking a ‘local’ White British tenant over their BME counterpart. In a further incident an estate agent told a BME shopper:

*“They needed to look at what they had that was suitable for me and they needed to check with the landlords on whether the landlord wanted to do the Right to Rent check because it cost extra.”<sup>19</sup>*

The Home Office evaluation results are compromised by small sample sizes, unrepresentative surveys that fail to engage those likely to be most affected by the scheme and a failure to assess the outcome of the rental process, i.e. whether a tenancy is ultimately secured. This notwithstanding, the research highlights some worrying examples of discrimination, which are liable to proliferate should the scheme be rolled out nationally, including to areas with extremely competitive rental markets. This should be read together with JCWI’s evidence that 42% of landlords surveyed said they were less likely to consider somebody without a British passport and 50% of tenants felt discrimination was a factor in

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<sup>18</sup> Evaluation of the Right to Rent scheme, p. 24.

<sup>19</sup> Evaluation of the Right to Rent scheme, p. 24.

the refusal of a tenancy. One person was told “no passport equals no home”.<sup>20</sup> Both the evidence of Government and the JCWI now indicates that the pilot implementation of right to rent produced discriminatory outcomes.

### *Ineffective and unworkable*

Of the 109 individuals ‘identified’ in the first six months of the scheme only 9 were ultimately removed. Considering that just 63 of the 109 were ‘not previously known’ to the Home Office, it is at least very unclear that these individuals would not have been removed in any event. Only 22 of the 68 surveyed tenants and 22 out of 34 voluntary community services felt informed about right to rent. 70 of 114 landlord respondents felt informed, but 22 out of 37 small-scale (1 property) landlords felt poorly or not at all informed. In the qualitative assessment, many small-scale landlords were said to be “unaware” of the scheme.

The pulse check survey found that 14 out of 55 letting agents had received complaints from landlords or potential tenants about the scheme. The most frequently mentioned complaints were about discrimination and checks delaying tenancies from starting (both 9 out of 14). Other complaints mentioned were around people not understanding the immigration system (8 out of 14) and additional work for landlords (5 out of 14). Of those letting agents who had not received complaints about the scheme, 22 out of 41 indicated that this was because they believed that people had not been impacted by the scheme.” In total, 52 % (59 of 114) of respondents to the landlords survey said they had concerns about the scheme. In the landlords survey, in particular, there was a view, expressed by many respondents in write-in comments, that they felt the scheme meant that they were carrying out a role that should be done by Immigration Officers. As to the perceived benefits of the scheme by landlords, the report is clear and damning: “84 per cent of landlords (96 out of 114) and letting agents (46 out of 55) said they had not noticed any benefits from the scheme...”.

The Government’s evaluation demonstrates that the scheme is not only having a discriminatory impact, it is reaping at best marginal and at worst no real enforcement benefits and causing consternation in the sector.

Liberty urges Parliamentarians to oppose the discriminatory and ineffective right to rent scheme in its entirety.

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<sup>20</sup> JCWI, “No Passport Equals No Home”: An independent evaluation of the ‘Right to Rent’ scheme, 3 September 2015.

## Part 2 – remove provision for driving search and seizure powers

Page 17, line 34, leave out clause 17.

### Effect

This proposed amendment would remove provision for the power to carry out searches relating to driving licences held by those without lawful residence in the UK.

### Briefing

Clause 17 amends Schedule 2 of the Immigration Act 1971 to provide a power for an authorised officer (police, immigration officers or third parties designated by the Secretary of State) to search premises - including a vehicle or residence an individual occupies or is present in when encountered – where the officer has “*reasonable grounds for believing*”: (i) an individual is in possession of a driving licence and is not lawfully resident; and (ii) the licence is on the premises. Authorisation should be sought from a senior officer where “*reasonably practicable*”. A further power in similar terms would allow police, IOs and designated third parties to search an individual for a driving licence.<sup>21</sup> The Bill also makes provision for seizure and retention of licences.<sup>22</sup>

### *Current provision for traffic stops*

In England & Wales, police officers’ powers to stop motor vehicles are contained in section 163 of the Road Traffic Act 1988 which states: “*a person driving a motor vehicle on a road must stop the vehicle on being required to do so by a constable in uniform*”. This power is not currently subject to the requirements of the PACE Code of Practice and does not require an officer to have a particular reason to stop a motor vehicle nor for the officer to explain why he or she has carried out the stop. Once a vehicle has been stopped, an officer can require the driver to produce their driving licence.<sup>23</sup> Beyond this the officer can ask the driver to account for themselves.<sup>24</sup>

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<sup>21</sup> Where the officer has reasonable grounds for believing the person is not lawfully resident, is in possession of a licence and that licence may be concealed on the person.

<sup>22</sup> The driving licence must then be passed on to the Secretary of State. Where the licence is not ultimately revoked it must be returned to the holder.

<sup>23</sup> Section 164, Road Traffic Act 1988.

<sup>24</sup> Liberty believes that the law urgently needs to be reformed to require that police constables only stop vehicles when they have an objective reason to do so, and that they are required to make a record of such stops as they are currently required to do for all other statutory stop powers. Use of this power should also be brought within Code A.

In 2014, as part of her drive to combat discriminatory police stop and search the Home Secretary commissioned HMIC to review police use of section 163 RTA to establish it is being used effectively and fairly.<sup>25</sup> Given that there is no national recording requirement, HMIC was unable to provide information on the volume of traffic stops each year. HMIC asked forces to conduct self-assessments of their use of the RTA power and found that only 3 police forces have a policy on its use and only two forces reported that they collected and recorded information about the use of the power. HMIC further commissioned a survey of 10,094 members of the public about the use of the power. The survey indicates that 7-8% of white drivers who responded were stopped in their vehicles in the last two years compared with 10-14% of Black and minority ethnic drivers. The survey also suggested that BME drivers were more likely not to be provided with a reason for the stop and are more likely to have their vehicle searched. Yet, white drivers are proportionately more likely than BME drivers to be arrested or result in prosecution which suggests that BME drivers are more likely to be stopped for no reason. 73% of Black respondents agreed or strongly agreed with the statement that the police unfairly target people from ethnic minorities for traffic stops. The Bill seeks to add routine immigration checks - backed up by intrusive search and seizure powers – into this toxic mix.

#### *Lax traffic powers combined with provisions in the Bill*

Liberty is deeply concerned about the existing power to stop vehicles without reason. As no reason is required to conduct a traffic stop, there is nothing to prevent routine stops to ascertain immigration status. This lax power, together with the new offence and related search and seizure powers could see police and immigration officers stop vehicles without reason, demand papers (in this case driving licences) and then on the basis of body language infer reasonable suspicion to conduct intrusive searches of persons and vehicles. Current guidance instructs IOs that the threshold for reasonable suspicion of an immigration offence may be met where they observe a person having “*an adverse reaction to an immigration presence*”.<sup>26</sup> Examples of an “*adverse reaction*” include a sudden change in direction, walking away, a change in pace, hanging back from the barriers or seeking to limit interaction. The guidance instructs “*under these circumstances the IO may lawfully seek to stop that person with a view to asking them consensual questions about their identity and*

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<sup>25</sup> HMIC, *Stop and search powers 2: are the police using them effectively and fairly?*, March 2015. Available at: <https://www.justiceinspectors.gov.uk/hmic/wp-content/uploads/stop-and-search-powers-2.pdf>.

<sup>26</sup> Home Office Enforcement Instructions and Guidance, Chapter 31: Enforcement Instructions, 31.19.5 *Basis to stop individuals*.

*leave status*".<sup>27</sup> The guidance then further instructs IOs that if a person attempts to leave while being consensually questioned, this may give rise to sufficient grounds to arrest the individual.

## **Part 2 – remove offence of ‘driving whilst an illegal immigrant’**

Page 20, line 33, leave out clause 18.

### Effect

This proposed amendment would remove the offence of driving without lawful residence in the UK.

### Briefing

Clause 18 creates an offence of driving whilst in the UK unlawfully, attracting a maximum custodial sentence of 51 weeks and/ or a fine. The Bill provides for vehicle seizure where a person is arrested and for a court to order forfeiture on conviction. The implications of this provision can only be fully understood when considered in conjunction with search and seizure powers set out in clause 16 and considered above. All drivers, but in particular drivers from minority ethnic groups are liable to be effected by these provisions, with discrimination in road traffic searches already an established concern.

Given the already unsatisfactory police practice in relation to traffic stops and its disproportionate use against BME groups, such operations will only add to - and potentially greatly exacerbate - the reality and perception of discrimination.

## **Part 3 – end speculative spot-check**

Page 25, line 18, at end insert -

“( ) In paragraph 2(2) after “examine” insert “at the point of entry into the United Kingdom.”

### Effect

Schedule 2, paragraph 2 of the 1971 Act (ostensibly a power dealing with individuals on arrival in the UK for the purposes of determining whether they have, or should be given

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<sup>27</sup> Ibid.

leave to enter or remain) has been used by the Home Office as justification for conducting speculative, in-country spot-checks involving ‘consensual interviews’. This proposed amendment would expressly limit this power to examination at the point of entry.

### Briefing

There is no freestanding right to stop and search people to establish their immigration status away from the border.<sup>28</sup> Despite this, the power has been gradually claimed by the Home Office with no regard for community relations. The Home Office takes the 1987 case of *Singh v Hammond* as authority for the proposition that Schedule 2, paragraph 2 examinations in relation to those ‘*who have arrived in the United Kingdom*’<sup>29</sup> can be carried out in-country. At Chapter 31 of the Home Office Enforcement Instructions and Guidance, the Department sets out the grounds on which it believes that reasonable suspicion can be formulated:

*“Reasonable suspicion that an individual may be an immigration offender could arise in numerous ways but an example might be where an individual attempts to avoid passing through or near a group of IOs who are clearly visible, wearing branded Home Office clothing, at a location which has been targeted based on intelligence suggesting that there is a high likelihood that immigration offenders will be found there. This behaviour could not necessarily be considered to be linked to, for example, evading payment of the train fare if IOs are wearing vests or other items of work wear which clearly show which agency they belong to. In such circumstances the IO could legitimately stop the individual and ask consensual questions based on a reasonable suspicion that that person is an immigration offender.”<sup>30</sup>*

It is on the basis of this woefully lax interpretation of reasonable suspicion and a spurious extrapolation of a 1987 judgment that the Home Office first started running divisive in-country fishing expeditions in ethnically diverse areas of the UK. When Liberty objected to

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<sup>28</sup> When Liberty first heard of speculative street and transport hub-based operations being conducted in 2012 we wrote to the then UKBA questioning the authority for the practice. UKBA then suspended the operations nationwide and reviewed its guidance. The operations were then re-instated - with amended guidance –at the end of 2012. We understand that the Guidance was amended again following the high profile public backlash against the use of the powers over summer of 2013.

<sup>29</sup> Immigration Act 1971, sub-paragraph 2(1). In *Singh v Hammond*, the Court of Appeal held that a Schedule 2, paragraph 2 in-country examination can take place away from the place of entry if the immigration officer has some information which causes him to inquire whether the person is a British citizen and if not whether he may enter without leave or should be given leave. The Court of Appeal in this decades old judgement, however, was clear that “the case does turn very much on its own facts” which involved an immigration amnesty and an IO’s specific and defined suspicion of identity deception.

<sup>30</sup> Home Office Enforcement Guidance and Instructions, paragraph 31.19.4.

the operations in 2012, UKBA suspended them nationwide and reviewed its guidance. The operations were then re-instated - with amended guidance - culminating in the controversial and divisive operations in London in August 2013. Anecdotal evidence suggests that members of ethnic minorities were targeted during these operations which led to public outcry.

### **Part 3 – 28 day time-limit on immigration detention**

Schedule 7, page 97, line 22, after sub-paragraph 2 insert –

“( ) The Secretary of State must grant a person bail if a person is detained under a provision mentioned in sub-paragraph (1) after no later than the twenty-eighth day following that on which the person was detained.”

#### Effect

This amendment would provide for immigration bail to be granted after 28 days in immigration detention.

#### Briefing

Current policy stipulations which dictate that detention should be “*used sparingly and for the shortest period necessary*” have proved meaningless in practice.<sup>31</sup> In recent years the Home Office has repeatedly been found to have unlawfully detained individuals for protracted periods. In 2014, the High Court found the 11 month detention of a woman seeking to join her husband in the UK under the refugee family reunion rules to be a violation of both Article 5 (right to liberty) and Article 3 (freedom from torture, inhuman and degrading treatment) as protected by the Human Rights Act.<sup>32</sup> In 2012, the Court of Appeal found that a claimant of disputed nationality, detained for an overall period of 22 months, had been unlawfully detained in circumstances where there was insufficient prospect of removing him within a reasonable period.<sup>33</sup> In the same year, the Home Office were found to have falsely imprisoned a Zimbabwean man detained under immigration powers over a 13 month period between November 2007 and January 2009. The court found that from May 2008 there was no realistic prospect of removing him due to official Government policy to suspend removals

<sup>31</sup> Home Office Enforcement Instructions and Guidance, Chapter 55.1.3.

<sup>32</sup> *R (MD) v Secretary of State for the Home Department* [2014] EWHC 2249 (Admin).

<sup>33</sup> *Bizimana, R (on the application of) v Secretary of State for the Home Department* [2012] EWCA Civ 414 (02 April 2012).



because of the violence and dire humanitarian conditions in Zimbabwe in the wake of general elections held in the March 2008.<sup>34</sup>

As the analysis of the Parliamentary Inquiry into the use of immigration detention in the UK (“the Inquiry”) shows, the longer an individual is detained, the less likely it is that that person’s detention will end in removal.<sup>35</sup> Of the 178 people detained for 12 months or more and released from detention in the year ending March 2015, 38% were removed compared to the 57% ultimately released.<sup>36</sup> A team leader from the Prisons Inspectorate told the Inquiry that “a quarter of the prolonged detention cases they looked at were as a result of inefficient case-working”.<sup>37</sup>

The frustrating truth is that protracted detention does not even serve administrative convenience; it is simply a pointless waste of human life and public funds. In an examination into the economic case for detention published in September 2012, Matrix Chambers found:

In the UK, over the next 5 years the benefits of timely release of detainees who would have eventually been released anyway exceed the cost of timely release by £377.4 million. Timely release will generate £344.8 million in cost savings due to reduced time spent in detention. In addition, another £37.5 million will be saved due to reduced unlawful detention costs.<sup>38</sup>

In a harrowing report into the systemic failings at Yarl’s Wood IRC, HMIP added its voice to the growing consensus that limitless detention must end.<sup>39</sup> Pointing to cases of individuals detained for months – some for well over a year thanks to inexcusable administrative delays – the Chief Inspector called for a strict time limit on the length of detention.

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<sup>34</sup> *AM v Secretary of State for the Home Department*, Central London County Court, 2012, judgment available at:

[http://www.bhattmurphy.co.uk/media/files/AM\\_Zimbabwe\\_v\\_SSHD\\_approved\\_judgment.pdf](http://www.bhattmurphy.co.uk/media/files/AM_Zimbabwe_v_SSHD_approved_judgment.pdf).

<sup>35</sup> Report, page 23.

<sup>36</sup> Immigration Statistics, paragraph 13.3. Available at:

<https://www.gov.uk/government/publications/immigration-statistics-january-to-march-2015/immigration-statistics-january-to-march-2015>.

<sup>37</sup> Report, pg 19.

<sup>38</sup> Matrix Evidence, ‘An economic analysis of alternatives to long-term detention: Final Report’, September 2012, page 9.

<sup>39</sup> *Report on an unannounced inspection of Yarl’s Wood Immigration Removal Centre*, HM Chief Inspector of Prisons, 13 April – 1 May 2015. Available at: <https://www.justiceinspectores.gov.uk/hmiprison/wp-content/uploads/sites/4/2015/08/Yarls-Wood-web-2015.pdf>.

Detention without limit is an invitation to abuse. Medical evidence suggests that the mental health of detainees deteriorates significantly after around a month in detention.<sup>40</sup> The JCHR has called for a maximum time-limit of 28 days on the detention of asylum seekers.<sup>41</sup>

Liberty supports the calls of those organisations working routinely to support and protect vulnerable detainees in their calls for a statutory time-limit on immigration detention of 28 days as an absolute minimum of protection.<sup>42</sup>

### Part 3 – automatic immigration bail hearings

Schedule 7, page 97, line 22, after sub-paragraph (2) insert -

“( ) The following provisions apply if a person is being detained under a provision mentioned in sub-paragraph (1)-

- (a) the Secretary of State must arrange a reference to the First-tier Tribunal for it to determine whether the detained person should be released on bail;
- (b) the Secretary of State must secure that a first reference to the First-tier Tribunal is made no later than the eighth day following that on which the detained person was detained;
- (c) if the detained person remains in detention, the Secretary of State must secure that a second reference to the First-tier Tribunal or Commission is made no later than the twenty-eighth day following that on which the detained person was detained and every eight days thereafter;
- (d) the First-tier Tribunal hearing a case referred to it under this section must proceed as if the detained person had made an application to it for bail; and
- (c) the First-tier Tribunal must determine the matter before the second day after the Secretary of State makes a reference.

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<sup>40</sup> Dr Katy Robjant, 1st Oral Evidence Session, 17 July 2014 told the Panel that “those who were detained for over 30 days had significantly higher mental health problems than those who were detained for under 30 days.” Report, page 19.

<sup>41</sup> JCHR, *The Treatment of Asylum Seekers Tenth Report of Session 2006–07, Volume I – Report and formal minutes*, paragraph 276.

<sup>42</sup> See the recommendations of Detention Action (*Written evidence to the Parliamentary inquiry into the use of immigration detention in the UK*, July 2014) and Women for Refugee Women (*Detained: women asylum seekers locked up in the UK*, January 2014).

## Effect

This proposed amendment would require the Home Secretary to refer a case to the Tribunal for consideration of bail no later than 8 days after an individual is placed in immigration detention. The Tribunal must determine the application within two days of a Secretary of State reference. For as long as individuals continue to be detained for longer than 28 days, the amendment would require a follow up reference to the Tribunal after 28 days. Such is the gravity of protracted detention of longer than a month, references at 8 day intervals thereafter would be required.

## Briefing

Immigration detainees have no automatic right to have their detention reviewed by the courts. Instead new arrivals must wait a week before they are permitted to apply to for bail; if no application is made, detention is not reviewed by the Tribunal.<sup>43</sup> The requirement that a detainee initiate a bail application is practically concerning, particularly for the significant number of detainees with poor or no literacy, who speak no English or who have mental health problems. At a more general level, concerns have been repeatedly expressed about failures to adequately explain the existence of, and the procedure for, accessing immigration bail. In a December 2012 report, HM Inspectorate of Prisons and the Independent Chief Inspector of Borders and Immigration remarked:

During our interviews, we were surprised that of those detainees held for more than six months, nine (19%) said they had never made a bail application. This may have been because detainees were unaware of bail processes and/or had poor legal advice. A number of detainees said they did not know how to apply for bail or clearly needed help to navigate the process.<sup>44</sup>

These problems are exacerbated by the lack of availability and sometimes poor quality of legal advice available to those in detention, including practical difficulties in accessing those legal services which are provided.<sup>45</sup>

Liberty supports the Parliamentary Inquiry on the Use of Immigration Detention's calls for the introduction of a "*robust system for reviewing the decision to detain early in the period of*

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<sup>43</sup> Immigration Act 1971, Schedule 2, paragraph 22(1)(a) and (1B).

<sup>44</sup> 'The effectiveness and impact of immigration detention casework: A joint thematic review by HM Inspectorate of Prisons and the Independent Chief Inspector of Borders and Immigration', December 2012, para 4.9.

<sup>45</sup> Report, page 45-46.

*detention.*<sup>46</sup> Increased judicial oversight will ensure that the decision to detain is treated with the gravity it deserves. The above proposed amendment would partially reintroduce provision for automatic bail hearings initially included in the Immigration and Asylum Act 1999, but repealed in 2002 before it could be brought into force.<sup>47</sup> Provision originally made in the 1999 Act would have provided for automatic bail hearings within the first 8 days of detention.<sup>48</sup>

#### **Part 4 – remove provision for the certification of human rights cases**

Page 39, line 6, leave out clause 34.
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#### Effect

This provision would remove an extension of “deport first, appeal later provisions” to include all human rights appeals.

#### Briefing

Part 4 of the Bill deals with appeal rights, dramatically extending a system of Home Secretary certification resulting in the removal of in-country appeal rights. Even prior to the 2014 Act, statutory provision was in place to certify claims where an individual would be removed to one of a list of designated ‘safe’ countries or because the Secretary of State determines there is no reason to think that human rights or Refugee Convention obligations would be breached by returning an individual.<sup>49</sup> The 2014 Act extended certification and the removal of in-country appeal rights to deportation appeals raising human rights issue to be certified.<sup>50</sup> The present Bill proposes the extension of these provisions to all human rights appeals, save for cases involving humanitarian protection or the Refugee Convention.

Part 4 of the Bill is designed to target Article 8 cases involving the right to respect for private and family life. Where a claim to remain in the UK to reside with, for example a British spouse, a minor child or an elderly relative requiring care, is refused by the Home Office, the applicant will be forced to return to his or her country of origin and to attempt to bring an appeal from there, save where the Home Office considers that removal at this stage would

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<sup>46</sup> Report, page 9.

<sup>47</sup> Amendment in the names of Lord Roberts of Llandudno and Lord Ramsbotham.

<sup>48</sup> Original s44 of the Immigration and Asylum Act 1999 now repealed.

<sup>49</sup> The 2002 Act, section 94.

<sup>50</sup> Section 94B of the Nationality, Immigration and Asylum Act 2002 removes the in-country appeal right wherever the Home Secretary ‘considers’ that removal would not breach human rights. This requirement is elaborated at subsection 94B(3) as including, in particular, a conclusion that removal would not expose the appellant to ‘a real risk of serious irreversible harm’.

represent a human rights violation.<sup>51</sup> If implemented, these proposals will not only result in the temporary separation of families for many months while appeal hearings are allocated and the appeals determined, it will substantially reduce the prospect of a fair hearing, leading to permanent injustice. Many family life cases are refused by the Home Office on the grounds that it does not accept the genuineness of a relationship. It is hard to fathom how a couple would be able to establish the strength and genuineness of their relationship with one party excluded entirely from proceedings. This situation is exacerbated by well-acknowledged practical difficulties of accessing and using video link technology in an appeal. Individuals further generally have no access to legal aid for the purposes of appeals on Article 8 grounds.<sup>52</sup>

All this must be seen in the context of notoriously low quality Home Office decision making. Tribunal statistics for the period April-June 2015, reveal that 39% of immigration and asylum appeals were allowed by the First Tier Tribunal, that is some 6081 people who succeeded on appeal in this period alone, before consideration of those who ultimately go on to succeed before the Upper Tribunal.<sup>53</sup> In the face of consistent reports of bad administration, inefficiency and poor-quality decision making, rather than attempting to improve the system, the Government apparently wishes to insulate itself from effective challenge. Long-standing concerns about the quality of Home Office decision making further mean that assessments of whether serious and irreversible harm would be occasioned by removal simply cannot be relied upon. The option to raise challenges to unlawful certification in judicial review proceedings remains possible at the moment, but will no longer be accessible if the residence test for legal aid is brought into effect, removing any effective oversight of Home Office decision making.

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<sup>51</sup> Nationality, Immigration and Asylum Act. ss 94(3)B and in particular where the Home Secretary considers there is “a real risk of serious and irreversible harm”

<sup>52</sup> Save in the event that exceptional funding.

<sup>53</sup> In the Upper Tribunal, appeals by both the Home Office and individual applicants are heard, this appeal right. These statistics include some categories of case which won't be affected by the provisions in the Bill, such as asylum appeals, but managed migration cases made up more than half of the cases disposed of by the First-Tier Tribunal. Managed migration appeals are currently generated by people already in the UK who will be hit by proposals set out in the Bill.

## Part 5 – reinsertion of section 95 support for all families with children

Page 112, line 37, leave out sub-paragraph (5).

### Effect

This proposed amendment would ensure the continuation of section 95 support for households with minor children.

### Briefing

Currently, under section 95 of the Immigration and Asylum Act 1999 (“the 1999 Act”) accommodation and financial support is available to those with ongoing asylum claims, where they are destitute, or liable to become so within a 14 day period. Section 94(5) provides for this support to continue to be provided to families after an asylum claim has been finally rejected, where the household includes minor, dependent children born prior to the final determination of an asylum claim. This is subject to a specific power to remove support where the Home Secretary certifies that a family has failed, without reasonable excuse, to take steps to leave the United Kingdom voluntarily.<sup>54</sup> This power has not been routinely used, following its pronounced failure to facilitate removal when piloted in 2005.<sup>55</sup> The Bill goes significantly further than this specific power by providing for the blanket removal of section 95 support for families once a claim has been finally rejected. Under the Bill, section 95 support will only be available where a protection claim is on-going; whilst further submissions are made to the Secretary of State if they are made on protection grounds; or if such further submissions have been rejected by the Home Office, but the individual has permission to judicially review the Home Office decision.

## Part 5 – appeal right for section 95A support

Schedule 8, page 109, line 30, at end insert-

“( ) If the Secretary of State decides not to provide support to a person under section 95A, or not to continue to provide support for a person under section 95A, the person may appeal to the First tier Tribunal.”

Schedule 8, Page 109, line 29, leave out ‘and (7)’.

<sup>54</sup> Nationality, Immigration and Asylum Act 2002, Schedule 3(7A) as inserted by section 9, Asylum and Immigration (Treatment of Claimants, etc) Act 2004.

<sup>55</sup> *Family Asylum Policy: the Section 9 Implementation Project*, Home Office Border & Immigration Agency. Available at: <http://webarchive.nationalarchives.gov.uk/20140110181512/http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithasylumseekers/section9implementationproj.pdf>.

Schedule 8, Page 109, line 30, at end insert – “in subsection (7) for ‘section 4 or 95’ substitute ‘section 95 or 95A’.”

### Effect

This amendment would re-insert a right of appeal against a decision to refuse destitution support.

### Briefing

The Asylum Support Tribunal statistics reveal that – for the period 1<sup>st</sup> September 2014 to 28<sup>th</sup> February 28 2015 –approximately two thirds of appeals were either allowed, remitted, or resolved by an acknowledged from the Home Office about flaws in decision making. Furthermore, the Asylum Support Appeals Project records:

In 2014–15 ASAP assisted 674 appellants, of which 64.5% were able to access support as a result of their appeal. In the first quarter of 2015-16 (April – June) ASAP assisted 221 appellants, 73% of which either won their appeal or had it remitted resulting in them accessing support they had previously been denied.<sup>56</sup>

To ensure a bare minimum of protection against widespread destitution caused by administrative error a right of appeal against the refusal of section 95A support must be included in this Bill.

### *Destitution as a means of enforcement*

Provisions in the Bill to remove or restrict report and remove appeal rights must be seen in the context of clauses of the Bill which create a freestanding offence of illegal working and provide for the seizure of earnings; provide for the closure and freezing of bank accounts; and lock those without leave (including asylum seekers granted “immigration bail” pending the outcome of a claim) out of the private rental sector. It is clear that the Government views destitution as a legitimate way of enforcing removal and deterring migrants from coming to the UK. This approach not only ignores the evidence, it demonstrates a callousness which is increasingly coming to characterise UK immigration and asylum policy. The present proposals follow drastic cuts in support payments for asylum seeking families. The support

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<sup>56</sup> ASAP’s response to ‘Reforming support for failed asylum seekers and other illegal immigrants’. Available at: <http://www.asaproject.org/wp-content/uploads/2015/09/ASAP-response-to-HO-Consultation-on-Asylum-Support-7-9-15.pdf>

provided to those still within the asylum system - and hitherto to families whose claims have been rejected - under section 95 of the 1999 Act, was set at a bare minimum and has since been significantly reduced. Under new rates introduced in August this year, support for a couple with two children fell from £178.44 to £147.80 and for a couple with one child from £125.48 to £110.85. Support for a single parent with two children falls from £149.86 to £110.85 and for a single parent with one child from £96.90 to £73.90. Healthcare for those refused asylum in the UK is further already severely restricted and the Secretary of State for Education recently announced an investigation into the extent to which the prospect of an education constitutes a “pull factor” for migrants.<sup>57</sup> In the frantic bid to introduce ever more severe and biting hardships, the Government is willing to see children left without the basic necessities of life.

The Government argued in its recent consultation document that the removal of support is a way to “reinforce our immigration controls” and suggests that, when support is removed, “some failed asylum seekers will necessitate less enforcement activity”.<sup>58</sup> In the Impact Assessment accompanying the consultation proposals, however, the Government acknowledges that the prospect of behavioural change is too speculative to form part of a cost-benefit analysis of the proposals:

...the financial value of support available is small in comparison to the benefits of living and working in the UK, and as the behavioural response to the withdrawal or restriction of support is difficult to evidence, even after changes have been introduced, we have not made any estimate of additional savings resulting from any behavioural response to the measures proposed.<sup>59</sup>

The counter-productive nature of policy which relies on destitution as an enforcement tool was neatly summarised by the current Secretary of State for Work and Pensions in a 2008 report:

If asylum is refused, asylum seekers are often left without support and usually without permission to support themselves through work... It also appears that a British government is using forced destitution as a means of encouraging people to

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<sup>57</sup> ‘Nicky Morgan orders immigration review to examine ‘education tourism’’, 16<sup>th</sup> August 2015, The Telegraph: <http://www.telegraph.co.uk/news/uknews/immigration/11805477/Nicky-Morgan-orders-immigration-review-to-examine-education-tourism.html>

<sup>58</sup> *Reforming support for failed asylum seekers and other illegal migrants: Impact Assessment*, page 5 and 13.

<sup>59</sup> *Impact Assessment*, page 6.



leave voluntarily. It is a failed policy: only one in five leaves voluntarily. This contrasts diametrically with Sweden, where, this year, only one in five had to be forced to leave. The rest did so voluntarily. Sweden achieves this by treating refused asylum seekers in a humane and reasonable manner...<sup>60</sup>

Arguments about the enforcement benefits withdrawal or reduction of support to families are even more directly met by reference to a 2005 Home Office pilot of a current power, rarely used, to halt support for families. That provision, much like the present proposal, was justified as an enforcement measure. Data collected at the end of the year-long pilot period, however, found that those subject to the power to remove support were no more likely to leave the UK than a control group, but that those in the pilot group were almost twice as likely to have their asylum support removed. Significantly the evaluation report also noted that, “[e]vidence suggests a significant number of the families may have absconded from accommodation because of concerns about the section 9 process”.<sup>61</sup> Unsurprisingly the Home Office concluded that the power to remove section 95 support from families:

...did not significantly influence behaviour in favour of co-operating with removal... this suggests that the section 9 provision should not be seen as universal tool to discourage departure... We therefore do not propose that the section 9 provision should be used on a blanket basis by Border and Immigration Agency case owners in the future.<sup>62</sup>

The recommendation was that a power to remove support should be retained and could be considered on a case-by-case basis by case-owners if it was felt this could encourage removal in particular circumstances. 8 years on from the publication of this analysis of the evidence, the Government seeks to introduce a broader measure than that piloted in 2005. The changes set out in the Bill offer similarly poor prospects of facilitating removal but carry crushing and far-reaching human consequences.

### *Destitution as a deterrent*

The Government also argues that provision of support sends the “*wrong message*” to prospective migrants and that withdrawal of support *will “remove incentives for migrants to*

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<sup>60</sup> *Restoring Trust in the UK Asylum System*, The Centre for Social Justice: Asylum and Destitution Working Group, December 2008. Preface by Iain Duncan-Smith at page 4.

<sup>61</sup> *Family Asylum Policy: The Section 9 Implementation Project*, paragraph 2.2.

<sup>62</sup> *Family Asylum Policy: The Section 9 Implementation Project*, para 4.3.

*remain in the UK*".<sup>63</sup> In the words of Home Office Minister, James Brokenshire, the Government hopes to demonstrate that the UK is not "*the land of milk and honey*";<sup>64</sup> or in the words of the Home Secretary that "*Britain's streets are not paved with gold*".<sup>65</sup> Available evidence reveals the fallacy in this approach. A Home Office Research Study published in 2002 concluded that:

There was very little evidence that the sample respondents had a detailed knowledge of: UK immigration or asylum procedures; entitlements to benefits in the UK; or the availability of work in the UK. There was even less evidence that the respondents had a comparative knowledge of how these phenomena varied between different European countries.<sup>66</sup>

This Home Office commissioned research also found that asylum seekers have little control over where they apply for asylum concluding:

...it is important to note that agents were critical determinants of the destination eventually reached by asylum seekers...if individual asylum seekers wanted to leave their home country they had to give over control of migration decision-making to these paid facilitators.<sup>67</sup>

This was confirmed by a 2011 review of the 19 main OECD recipient countries for asylum applications carried out by the Centre for Economic Policy Research.<sup>68</sup> The review concluded that tightening of welfare provision did not have any deterrent effect.<sup>69</sup> In the UK specifically, the introduction of the separate and reduced support arrangements for asylum seekers in 1999 had no deterrent effect. Applications for asylum, excluding dependants, rose

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<sup>63</sup> *Reforming support for failed asylum seekers and other illegal migrants*, paragraph 7 and 10.

<sup>64</sup> *Concerns raised over plan to strip failed asylum seeker families of benefits*, The Guardian, 2<sup>nd</sup> August 2015. Available at:

<http://www.theguardian.com/uk-news/2015/aug/02/concerns-raised-plan-strip-failed-asylum-seeker-families-benefits>.

<sup>65</sup> *Migrants think our streets are paved with gold*, The Telegraph 1<sup>st</sup> August 2015. Available at:

<http://www.telegraph.co.uk/news/uknews/immigration/11778396/Migrants-think-our-streets-are-paved-with-gold.html>.

<sup>66</sup> V.Robinson, *Understanding the decision-making of asylum seekers*, University of Wales, July 2002, page viii.

<sup>67</sup> *Understanding the decision-making of asylum seekers*, page 19.

<sup>68</sup> *Seeking Asylum Trends and Policies in the OECD*, Timothy J Hatton (University of Essex, Australian National University, and CEPR), July 2011.

<sup>69</sup> *Seeking Asylum Trends and Policies in the OECD*, see e.g. sections 8.2 and 9.3.

by 25,000 to 71,100 in 1999,<sup>70</sup> in 2000 applications rose by a further 13% to 80,315.<sup>71</sup> The Home Office should engage with the analysis of the Secretary of State for Work and Pensions:

The Government claims that the asylum system is effectively reducing the numbers of asylum seekers entering the UK. However this report shows that the rise of asylum numbers at the turn of the millennium and subsequent fall since 2003 is an international phenomenon....<sup>72</sup>

## Part 5 – permission to work for asylum seekers after six months

Page 119, line 21 at end insert the following new clause-

### **“Permission to work**

- (1) The Immigration Act 1971 is amended as follows.
- (2) After section 3(9) (general provisions for regulation and control) insert—
  - “(10) In making rules under subsection (2), the Secretary of State must have regard to the following.
  - (11) Rules must provide for persons seeking asylum, within the meaning of the rules, to apply to the Secretary of State for permission to take up employment and that permission must be granted if—
    - (a) a decision has not been taken on the applicant’s asylum application within six months of the date on which it was recorded, or
    - (b) an individual makes further submissions which raise asylum grounds and a decision on that fresh claim or to refuse to treat such further submissions as a fresh claim has not been taken within six months of the date on which they were recorded.
  - (12) Permission for a person seeking asylum to take up employment shall be on terms no less favourable than those upon which permission is granted to a person recognised as a refugee to take up employment.””

<sup>70</sup> ASYLUM STATISTICS UNITED KINGDOM 1999:  
<http://webarchive.nationalarchives.gov.uk/20110218135832/http://rds.homeoffice.gov.uk/rds/pdfs/hosb1700.pdf>.

<sup>71</sup> ASYLUM STATISTICS UNITED KINGDOM 2000:  
<http://webarchive.nationalarchives.gov.uk/20110218135832/http://rds.homeoffice.gov.uk/rds/pdfs/hosb1701.pdf>.

<sup>72</sup> *Restoring Trust in the UK Asylum System*, page 4.

## Effect

This proposed amendment would provide for asylum seekers to be able to work if their claim is not determined within the Home Office target time of six months.

## Briefing

Whilst the proposed changes to asylum support do not constitute an effective means of enforcement or deterrence, they would create financial savings, at least for central Government (although the extent to which these costs would be transferred to local Government is discussed further above). These savings would be paid for by the abject suffering of destitute people and – because the evidence shows some will abscond - by compromises to the integrity of the immigration system.<sup>73</sup>

If the Government seeks to find financial savings from the asylum support system there are many more constructive and humane ways to do so, most obviously by allowing more asylum seekers to work whilst their claims are processed, generating additional tax revenue and significant savings from the asylum support system.

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<sup>73</sup> Ibid., During the Home Office pilot, section 9 frustrated removal by encouraging people to abscond.