

## Submission to the Joint Committee for Human Rights on the Draft Immigration Bill 2009

### 1. Introduction

1.1 Asylum Support Appeal's Project (ASAP) is a registered charity that provides specialist advice on asylum support law. We run a full-time duty "representative scheme" at the First-Tier Tribunal (Asylum Support)<sup>1</sup>, where our pro-bono solicitors, barristers and staff give advice and representation to over 300 appellants a year. We run an advice line and regular training sessions on asylum support law for refugee community organisations. The third plank of our activity is advocacy and policy work based on the evidence gathered at the tribunal and through our links with a large constituency of organisations working directly with asylum seekers.

1.2 We are grateful that the Joint Committee on Human Rights has chosen the Draft Immigration Bill 2009 as one of its priority areas for legislative scrutiny in 2010 and for the opportunity to make the following comments on asylum support proposals. The analysis is restricted to a brief overview of the issues within the JCHR's remit which causes ASAP most concern.

### 2. General points

2.1 ASAP believes the Bill will lead to increased destitution of asylum seekers and is in places potentially incompatible with human rights law. The proposals place more weight on enforcement, budgetary cuts and the behaviour of asylum seekers, than on the UK's legal obligations or the need for sound policies and decision making<sup>2</sup>. They encroach upon the UK's obligations under international conventions to prevent inhuman and degrading treatment by making it more difficult to access support.

2.2 Regrettably, these proposals show that the UKBA continues to view the asylum support system as a means of immigration control in contravention of the UK's obligations, particularly under the Refugee Convention *non-refoulement* principle. Most notably, Section

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<sup>1</sup> Formerly the Asylum Support Tribunal and before that the Asylum Support Adjudicators

<sup>2</sup> This can be surmised from reading the Consultation document (particularly the introduction at page 6) and Phil Woolas' summary of the Impact Assessment.

55 is expressly designed to deter potential asylum applicants<sup>3</sup>, a group which necessarily includes refugees.

2.3 It is unacceptable that the bill only lays down the barest framework for the support system, leaving the detail to regulations. Considering the political rhetoric and past conduct of the UKBA, this vagueness does not ensure that human rights will be respected in the proposed regulations. The Secretary of State proposes to take too much legislative power. ASAP argues that the detail of the proposed system should be contained in primary legislation, subject to the full scrutiny of Parliament.

2.4 ASAP views this Bill as a missed opportunity to simplify asylum support law. Although presented as a simplification of the existing law, in fact the Bill uses the structure of the current system but makes it more complex and uncertain<sup>4</sup>. This will make it more difficult for asylum seekers to access support, which will lead to increased destitution. Moreover, the consultation document is misleading because it omits some major changes outlined in the Bill.

### 3. Specific Human Rights considerations

#### **Curtailing Entitlement to Support (Clause 207)**

3.1 In defining who is eligible for support, or “eligible protection applicants” (EPA), the Bill circumscribes entitlement to support. In contrast to existing legislation<sup>5</sup>, those making applications under European Convention of Human Rights (ECHR) are not EPAs<sup>6</sup>. This is confirmed in Explanatory Note 694. Therefore, people with serious outstanding protection applications may be left destitute, in breach of Article 3.

#### **Limiting Support to 3 Months (Clause 210(8))**

3.2 ASAP considers that this proposal is unlawful. It adopts the existing policy of limiting support to a three month period for refused asylum seekers taking steps to leave the UK<sup>7</sup>. There are substantial categories of people for whom returning is impossible or will inevitably

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<sup>3</sup> See the Impact Assessment document which at page 11 states as one of the Benefits of Section 55’s re-introduction: “potential deterrence effect, reducing the number of asylum applications”

<sup>4</sup> For example, Clause 210 which replaces the existing Section 4 support, provides for three different cases where a person would be eligible for support, two of which have additional criteria attached to them which have yet to be defined. Clause 212 lists the ways in which the UKBA can give support but doesn’t provide guidance as when these apply.

<sup>5</sup> See Section 94(1) Immigration and Asylum Act 1999 (the 1999 Act), which defines an asylum claim as including a claim under Article 3 of the European Convention for Human Rights.

<sup>6</sup> See Clause 207 which includes applications under Clause 21(1)(a) and (b) but not (c) – human rights applications

<sup>7</sup> Details of this policy can be found on the UKBA website at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/asylumsupport/guidance/section4supportinstruction.pdf?view=Binary>

take longer than three months. For example, many Palestinians or Eritreans cannot get travel documents and Somalis cannot access the IOM voluntary return scheme. As a result a group of people effectively “trapped” in the UK could be left destitute in breach of Article 3. The “exceptional cases” clause contained in the existing policy will not be sufficient to ensure these individuals remain supported.

3.3 Explanatory Note 384 indicates that this rule should only affect those taking steps to return. However, the clause itself is drafted in such a way that the Secretary of State could apply it to all those supported under Clause 210 (currently Section 4 support).

### **Limiting appeal rights (Clause 222(3))**

3.4 This represents a drastic change. This Clause provides for a number of circumstances where there are no right of appeal against a decision to refuse or stop support. For example, there is no right of appeal on expiration of the prescribed period of support considered above. The UKBA’s decision-making is poor, as was detailed in our 2008 report *Not Destitute Enough*<sup>8</sup>. In 2009, 50% of asylum support appeals succeeded or were sent back to the UKBA for a new decision<sup>9</sup>. We conclude that a large number of people will be incorrectly denied support.

3.5 In these cases, the only effective remedy will be Judicial Review (JR). ASAP is strongly opposed to this change. JR is an inappropriate remedy for resolving largely factual disputes which is expensive and time-consuming. It runs contrary to all other government policies to limit the use of JR. It will increase the pressure on Legal Aid and will overwhelm the capacity of the few firms that work in this area. In certain parts of the country there are no firms that undertake asylum support JRs. As a result, a large number of people will be left without any remedy at all as they are not able to obtain representation, in breach of Article 6.

### **Widespread powers relating to breach of conditions (Clause 213 and 214)**

3.6 Explanatory Note 696 acknowledges that suspending or discontinuing support raises an issue under Article 3. The note relates to the proposals in the Bill which allow the UKBA to stop supporting those who breach the conditions of their support. Whilst we are not disputing the right of the UKBA to link support to conditions, we are concerned that the current proposals create uncertainty, give the UKBA excessive power over individuals and may breach human rights law.

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<sup>8</sup> Available at [www.asaproject.org/web/index.php?option=com\\_content&view=article&id=121&Itemid=115](http://www.asaproject.org/web/index.php?option=com_content&view=article&id=121&Itemid=115)

<sup>9</sup> These figures are the latest available on the First-Tier Tribunal (Asylum Support) website, counting only the appeals heard i.e. those that were allowed, dismissed or remitted. [www.asylum-support-tribunal.gov.uk/statistics.htm](http://www.asylum-support-tribunal.gov.uk/statistics.htm)

3.7 Clause 213 does not limit the conditions the Secretary of State can make. We would argue against such wide powers, especially if the conditions are overly restrictive and could lead to a breach of Article 8.

3.8 Clause 213 specifies that conditions must be notified to the individual, but the mode of communication is not stated<sup>10</sup>. This means that there is no certain way of ensuring the individual has been informed of the conditions of support in a manner they can understand.

3.9 It is not known in what circumstances a breach will lead to the withdrawal of support because this is left to regulations<sup>11</sup>. However, the Bill does effectively bar people from later regaining support who previously breached their conditions (save in unspecified circumstance<sup>12</sup>). This bar would apply to individuals and families with outstanding asylum claims and will lead to destitution in breach of Article 3.

### **No subsistence-only support for refused asylum seekers**

3.10 The consultation document expresses an intention to provide support for single refused asylum seekers as a package of accommodation and vouchers only<sup>13</sup>. This replicated the current Section 4 scheme, which in certain circumstances causes a breach of Article 8. We frequently come across people classified as single who have families with different support entitlements. A partner could, for example, have a different immigration status, so may be working or claiming welfare benefits. The proposal would force the “single” person to live away from their family interfering with their right to a family life. But, a more flexible type of support, such as a subsistence only option, would easily remedy this breach

### **Dependents**

3.11 The meaning of “dependent” is left to be defined in regulations<sup>14</sup>. Assuming that the existing definitions will be replicated<sup>15</sup>, there is an incompatibility with Article 8 relating to un-married couples<sup>16</sup>. For a partner to be a “dependent”, the couple must have lived together for two of the last three years. However, a lasting relationship may form earlier, particularly where the couple have children. For others, the criterion will never be met because the conditions of one partner’s support precludes the other from living with them.

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<sup>10</sup> Currently these must be notified in writing, see Section 95(10) of the 1999 Act.

<sup>11</sup> Clause 214(6)

<sup>12</sup> Clause 206(2) and 209(2)

<sup>13</sup> See page 13 of the Consultation document

<sup>14</sup> Clause 232(1)

<sup>15</sup> These are found in Section 94 (1) of the 1999 Act and Regulation 2(4) of the Asylum Support Regulations 2000

<sup>16</sup> Or those who have not entered into a civil partnership

#### **4. Recommendations**

4.1 ASAP regards the Immigration Bill as a missed opportunity to address weaknesses in the asylum support system, reduce destitution and protect the human rights of people claiming asylum.

4.2 In order to redress the shortcomings of the Bill, ASAP proposes the following changes to the proposals, recommendations which will be set out in more detail in ASAP's response to the consultation on the Bill:

- Set out full details of the asylum support scheme in primary legislation
- Provide support to all those making applications under the ECHR
- Abandon the time limit for support for those supported under Clause 210 (current Section 4 support)
- Restrict the Home Secretary's powers to place conditions on support
- Scrap the bar on regaining support
- Abandon provisions to limit appeals to the First-Tier Tribunal (Asylum Support)
- Introduce a subsistence-only option for those supported under Clause 10
- Broaden the definition of dependent for unmarried couples.
- Abolish Section 55 without replacement

18<sup>th</sup> January 2010