



Asylum and Immigration Bill 2003: Key issues and concerns

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Introduction

On 27 November 2003, the [Asylum and Immigration \(Treatment of Claimants, etc.\) Bill](#) was introduced into Parliament. One part of the Bill, which would remove any support from unsuccessful asylum-seeking families, has attracted particular media attention, as it could lead to children being taken into care and away from their parents.

But the Bill also removes absolutely essential legal safeguards for asylum applicants (and other immigrants such as visitors, business people, and students). Asylum seekers will effectively no longer be able to challenge unlawful decisions made on their cases; no other group in British society is denied access to the courts in this way. The legal profession has been particularly vocal in its criticism of this aspect of the Bill, pointing out that it would in fact compromise the courts' position as the final arbiters to uphold the rule of law.

The Bill also restricts asylum seekers' access to asylum appeals, creates new penalties for people who arrive in the UK without documentation, and increases the powers available to the Home Secretary to remove asylum applicants on 'safe third country' grounds.

The main changes in the Bill affecting asylum seekers are:

- ⇒ Restrictions in accessing asylum appeals
- ⇒ Penalties for arriving in the UK without documentation
- ⇒ Expansion of safe third country provisions
- ⇒ Withdrawal of support from families at the end of the asylum process

This briefing summarises the main changes set out in the Bill and how they affect asylum seekers.

Content of the Bill

1. Entering the UK without a passport

Where: [Clause 2](#) of the Asylum and Immigration (Treatment of Claimants, etc.) Bill

- ⇒ It will be a criminal offence for a person not to possess, without reasonable explanation, a valid document showing his/her identity and nationality when first interviewed by an immigration officer after arrival in the UK.
- ⇒ If an immigration officer believes that an offence has been committed s/he may arrest the individual without a warrant.

Any person found guilty of this offence may face a fine and/or imprisonment for a period of up to two years. If an adult accompanies a child, s/he may face prosecution. In this case, the child will presumably be placed in care at enormous financial and social cost. The Home Office document summarising and responding to the responses to the consultation on this proposal states that this offence also applies to children over ten years of age.

Subsections (3) and (4) set out that people have a defence if they are an EEA national or if they have a reasonable excuse for not possessing relevant documentation. However, subsection (5) also specifies that it is not a reasonable excuse to say, for example, that the person helping them to the UK, such as a smuggling agent, forced them either to destroy or hand back their travel documents.

The Refugee Council's concerns

The Refugee Council believes that measures penalising refugees for arriving without travel or identity documents in effect punish refugees for behaving like refugees. The United Nations High Commissioner for Refugees (UNHCR) points out that 'in most cases a person fleeing from persecution will have arrived with the barest necessities and very frequently without personal documents.' Often this is because of the impossibility of obtaining a passport from the very authorities that are responsible for the acts of persecution from which people are fleeing.

Increased border controls, which in recent years have included the extension of visa requirements to refugee-producing countries, carrier liabilities and juxtaposed controls, have reduced options for a safe and legal transit to the EU for the purpose of asylum. This proposal disregards the protection afforded by Article 31 of the [Refugee Convention](#) which states that asylum seekers should not be penalised for arriving using false documentation.

2. Trafficking people for exploitation

Where: [Clause 4](#) of the Asylum and Immigration (Treatment of Claimants, etc.) Bill

⇒ It will be a criminal offence for anyone to traffic another person into or out of the UK for the purposes of exploitation.

It is important to recognise the distinction between trafficking and smuggling. People are being trafficked if they are brought into another country to be exploited for their labour or services. Smuggling involves people paying a fee to have their entry facilitated into another country. People who are convicted of a trafficking offence can face a maximum prison sentence of 14 years.

The Refugee Council's concerns

We welcome the Government's commitment to tackling the highly exploitative practice of people-trafficking.

However, it is regrettable that Clause 2 of the Bill, which creates a new offence for entering the UK without valid immigration documentation, will potentially penalise the victims of trafficking as well. Many victims of trafficking will have entered the UK illegally, and may be too frightened to come forward for fear of being themselves prosecuted. Clause 2 will severely undermine attempts to clamp down on traffickers.

All victims of trafficking for exploitation should be given support and accommodation in a safe house, just as the Home Office offers to victims of trafficking for specifically sexual exploitation. Some victims may well fear returning to their country of origin, particularly if they have cooperated with the police in prosecution of their traffickers.

3. Credibility of asylum applicants

Where: [Clause 6](#) of the Asylum and Immigration (Treatment of Claimants, etc.) Bill

⇒ This clause sets out various behaviours, which the authorities must take into account in deciding whether to believe a statement made in support of an asylum or human rights claim.

The clause sets out a list of types of behaviours, which may put an applicant's credibility into question. For example, if the applicant cannot produce documents without a *good explanation*; if s/he is unable to respond adequately to the authorities' questions; or if s/he does not register a claim at the earliest opportunity or in a 'safe third' country.

The Refugee Council's concerns

The proposal that an individual's asylum claim be deemed less credible if s/he has travelled through another country before reaching the UK builds on a false premise. In fact, there is nothing in international law that obliges people in need of protection to make a claim for asylum in the first country they reach. Nor is it reasonable to expect them to do so.

This proposal marks a worrying trend within the UK's asylum procedures of judging an asylum application by looking at how an individual came to claim asylum rather than why they had to flee.

4. Withdrawal of basic support for families

Where: [Clause 7](#) of the Asylum and Immigration (Treatment of Claimants, etc.) Bill

⇒ This Clause withdraws access to basic state support from unsuccessful asylum applicants with dependant children who are at the end of the asylum process.

Unsuccessful asylum seekers with dependent children currently receive support from the National Asylum Support Service (NASS) until they leave the UK or fail to comply with a removal direction. Clause 7 provides that if the Home Secretary certifies that in his opinion an individual has failed, without "reasonable excuse" to leave the UK voluntarily, then their asylum support will be stopped. In the event of a child's welfare being compromised, support

under Section 20 of the Children Act 1989 may be provided, but only to children under 18; local authorities will not be able to provide accommodation and subsistence to any other members of the household. If necessary, children will be separated from their families.

The Refugee Council's concerns

We accept that asylum-seeking families who have reached the end of a fair and transparent determination process should be assisted to return. However, we consider removal of support to destitute asylum-seeking families while they are still in the UK to be inhumane. Removing access to support under Section 20 of the Children Act will not only undermine the principles of the Children Act itself, but will also exert yet more pressure on the resources of social service departments. It would potentially also place social workers in the difficult position of having to take children away from their parents.

5. More powers to immigration officers

Where: [Clause 8](#) of the Asylum and Immigration (Treatment of Claimants, etc.) Bill

⇒ Clause 8 provides immigration officers with a power of arrest, entry, search and seizure in respect of a number of specified offences.

Currently, these powers exist only in relation to immigration-related offences under the current immigration legislation. The new powers will apply to a long list of criminal offences which range from theft to bigamy.

The Refugee Council's concerns

These are alarmingly wide powers, allowing immigration officers to arrest without warrant anyone suspected of any of the long list of offences listed in Clause 8, Subsection 2. Along with powers of arrest, there are powers to enter premises, search and powers of seizure. We are concerned that the exercise of these new powers will not be subject to scrutiny under the Police and Criminal Evidence Act 1984.

6. Asylum appeals

Where: [Clause 10](#) of the Asylum and Immigration (Treatment of Claimants, etc.) Bill

- ⇒ This clause abolishes the current two-tier asylum appeals system and replaces it with a single tier tribunal called the Asylum and Immigration Tribunal
- ⇒ This clause prevents judicial review of the new Tribunal's decisions.

Currently, asylum applicants can appeal against an initial negative decision by the Home Office to a special adjudicator. Subject to permission being granted by the Immigration Appeal Tribunal (IAT) a flawed decision can then be appealed at the IAT. The IAT panel members will look at the legality of the process through which the earlier decision was taken and, if necessary, overturn the earlier decision.

Currently, in certain situations, decisions of the Tribunal can be challenged by judicial review, a process of scrutiny involving the higher courts. This clause would prevent asylum seekers being able to challenge the legality of decisions made by the new Tribunal or by the Home Secretary.

Refugee Council concerns

In terms of protection, this is an area of significant concern. There are two aspects to the proposed changes – the removal of the second tier of appeal and the proposed insulation of the new appeals system from the higher courts (the prohibition on judicial review and appeals to the Court of Appeal and House of Lords).

According to recent Home Office statistics, about 20 per cent of appeals to the special adjudicator and 21 per cent of appeals before the Tribunal are successful. This proves that the two-tier structure is a crucial check on asylum decision-making. In addition, a significant number of cases are remitted for reconsideration following a successful judicial review; once again, this is evidence that this is an important check.

Whilst the new Tribunal will be able to review its own decisions, this would only be on the papers; there will be no opportunity for an oral hearing. Decisions of the Tribunal will not be capable of setting precedent, thereby limiting opportunity for consistency in the decision-making process. The fact that appellants will not have any further opportunity for judicial challenge will put the asylum decision-making process beyond sufficient scrutiny. The President of the AIT becomes a totally unaccountable legal authority beyond the reach of the courts.

7. Removing asylum seekers to 'safe' countries

Where: [Clause 12](#) and Schedule 3 of the Asylum and Immigration (Treatment of Claimants, etc.) Bill

- ⇒ Provisions for removing individuals to a safe third country without substantive consideration of their asylum application are expanded.

Under the current provisions a person can challenge removal on the grounds that it would be incompatible with the European Convention on Human Rights (ECHR). Under the new

provisions, certain countries will be deemed safe for Refugee Convention purposes and others safe in terms of the ECHR. If a country is deemed safe for both purposes and a claim is certified clearly unfounded, no appeal is possible. This clause does not affect claims against removal based on the breach of the claimant's rights in the UK, for example Article 8 of the ECHR, which prohibits interference with family life established here.

The Refugee Council's concerns

Clause 12 will considerably expand the use of 'safe third country' provisions. We are very concerned about the use of 'safe country' lists. A fundamental premise of asylum is that each case is examined without prejudice and on its own individual merits. No country can therefore be assumed to be safe for all people all of the time.

The clause will enable the transfer of responsibility for determination of asylum claims to countries that are deemed to be safe. In some circumstances it will also prohibit challenges under the Refugee Convention and the ECHR. It is possible that the new powers have been proposed to enable the Government to proceed with the idea of sending applicants to 'Zones of Protection', in or near refugee-producing regions. The Refugee Council's concerns about the zones of protection proposals are detailed in the paper [Unsafe Havens, Unworkable Solutions](#).

EU negotiations on the concept of safe third countries have been taking place in the context of the EU procedures directive. In these discussions, the UK has been pushing for several months to ensure that it will be able to remove asylum seekers to places they have never previously set foot in. This goes against the United Nations High Commissioner for Refugees' position. It also met considerable resistance from other EU member states. It is of extreme concern that the Bill will not require asylum seekers to have any link at all with the safe country to which they may be removed.

The Clause will provide wide powers to extend the lists of safe third countries. In situations of 'urgency', the Secretary of State may add countries to the lists without even consulting parliament. There is a real risk that the designation of countries as 'safe' will be driven by commercial and political interests rather than human rights considerations. Asylum seekers will be unable to challenge their removal and may therefore face the real possibility that they may be sent from the UK to a country where their safety is at risk.

The Bill's criteria for what constitutes a 'safe third country' are wholly inadequate. We are concerned that there is not even the basic requirement that the 'safe' country in question has to be a signatory to the 1951 Refugee Convention - a key indicator of a country's commitment to protecting refugees.

8. Cooperation with deportation or removal procedures

Where: [Clause 14](#) of the Asylum and Immigration (Treatment of Claimants, etc.) Bill

This clause creates a new offence of failing to cooperate, without reasonable excuse, with steps by the Secretary of State to carry out removal. This would include steps by the Immigration Service to re-document an individual. If a police officer or an immigration officer has a reasonable suspicion that this particular offence has been committed he may arrest the individual without a warrant.

The Refugee Council's concerns

Clause 14 contains another example of extremely wide powers to arrest without warrant and to search and enter for failure to comply with a travel documents procedure. As such, it represents a worrying trend of using criminal law to enforce asylum procedures. In the context of other measures in this Bill, we are concerned that many individuals who have been denied access to a fair hearing of their asylum claim will face removal back to life-threatening situations.

9. Electronic monitoring

Where: [Clause 15](#) of the Asylum and Immigration (Treatment of Claimants, etc.) Bill

⇒ This provision allows for the electronic monitoring of persons subject to immigration control who are at least 18 years of age where a residence restriction is imposed and where a reporting restriction could be imposed or where immigration bail is granted.

A person subject to electronic monitoring is required to cooperate with arrangements to help detect and record his or her location at specified times.

Such a form of monitoring is only ever acceptable as an alternative to a custodial sentence. The criteria set out in this clause mean that almost any asylum seeker would be liable to electronic monitoring. To use it routinely as an administrative convenience is wholly objectionable. It is being suggested here that it could be a routine part of reporting or residence requirements.

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