



THE GOVERNMENT REPLY TO THE FIRST
REPORT FROM THE HOME AFFAIRS COMMITTEE
SESSION 2003–04 HC 109

Asylum and Immigration (Treatment of Claimants, etc.) Bill

**Presented to Parliament by the Secretary of State
for the Home Department
by Command of Her Majesty
February 2004**

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We have already made significant progress in reforming the immigration, nationality and asylum system and strengthening the UK's borders to tackle illegal immigration. This has reduced by half the number of asylum claims, increased the number of failed asylum seekers removed and reduced the number of asylum cases awaiting a decision to the lowest for a decade.

The Asylum and Immigration (Treatment of Claimants, etc.) Bill sets out our third phase of reforms to the asylum and immigration system building on the action that we took in the Immigration and Asylum Act 1999 and the Nationality, Immigration and Asylum Act 2002 and the ongoing operational improvements we are achieving. It also responds to the continuing and increasingly sophisticated abuse of the system.

We have a progressive policy of welcoming migrants where that helps our economy and offering opportunities to people from less developed countries. We are committed to finding better ways of integrating refugees in the UK and helping refugees worldwide. However, we cannot expect to make the case for managed legal migration and providing more help for refugees unless we deal effectively with the misuse of the asylum system and return it to the purpose for which it was intended – the protection of people fleeing persecution.

Facing up to the challenges posed by global migration is vital to building up tolerance and understanding in our diverse communities. We have a proud tradition of welcoming people and we are proud of modern Britain's ethnically rich and diverse society. We must not allow this to be damaged by traffickers or people who misuse the system, for whatever understandable reasons.

The Bill will provide a quicker and more robust system that protects those in genuine need but deters and prevents behaviour designed to frustrate our processes. We are getting tougher on traffickers and others seeking to play the asylum system to ensure that the public has confidence in our immigration controls. In turn this will ensure that genuine refugees and legal migrants continue to be welcomed and valued for the important contribution they make to life in the UK.

The Bill was introduced into the House of Commons on 27 November 2003. The Home Affairs Committee (HAC) published its report on the Bill on 16 December 2003¹.

The Government is grateful to the HAC for its scrutiny of the Bill. This paper responds to the specific conclusions and recommendations made by the HAC in its report.

Response to specific conclusions and recommendations made by the HAC

The HAC's conclusions and recommendations are addressed in turn, giving the number of the paragraph in the Committee's report. The Committee's recommendations are shown in bold below.

¹ House of Commons Home Affairs Committee, *Asylum and Immigration (Treatment of Claimants, etc.) Bill, First Report of Session 2003-04*, HC 109

Undocumented passengers

1. We assume, in the light of the Minister's comments, that a "reasonable excuse" will include circumstances where a person fleeing persecution has no practical way of obtaining valid documents. We recommend that the Government make this clear explicitly in the text of the Bill. (Paragraph 20)

Given the security and travel checks made before people are able to begin their journeys by plane, we expect only exceptional examples of where a person has never had a travel document but nonetheless has been able to travel by air. However, where a person did not have a travel document when they began their journey, that would be a reasonable excuse for arriving without one.

Refugees who have travel documents have nothing to fear from keeping hold of them.

Ultimately it will be for the courts to define what constitutes a reasonable excuse for the purpose of the offence, subject to provisions in the clause which explicitly rule out certain defences that are not considered as reasonable causes for no longer being in possession of a document.

2. We support in principle the Government's new measures to penalise, in certain circumstances, those who deliberately lose or destroy their travel documentation. However, to avoid disadvantaging genuine refugees, we recommend that the Government should take steps to ensure, as far as is reasonably possible, that the potential consequences of deliberately losing or destroying their documentation is drawn to the attention of people arriving in the UK, both immediately on arrival at a port, and (by requiring carriers to provide this information) prior to arrival. (Paragraph 23)

We are pleased that the Committee recognises the merit in the proposal to make being undocumented without reasonable explanation a criminal offence. We agree that we need to make the existence of this offence widely known, as the primary aim of the offence is to deter such behaviour. We will be considering what practical steps can be taken to get the message across to anyone subject to UK Immigration Control.

3. We support the use of surveillance techniques to assist in linking passengers who lose or destroy their travel papers with their flight of arrival. We recommend that consideration be given to extending such schemes to airports other than Heathrow, and to seaports. We also recommend that the tactic of deploying immigration officers to meet passengers as they disembark from selected flights should be used more often, both to establish where people who have disposed of their travel documents have arrived from, and to send a discouraging message to the criminal 'facilitators' (Paragraph 26)

We are pleased that the Committee recognises the importance of linking inadequately documented passengers to the flights on which they arrive. Surveillance techniques are not restricted to Heathrow Airport. All air and seaports have the facility to meet selected flights and ships and conduct document checks where appropriate. Surveillance officers are deployed tactically to target specific flights and ships based on intelligence obtained through co-operation with other border agencies, the maritime and aviation industries and partners abroad. We will continue to ensure that resources are efficiently deployed to maximise impact in this area. For example, we have identified CCTV as an excellent support to manual surveillance techniques and the Immigration Service's ability to access existing and new CCTV forms a key part of negotiations with port operators.

The tactic of intercepting inadequately documented passengers will be developed by the extension of juxtaposed controls, which will mean that, at seaports, interdiction will be possible prior to arrival in the United Kingdom. We believe

that measures in the Bill are both necessary and desirable to complement these operational practices.

4. We recommend that the Government should clarify its intentions as to whether or not, if it were to introduce a power to require carriers to copy travel documents, this would apply to all carriers and all flights. (Paragraph 29)

We tabled a new clause on this on 19 January. This was debated by Standing Committee B on 27 January and now forms part of the Bill. The effect of the new clause is to allow an Immigration Officer to require a carrier to provide either a full or partial copy of any document relating to a passenger and containing information about that passenger. This is intended to address the abusive behaviour of individuals who destroy their passport or travel document before presenting themselves to Immigration Control. Such action makes establishing their true identity and nationality difficult and obstructs any subsequent attempt to remove them from the UK. To test the impact on carriers of such a measure, a trial of 6 months duration will take place. Evaluation of the trial will include consideration of the effectiveness of statutory and voluntary approaches, including the possibility of incentives for a voluntary scheme. The power in the Bill would be commenced only if the evaluation and review process concluded it was justified. We have made it clear that this power would apply in a targeted way on those flights/ routes where evidence demonstrated a particular problem.

5. We recognise that a power [to require carriers to copy travel documents] such as the Government envisages may be useful if used in the targeted manner described by the Minister. We believe that the Government should demonstrate that the proposal would not cause undue delays to legitimate passengers and that the costs imposed on airlines would be commensurate with the benefits to be gained in tackling abuse of the asylum system. We hope that the Government will not seek to amend the Bill to introduce this provision without first publishing the results of its consultations with carriers and other interested parties. We believe that it would be desirable for the Government to publish an assessment of the operation of similar powers in the Netherlands. (Paragraph 33)

We published a summary report on consultation responses on 17 December 2003. We tabled an amendment on 19 January and published a regulatory impact assessment which takes account of comments received on 20 January. To test the effect such a proposal will have, on both airlines and the travelling public, we will conduct trials at two locations. This will establish the optimum technical solution and provide reliable evidence of the cost and time implications of such a requirement. The trial will also indicate if a voluntary scheme would be viable. We would also publish an updated Regulatory Impact Assessment before commencement. We have been in contact with colleagues in The Netherlands and will continue to liaise with them as necessary. The system in The Netherlands works differently from the system we are proposing so a separate report would be of limited value. We will, however, consider the effectiveness of the system in The Netherlands as part of our evaluation.

Reform of the appeals process

6. We recommend that, in considering the Government's proposed simplification of the asylum appeals system, the House should consider whether the Government has made sufficient commitment to investing the necessary resources, and making other improvements to the quality of initial decision-making on asylum cases. The real flaws in the system appear to be at the stage of initial decision-making, not that of appeal. We recommend that the implementation of the new asylum appeals system should be *contingent* on a significant improvement in initial decision making having been demonstrated. In particular, the relevant sections of the Act should not be brought into force until the statistics show a clear reduction in the number of successful appeals at the first-tier, adjudication level. (Paragraph 43)

The Committee has acknowledged in its most recent report on asylum applications (HC 218) the progress recently made to improve the asylum decision making process. The Government is committed to delivering high quality decisions at all stages of the asylum system. Many improvements have already been made, including setting a specific target for decision quality, introducing quality assurance systems involving both internal and external assessment, enhanced training and use of language testing.

We are determined to build on these improvements to ensure that the highest standards are consistently achieved. We are discussing with UNHCR how they might work with us to provide an additional external assessment of the quality of decisions. We are looking at other ways of strengthening the quality assurance systems, including sampling a cohort of the same cases at each stage of the initial decision process. We are developing greater external input to our training from other organisations with specialist skills and have introduced the independent Country Information Advisory Panel to ensure that the country information is as accurate, objective and up to date as possible.

These and other measures will continue to drive up the quality of initial decisions, but the Government cannot accept that implementation of the new appeals process should be contingent on delivery of further improvement. Nor does the number of successful appeals provide a reliable measure of initial decision quality. The quality of the decision is, of course, an important factor but it is certainly not the only one. The passage of time between the decision and appeal may mean that individual circumstances, country conditions or evolving case law have changed and therefore so should the outcome. That is one reason for the fast track processes we have developed and which the Committee has welcomed. The conduct of the appeal including whether and how effectively the parties, including the Home Office, are represented may affect the outcome particularly where the issues are complex. Having failed to win their case at the initial decision stage, legal representatives naturally take new instructions and, in many cases, develop new arguments to put before the adjudicator. These and many other factors mean that the number of allowed appeals is not a direct product of initial decision quality.

Despite the progress made to improve decision quality, the Government is not complacent. We will pursue vigorously our programme of further measures designed to drive up quality throughout the process, including initial decisions.

Removal to a ‘safe third country’

7. We repeat our earlier recommendation, in respect of non-suspensive appeals, and make a similar recommendation in respect of the proposals relating to ‘safe third countries’ in the present Bill, i.e. that if the Secretary of State wishes to add further countries to the list in Schedule 3 to the Bill, he should append a written memorandum to the relevant Statutory Instrument, explaining the rationale for believing those countries to be safe. (Paragraph 53)

We have set a high test to designate countries as safe in the context of the provisions in Schedule 3, as amended during the Commons Committee stage. We have undertaken detailed research to comply with the obligation that we are satisfied as a matter of fact that countries are safe from an ECHR and 1951 Convention point of view within the structure of the amended provision. But by taking a graduated approach on a statutory basis to deal with human rights claims, we acknowledge that not all countries are the same in that regard and that exceptional cases may arise. We have accordingly retained for each list in the amended provisions the potential for an in-country challenge to removal on human rights grounds except where that challenge is certified

as clearly unfounded. That certificate is then susceptible to judicial review in an appropriate case.

8. We also recommend that the Government should make a clear statement of the circumstances which might trigger a decision to seek parliamentary authority for the removal of a country from the list of ‘safe third countries’. In particular, we expect that satisfactory mechanisms will be set up within Government to keep the human rights situation in ‘safe third countries’ under review, so that they do not remain on the list if that situation significantly deteriorates and they cease to be safe. (Paragraph 54)

The research to demonstrate that a country is safe as a matter of fact will be refreshed on a regular basis. There is power in the provisions as amended to remove a country from a list if reliable objective evidence indicates that circumstances in a third country not party to the Dublin arrangements would expose applicants to a real risk of treatment contrary to our international obligations. For example, persecution in the third country on the grounds of race, religion, nationality, political opinion or membership of a particular social group or evidence of inhuman or degrading treatment there. We consider that member States and Dublin participants listed at Part 2 offer a high level of international protection and can properly be distinguished from other third countries to which this Schedule might apply and there is accordingly no power to remove such a country from the list.

Restricting family support

9. The Minister also informed us that the Home Office is not in a position to give estimates of the number of families to whom Clause 7 might apply. We believe that this is unsatisfactory and that the Home Office should at least be able to publish figures showing the number of families, including the number of children, who are currently in the asylum system and to whom Clause 7 could apply. (Paragraph 64)

The numbers to whom clause 7 might apply will depend on a number of factors, including the decisions of parents. It would only apply to those whose claims are refused with appeal rights exhausted. A decision would be taken after assessing each case individually and would only apply where the family was able to return through a voluntary route. We are confident that the numbers who will be adversely affected by the clause will be low and have undertaken, during the course of Commons Committee debates on the Bill, to publish statistics on the number of approaches for assistance made to local authorities as a result of the provisions contained in clause 7 of the Bill.

10. We believe that the priority should be to improve the removal system so that it is understood by all parties that a failed claim will lead to swift action to effect a removal. (Paragraph 67)

Improving the removals process has been, and remains a priority. Considerable progress has already taken place and removals are currently at record levels. A number of measures in the Bill, including the offence of failing to co-operate with re-documentation and the power to allow us to withdraw support from families will enable us to build on the progress already made in this area. One of the key aims of the Bill is to introduce a new speed and finality to the appeals and removals process, to prevent the current multi-layered appeals process being abused simply to prevent removal from the UK.

11. The principle behind Clause 7, of removing taxpayers’ support from those with no right to asylum, is justified, and we do not recommend that Clause 7 be removed from the Bill. However, we recommend that the Government should give assurances that Clause 7 will not come into effect until the House is satisfied that in practice it will not lead to significant numbers of children being taken into care. (Paragraph 69)

The Government is pleased that the Committee have welcomed in principle our measures to withdraw support from those families who have no right to be here and that the Committee recommends that this measure should remain part of this Bill. The Government faces difficult choices in ensuring that a fair and effective system results in those whose claims are refused actually leaving the UK. On one hand, there is concern about children being detained, which I hope the measures we announced on 17 December 2003 will go some way to alleviating. On the other, there are families whom we cannot detain but who refuse to co-operate with returning home. In these circumstances we cannot allow those families illegally resident in the UK to receive unlimited state benefits and housing.

We hope that assurances made during debates on this clause in Commons Committee have reassured members that a clear process will be in place that will not lead to large numbers of children being taken into care and that ending support would be a last resort. At every stage, either a voluntary or enforced return home will be pursued.

12. We recommend that in its consideration of the Bill, the House should give particular attention to the way in which the Government plans to implement Clause 7. (Paragraph 69)

This measure was discussed at length during Commons Committee. Following these debates we are confident that members will be reassured that a clear process will be in place that will not lead to large numbers of children being taken into care and that removing support will be a last resort.

13. If the provisions in Clause 7 are brought into effect, we recommend that the Government should submit a written report to Parliament once a year on the number of families from whom benefit has been removed under the terms of the clause, and the number of children who have been taken into care as a result of the operation of the clause. (Paragraph 70)

As outlined above, we are confident that the numbers who will be adversely affected by the clause will be low and have undertaken, during the course of Commons Committee debates on the Bill, to publish statistics on the number of approaches for assistance made to local authorities as a result of the provisions contained in clause 7 of the Bill.

14. We believe that it would be an important safeguard if the Government were to publish and regularly update a list of those countries for which a voluntary resettlement programme is in place. (Paragraph 71)

There is no list of safe countries to which the International Organization for Migration (IOM) are able to offer assisted voluntary return. IOM will return to all countries where it is safe to do so and where there are travel routes available. Although there are difficulties, such as re-documentation, in returning failed asylum-seekers to particular countries it is vitally important to keep in mind that these difficulties do not mean a country is unsafe. The aim behind clause 7 is to encourage people to leave voluntarily where they can do so. Simply because we are not in a position immediately to enforce a removal should not mean a family remains entitled to support at the taxpayer's expense indefinitely when there are other options available.

New powers for the Immigration Services Commissioner

15. We consider that the proposed new powers for the Immigration Services Commissioner, which have been requested by the Commissioner himself, are sensible and proportionate, and we urge the House to support them. (Paragraph 77)

The Government is pleased that the Committee have welcomed our measures to

enhance the powers of the Office of the Immigration Services Commissioner. These measures will improve the effectiveness of the regulatory scheme administered by the Immigration Services Commissioner, especially its ability to deal with unscrupulous advisers.

Other measures in the Bill

16. [Clause 4 and Clause 15] were not announced in advance of the publication of the Bill on 27 November, and accordingly we have not had an opportunity to take evidence on them or explore their implications with the Minister. We therefore recommend that the Standing Committee on the Bill should give particular attention to these provisions, with a view to exploring and testing the Government's justification for them. (Paragraph 79)

The trafficking offence was announced at the NCS Reflex Conference on 13 November 2003. Standing Committee B was able to explore the implications of clauses 4 and (what was then) 15, along with other parts of the Bill, with the Minister. The Minister has undertaken to consider some of the points raised during the debates on these clauses. As the Bill proceeds through Parliament, these provisions will be given the same Parliamentary scrutiny as the rest of the Bill.

**Home Office
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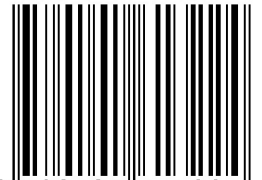
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