



Joint Committee on Human Rights

House of Commons · 7 Millbank · London · SW1P 3JA

Tel 020 7219 2797 Fax 020 7219 8393 Email JCHR@parliament.uk Website www.parliament.uk



From Dr Hywel Francis MP, Chair

The Rt Hon Theresa May MP,
Secretary of State for the Home Department,
Home Office,
Peel Building,
2 Marsham Street,
London, SW1P 4DF

Wednesday 30 October 2013

Dear Theresa,

Immigration Bill Parts 1 to 3

The Joint Committee on Human Rights is currently scrutinising the Immigration Bill in light of the requirements of human rights law.

Information provided by the Government

The Committee is extremely grateful to your Department for the very detailed ECHR memorandum you have provided summarising the Government's consideration of the Bill's provisions in light of the European Convention on Human Rights. It is also grateful to the Bill team which made itself available at short notice to meet the Committee's Legal Adviser.

UN Convention on the Rights of the Child

Some of the Bill's provisions have significant implications for the human rights of children. The Government undertook on 10 December 2010 to always have due regard to the UN Convention on the Rights of the Child when developing law and policy. The Committee has been pleased to receive from the Government memoranda accompanying Bills which demonstrate that it has honoured that commitment by setting out a detailed analysis of the Bill's compatibility with the UNCRC, most recently in relation to the Children and Families Bill. We have not received such a memorandum in relation to this Bill, however, notwithstanding that some of its provisions have very significant implications for the rights of children.

Q1: Please provide a Memorandum containing the Government's analysis of the implications of any provisions in the Bill for the rights of children in the UN Convention on the Rights of the Child, and explaining the Government's view of why those provisions are compatible with that Convention.

I would also be grateful if you could answer the following specific questions about Parts 1 to 3 of the Bill. The Committee may be in touch further about Part 4 of the Bill when it has had the opportunity to consider it.

Power to remove family members (clause 1)

Q2: Please explain who the Secretary of State considers to be a "family member" for the purposes of proposed s. 10(2) of the Immigration and Asylum Act 1999, and what the process will be in practice for removing a family member under proposed s. 10(2).

Q3: Is it the Government's intention that a family member may be removed without being given notice? If so, please provide the justification for such removal without notice.

Enforcement powers (clause 2 and Schedule 1)

Q4: Please explain why it is necessary to supplement the existing powers in Schedule 2 to the Immigration Act 1971, to search detained persons and to enter and search premises, including reference to any evidence relied on to demonstrate the inadequacy of the current powers.

General power to use reasonable force (Schedule 1 para. 5)

Q5 Please specify each power of an immigration officer in respect of which the Government says the power to use reasonable force is necessary but not currently available.

Q6: In relation to each such power, please provide the evidence which demonstrates the necessity for introducing a power to use reasonable force.

Q7: Is it the Government's intention that immigration officers should have the power to use reasonable force on (a) children, (b) pregnant women, and/or (c) people with disabilities; and what guidance exists for immigration officers about the use of force on vulnerable people, including its necessity and proportionality?

Bail (clause 3)

Q8: Please provide the latest figures for the number of people who have absconded while on immigration bail in the last three years.

Biometrics (clauses 4-10 and Schedule 7)

Q9: What is the justification for removing the statutory 10 year limit on the retention of information taken under the Immigration and Asylum Act 1999 and the Nationality, Immigration and Asylum Act 2002?

Q10: Please explain in your Memorandum on the Bill's compatibility with the UNCRC why the safeguards for children in clause 9 of the Bill only apply to under 16s as opposed to under 18s, in light of the applicability of the UNCRC to under 18s and the recent court decision concerning the applicability of certain safeguards in PACE Codes to under 18s.

Q11: What specific provision will regulate the use and retention of biometric information taken by a designated person carrying out embarkation checks under Schedule 7 to the Bill?

Appeals (clauses 11 and 12)

Q12: Bearing in mind the high proportion of appeals to the First Tier Tribunal which succeed (on the Government's own figures, 50% of entry clearance appeals, 49% of Managed Migration appeals and 32% of deportation appeals), why is the removal of appeal rights in immigration cases in Part 2 of the Bill compatible with the common law right of access to a court or tribunal?

Q13: Bearing in mind the frequency with which fresh matters are raised in immigration cases before an appeal is finally determined, and the importance of ensuring that immigration decisions are taken having regard to all relevant facts at the time of final

decision (including on appeal), please explain why in the Government's view it is compatible with the right of access to court, the principle of equality of arms and the rule of law for the Secretary of State to have the final say on whether a fresh matter is considered by the Tribunal?

Q14: Are there any examples from other statutory contexts of provisions which prevent a court or tribunal from considering fresh matters unless the Secretary of State has given the court or tribunal permission to do so?

Q15: Will judicial review provide a practical and effective means of challenging the Secretary of State's certification that an appeal can be heard out of country, bearing in mind proposed changes to the availability of legal aid such as the residence test, and proposed reforms to judicial review designed to restrict its availability?

Article 8 ECHR (clause 14)

Q16: Can you point to any other example of statutory provisions equivalent to proposed new s. 117B(4) and (5) of the Nationality, Immigration and Asylum Act 2002, in which Parliament has sought to prescribe the weight to be given by courts and tribunals to particular considerations?

Q17: Please explain in your UNCRC Memorandum how the proposed definition of "qualifying child" in new s. 117D(1) is compatible with the obligation in UNCRC to have regard to the best interests of the child as a primary consideration.

Q18: Please explain how in the Government's view the test of "it would not be reasonable to expect the child to leave the UK" in new s. 117B(6)(b) is compatible with (a) Article 8 ECHR and (b) UNCRC Art. 3.

Q19: Please explain how in the Government's view the test of "the effect of deportation on the partner or child would be unduly harsh" in new s. 117C(6) is compatible with (a) Article 8 ECHR and (b) UNCRC Art. 3.

Access to residential tenancies (clauses 15-32)

Q20: What assessment has the Government conducted of whether the civil penalty scheme for employers has led to discrimination on racial grounds?

Q21: How, in practice, does a person who lacks the necessary leave to enter or remain but genuinely faces a barrier to leaving the UK, avoid being caught by the disqualification from occupying rented premises in clause 16 of the Bill?

Q22: Please give specific examples of the sorts of things that you envisage landlords or agents will be advised they should or should not do in order to avoid discriminating on racial grounds against prospective tenants.

Q23: How does the Government propose to monitor whether the new provisions are leading to discrimination on racial grounds against members of ethnic minorities, contrary to Article 14 ECHR in conjunction with Article 8, the Equality Act and the common law principle of equal treatment?

Access to health services (clauses 33 and 34)

Q24: What evidence does the Government rely on to demonstrate the scale of so-called "health tourism"?

Q25: What evidence does the Government have that free NHS access acts as an incentive for temporary migration?

Q26: What assessment has the Government made of the likely impact on public health of the provisions on access to health services?

Q27: Is the differential treatment of temporary migrants in relation to access to health services on grounds of their immigration status justified by (1) the need to reinforce the maintenance of immigration control (para. 10 of the ECHR Memorandum) or (2) the degree of connection with/commitment to the UK (para. 122)?

Q28: Will any immigrants paying taxes also be subject to the NHS charge? If so, what is the Government's best estimate of the proportion of those subject to the charge who will also be paying taxes?

Q29: Having regard to the wide variety of types of immigration permission, and the varying degree of connection with the UK that accompanies each type of permission, is it the Government's intention that the amount of the charge will vary according to the type of immigration permission sought, and if so what criteria will be used to determine the appropriate amount of the charge?

Q30: What is the justification for treating a person who pays the health surcharge differently from a permanent resident in terms of their access to "particularly expensive discretionary treatments"?

It would be helpful if we could receive your reply to these questions by **Thursday 14 November 2013**. I would also be grateful if your officials could provide the Committee secretariat with a copy of your response in Word format, to aid publication. I look forward to hearing from you.

Yours
Hywel

Dr Hywel Francis
Chair