

Briefing

Immigration Bill – 2nd Reading 22 October 2013

Scottish Refugee Council is Scotland's leading refugee charity, which since 1985 has provided help and advice to those that have fled human rights abuses or other persecution in their homeland and seek refuge in Scotland. Our vision is that all refugees seeking protection in Scotland are welcomed, treated with dignity and respect, and are able to achieve their full potential. We provide advice and information to those seeking asylum and refugees, campaign for their fairer treatment and for better awareness, policy, and law on matters affecting them.

Introduction

We have not provided detailed comment on all aspects of the Immigration Bill at this stage, rather the briefing sets some of Scottish Refugee Council's overarching concerns and focusses on Part 3 of the Bill (Access to Services) in relation to housing and health.

Overarching concerns

- The Immigration Bill (Bill) may be "tough" but it is not "smart" as our 30 years of experience working on the ground has taught us that migrants are here to work, contribute and integrate, and those seeking asylum do so not lightly but to flee persecution;
- The Bill proposes making life harder for an already marginalised group but that will not mean more identification, administrative removals or returns but rather more hiddenness, vulnerability, and harm to men, women and children whose lived realities cannot easily be fitted into UK Government imposed categories of 'deserving' and 'undeserving';
- The Bill, being discriminatory in design, will be discriminatory in effect, especially for visible ethnic minority groups, settled and new, harming community relations. The intimidating conditions it seeks to create for 'illegal immigrants' will be intimidating for all of us in the UK as British citizens will need to prove their citizenship to access services;
- The Bill will do nothing to solve the continuing chaos and reduced resources in the new Home Office departments that were formerly the UK Border Agency (referred to for reference as the former UKBA). Rather it places new demands on the former UKBA that it will simply not be able to meet;
- Replacing appeal rights with a reliance on ineffective, inefficient internal 'administrative reviews' and curtailing bail applications, dramatically reduces the necessary and vital oversight of the constantly ill-performing former UKBA which is charged with making decisions on the fundamental rights of individuals and families. For individuals and families who fall foul of the former UKBA's poor-decision making, recourse to justice recourse will

be distressingly absent;

- For appeals on asylum or human rights grounds which remain, the Home Office briefing states the Bill will: *“Make the appeals process more transparent so that decisions on human rights and asylum claims must be considered by the Secretary of State before they are considered by the Tribunal.”* This is worrying as there is no obligation placed upon the Secretary of State within the Bill to consider new matter. The potential of this is that asylum cases will be left in yet another Home Office backlog. We cannot understand how this will in anyway make these appeals on these grounds *‘more transparent’*;
- The Bill extends significantly the use of force by immigration officers. The use of force by officers in the former UKBA needs to be considered *‘power-by-power’* and not simply legislated for on a blanket basis; and
- The Bill seeks to use reserved immigration powers to impose changes that will impact on devolved policy areas in Scotland and which are inconsistent with consecutive Scottish Government approaches to the delivery of public services.

Access to services (Part 3)

- Scottish Refugee Council is very concerned that no robust evidence has been presented by the UK Government to back up its declared rationale for restricting migrants’ access to vital, life-saving public services. The allegation that *‘health tourism’* is a *‘significant problem’* or that migrants are a significant drain on public services has not been founded in any evidence. Even the Home Office clearly stated in its consultations on these aspects of the Bill that there is *“limited detailed information available”* to this effect. The Migration Observatory at the University of Oxford has noted:

“There is ... very limited systematic data and analysis about migrants’ use of public services, especially health and education, and even less information about the value of migrants’ contributions to the provision of public services in the UK.”¹

- In our consultation responses² we queried the UK Government’s competency to lay down legislation that will have a significant impact on devolved policy areas under the responsibility of Scottish Ministers, such as health and housing. It is our understanding that there has been little consultation with devolved administrations in the lead-up to the publication of the Bill and that the Scottish Government has significant concerns about the inconsistency of the provisions with its own principles and approach to the provision of public services.³
- **Housing** - We are concerned that the proposals to require landlords to conduct immigration checks on tenants are unlikely to meet the UK Government’s stated aim of reducing illegal immigration. What it is more likely to achieve is to push people who have leave in the UK as well as those who do not closer to rogue or even criminal landlords which may put them at more risk of exploitation. We are also concerned that the proposals will create additional barriers for all refugees and migrants to access suitable housing and raise the potential for indirect discrimination against refugees and other migrants. This will aggravate an already serious problem of homelessness, destitution and poor housing options amongst refugees and migrants who have a legal right to rent accommodation, severely impacting on their integration.
- We consider that the moves are impractical, unrealistic to manage and present unnecessary additional burdens on private and social landlords. Both private and social landlords will be

required to undergo staff training, obtain IT systems to record checks and give staff time to complete follow ups. This is likely to increase void times (already a concern with socially rented properties) as landlords will need to delay property allocations while they check immigration documents. These concerns are endorsed by the Scottish Federation of Housing Associations (the representative body for Scotland's Housing Association sector).

- **Health** – We have considerable concerns about the proposed immigration health charge and how it would work in practice. The Bill at this stage provides wide-ranging enabling clauses which state that the UK Government will limit entitlement to health services in England and the devolved nations: Wales, Northern Ireland and Scotland to British citizens and those with settled status. Entitlement to others will be governed by regulations and may be subject to a levy.
- In Scotland, statutory regulations and government guidance in the area of overseas visitors' access and charging for healthcare differ from those in force in England.⁴ An example of a significant difference between the legislative frameworks of England and Scotland are the regulations governing exemptions from charging for NHS services for asylum claimants. This difference already causes confusion, which, in turn, can often be a barrier to accessing vital services. In Scotland:

*“Anyone who has made a formal application for asylum, whether pending or unsuccessful, is entitled to treatment on the same basis as a UK national who is ordinarily resident in Scotland while they remain in the country”.*⁵
- In England, the equivalent exemption is limited to anyone who *“has made an application, which has not yet been determined, to be granted temporary protection, asylum or humanitarian protection under those rules...”* or, *“is currently supported under section 4 or 95 of the Immigration and Asylum Act 1999(13)”*. The English regulations allow the NHS to charge, an extremely vulnerable group of people, refused asylum but in England without access to public funds, who are likely to have healthcare needs and very unlikely to be able to pay for them. This example highlights a fundamental difference in approach between England and Scotland, which is inconsistent with a uniform policy of further restrictions as suggested in the Bill.
- Whilst the UK Government states that there is no requirement to seek the views of the Scottish Parliament in relation to these clauses, we would query this. The Scotland Act transferred the powers of the Secretary of State to Scottish Ministers in relation to health and Scottish Ministers have subsequently made regulations in relation to overseas visitors. That so much of the detail of these policies will be left to secondary legislation is also concerning.

References

- (1) <http://www.migrationobservatory.ox.ac.uk/top-ten/7-impacts>
- (2) http://www.scottishrefugeecouncil.org.uk/policy_and_research/responding_to_policy/policy_and_research_2013
- (3) <http://news.scotland.gov.uk/News/Hyslop-Scotland-won-t-slam-door-on-foreign-students-535.aspx>
- (4) The legislation in force in Scotland is The National Health Service (Charges to Overseas Visitors) (Scotland) Regulations 1989 and in England, it is The National Health Service (Charges to Overseas Visitors) Regulations 2011
- (5) Scottish Government Health Directorate, CEL 09 (2010) Overseas Visitors' Liability to Pay Charges for NHS Care and Services www.sehd.scot.nhs.uk/mels/CEL2010_09.pdf

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