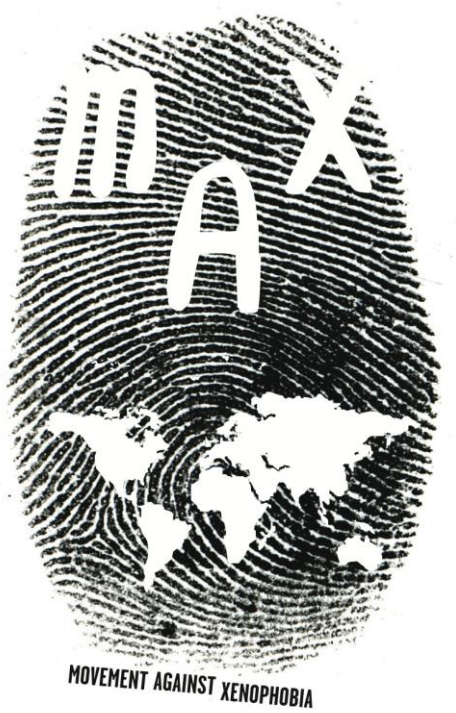
Parliamentary Briefing

Immigration Bill 2013/14

Movement Against Xenophobia (MAX)

http://movagxen.wordpress.com/



Briefing for the Report Stage/Third Reading of the Immigration Bill

and a preliminary introduction for the House of Lords

MAX: Affiliated Organisations

These are the 77 organisations signed up to MAX (movement against xenophobia) at present. There are new organisations signing up regularly. Check the website at http://movagxen.wordpress.com/who-are-we/ for the latest and most extensive list. Organisations agreeing with the statement of MAX, also found on the website, may indicate agreement and join the list

- 1990 Trust
- 8 April Movement
- Against Violence and Abuse
- Bail for immigration Detainees
- BARAC
- Black Men in The Community
- Black Minority Ethnic Community Organisations Network
- BRAP (Birmingham)
- Bristol Refugee Rights
- BritCits
- Campaign Against Criminalising Communities
- Coalition for Racial Equality and Rights
- Colne Valley Green Party
- Counterfire
- Detention Action
- Detention Forum
- Emerging Communities Network
- Employability Forum
- End Child Detention Now
- Exiled Writers Ink
- Fahamu Refugee Programme
- Family Immigration Alliance
- Friends, Families and Travellers
- Glasgow Campaign to Welcome Refugees
- Globalise Resistance
- Hackney UCU
- Hammersmith & Fulham Refugee Forum
- Housing Justice
- Indian Workers Association
- Immigration Law Practitioners' Association
- Independent Academic Research Studies
- Islington Centre for Refugees and Migrants
- Joint Council for the Welfare of Immigrants
- Jewish Socialist Group
- JUST West Yorkshire
- Labour Representation Committee
- Latin American Women's Rights Service
- Leeds No Borders
- Liberal Democrats for Seekers of Sanctuary
- London Churches
- London Churches Refugee Network
- Medical Justice
- Migrant & Refugee Community Forum
- Migrant Voice
- Migrants Rights Network
- Miscarriages of Justice UK
- Movement for Justice
- Muslim Professionals Forum
- National Black Police Association
- National Coalition of Anti-Deportation Campaigns
- National Union of Students Black Students Campaign
- No Deportations
- North of England Refugee Services
- Northern Ireland council for Ethnic Minorities
- Operation Black Vote
- People's Assembly
- Race Equality Foundation
- Race on the Agenda
- RAMFEL
- Refugee Action
- Refugee Council
- Rene Cassin
- Sheffield BME Network
- Society of Asian Lawyers
- Society of Black Lawyers
- South London Immigration Monitor
- South Yorkshire Migration and Asylum Action Group
- Southall Black Sisters
- Stop the War Coalition
- Strickly Roots
- SWP
- UAF Wales
- Ubuntu Women's Group Wales
- UCU, University Northampton
- Unite the Union
- War on Want
- Yemeni Community Association

Introduction:

The Movement Against Xenophobia (MAX) is a coalition of civil society groups, faith groups, trade unions and individuals who have come together to oppose xenophobia and misinformation in the immigration debate. MAX was launched on 16th October 2013 and has grown rapidly. It now has 77 affiliated organisations.[1]

Joint Council for the Welfare of Immigrants (JCWI) is an independent national charity that provides direct legal assistance to immigrants and campaigns for a human rights based approach to the formulation of asylum, immigration and nationality law. JCWI was founded in 1967. JCWI acts as the Secretariat for MAX.

This briefing should be read in conjunction with briefings provided by other MAX members; Immigration Law Practitioners Association (ILPA), Bail for Immigration Detainees (BID), Refugee Action, Migrants Right Network (MRN), South Yorkshire Migration & Asylum Action Group (SYMAAG) and the Race Equality Foundation. These are attached.

Please also see the amendments put down by ILPA, which many MAX affiliates have contributed to and which MAX endorses.

We provide an overview of the Bill and then look at detailed provisions.

Overview:

The principles behind this Bill are flawed and must be opposed. The Bill spans six Whitehall departments with a plethora of measures declared to create a "hostile environment for illegal migrants". These measures are unjust, unworkable, expensive and potentially unlawful.

Most of the measures will not serve to reduce the numbers of undocumented entrants coming to the UK nor will they serve to force people already here to leave, but they will create a hostile environment for all migrants. For example, people who are already here will not leave simply because a landlord will not rent to them. Instead they will be forced to take more desperate measures and will rent from rogue landlords, exacerbating problems of criminality and exploitation.

Measures to prevent access to public services are unworkable and will make unpaid border guards of ordinary citizens. Migrants engaged in normal activities like opening a bank account, applying for a driving license or renting accommodation will be subjected to intrusive immigration checks by their peers. Ascertaining immigration status is not as simple or straightforward as the Government is purporting, it requires specialist legal knowledge.[2] Forcing ordinary citizens who are not qualified in immigration law to check someone's legality will result in mistakes and inadvertent discrimination. This is not conducive to social cohesion or to Britain's prosperity as a multi-ethnic country that thrives on diversity.

Measures to drastically reduce rights of appeal, rights to bail and to deport people without an in-country right of appeal will have a fundamental impact on the rule of law. Home Office decision making is poor, as demonstrated by the current average 40% success rate of appeals. Without the

[1] A list of members is on the page opposite.

[2] The guidance given to employers on checking immigration status runs to 89 pages. The list of acceptable documents provided by the UKBA in May 2013 runs to 12 page for list A and 11 pages for list B. And there are over 404 European identity documents alone.

right to appeal, those wrongly denied status would have no redress. Erosion of basic legal checks and balances cannot be justified in a just and democratic society that adheres to the rule of law.

This Bill is a series of measures designed to attract the anti-immigrant vote. It sends out all the wrong messages and marks a fundamental shift in the way immigration is 'policed' in the UK. It will serve to create a hostile environment for ALL migrants, increasing discrimination and racism, destroying social cohesion and making a significant part of the ethnic minority population feel unwelcome in their own country. Migrants create Britain's multiculturalism, which is celebrated in all aspects of British life including arts, medicine and sports.

The Bill will also change the global perception of Britain as a tolerant and welcoming country, alienating future migrants. This will not serve Britain well as migrants contribute significantly to the economy and they are essential to its economic recovery and growth.

SPECIFIC PROVISIONS:

1. Residential Tenancies

Summary:

Private landlords are required to verify immigration status or face a fine of up to £3000[3].

The Government accepts that these provisions have the ability to result in discrimination against ethnic minorities who could be British Citizens or have the right to reside in the UK. It proposes issuing a Code of Practice for landlords to avoid discrimination; however, a breach of the Code does not impose civil or criminal liability. Therefore, the Code has no teeth.

These provisions will lead to racial profiling and a return to the days of "no blacks, no dogs, no Irish".

Briefing:

Checking Immigration Status

Checking immigration status is not simple or straightforward. Legal advisers require specialist legal training and need to pass examinations before they can give immigration advice. As footnoted above, the guidance given to employers to enable them to do so runs to 89 pages and the list of acceptable documents provided by the UKBA in May 2013 runs to 12 pages for list A and 11 pages for list B. Lay landlords cannot be expected to decode immigration entitlement especially in complex cases.

Difficulties will inevitably arise in cases where individuals still have historic outstanding applications, where the Home Office has their documentation, as will be the case when people make valid extension or leave to remain applications and do not have biometric cards, or where individuals have biometric cards but a decision on their application has not been made so it is not possible to ascertain what leave they may be entitled to from the card.

Individuals often do not have any identity documentation or confirmed status but have the right to remain in the UK; where for example, leave has expired and a valid further application has been made to the Home Office. A valid, in-time application for extension of leave allows the person's

[3] This is per adult who rents without correct immigration status.

original status to continue whilst the application is pending. Furthermore, somebody who has been granted indefinite leave to remain or refugee status may have their passport with the Home Office for endorsement and again not be able to show any relevant identity documents.

What happens in a case where an individual has had their application refused but has lodged an appeal**?** They have the right to remain in the UK during this process but under the proposed legislation would not have the right to rent somewhere to live as they will fall of Para 16 (2) Immigration Bill, "leave to enter or remain in the UK but [do] not have it."

The Government is proposing a checking resource service, but this needs to be efficient and effective. It is notoriously difficult to get through on Home Office helplines. The experience of our caseworkers is that there is a time lag between an application being submitted to the Home Office and it being updated on the computer system.

As the Home Secretary herself said when she abolished the UKBA as recently as March 2013, the IT system was inadequate: "UKBA's IT systems are often incompatible and are not reliable enough. They require manual data entry instead of automated data collection, and they often involve paper files instead of modem electronic case management. …" [4]

Furthermore, the UKBA was abolished due to further fundamental problems with its ability to process applications. "The agency struggles with the volume of its casework, which has led to historical backlogs running into the hundreds of thousands".[5]

Although the UKBA has been disbanded, the Home Office has inherited the problems including the IT system and the backlog of cases. Whilst MAX strongly disagrees with the policy behind these proposals, it is concerned that even if the policy was workable, the Home Office is trying to create too many new systems at the same time given the breadth of the provisions of this Bill. The Home Office runs the risk of spending a lot of money and creating further chaos. MAX urges caution in moving forward. The Home Office needs to demonstrate that it has got a grip on the immigration backlog, it is processing new applications within the stated time limit, its computer and operational systems are running properly and correct staff management is in place before it takes on further major initiatives.

Discrimination and Rogue Landlords

Many landlords will simply not rent to anyone who seems foreign or doesn't have a British passport for fear of getting it wrong and paying up to £3000.

This will inadvertently result in racial profiling and discrimination. It also gives a charter to those landlords who are, unfortunately, racist.

The Government accepts that the new rules "might provoke landlords to discriminate against people who they perceive to be foreign rather than conduct proper checks"[6] . It also recognises and acknowledges the risk that "vulnerable people might be impacted"[7] and that policy "might push greater numbers into a 'shadow' housing market and increase exploitation of illegal migrants."[8]

[4] 7 Hansard HC Deb 6 Mar 2013 : Column 1500
[5] Ditto
[6] Government's Response to Consultation Tackling illegal immigration in privately rented accommodation - the government's response to the consultation Published: 10 October 2013 p 18 issue 1
[7] Ditto pg 18 issue 2
[8] Ditto pg 18 issue 3

The Government's response is to provide a "Code of Practice and associated guidance which will make it clear that the checks do not allow for landlords to act in a manner inconsistent with the UK's equality legislation"[9]. We submit that this is not actually sufficient as it requires a landlord to read the code and adhere to it without any redress if they do not do so. It will be very difficult and costly for a potential tenant to bring a challenge of discrimination, victimisation or harassment from a private landlord under Part 4 of the Equality Act 2010.[10]

If people cannot rent easily they will be forced to seek accommodation from 'rogue' landlords. These people exploit the vulnerable and do not contribute taxes. This will increase the 'beds in sheds' scenario that the Government is trying to tackle.

If these provisions increase destitution and increase the number of families that may require assistance under the National Assistance Act 1948 then this will be a greater cost to the public purse.

Conclusion:

MAX considers that Clause 15-32 on residential tenancies should not stand part of the Bill. In the alternative, the amendment below should be incorporated.

Amendments:

Ministers have said these provisions will not come into a force until a pilot has been conducted and roll out will be phased.[11] This is not in the body of the Bill.

- An amendment has been laid down by Yvette Cooper, Mr. David Hanson, Phil Wilson and Helen Jones for a pilot of residential housing provisions.[12] MAX supports this amendment.

The Code of Practice must be meaningful.

- The Code of Practice must be approved by both Houses and must be issued before clauses 15-32 come into force. The code must also be widely publicised. This amendment has been drafted by ILPA working together with MAX colleagues.

> Clause 28, page 24, line 45, at end insert
> (7) The Secretary of State shall take all reasonable steps to bring the code of practice, and any subsequent revisions of the code of practice to the attention of all landlords and all persons likely to act as landlords' agents.
>
> Clause 65, page 50, line 30, at end insert
> Sections 15 to 27 shall not come into force until a Code of Practice has been issued under Section 28, in accordance with the provisions of that Section

[9] Government's Response to Consultation Tackling illegal immigration in privately rented accommodation - the government's response to the consultation Published: 10 October 2013 Annex C

[10] The Government also intends to run a telephone advise line and a pre-certification service for migrants as well as enquiry service for landlords. But see our comments above on telephone lines and IT.

[11] See Public Bill Committee debate 7 November 2013

[12] See Notice of Amendments 18 December 2013 10001: Pilot of Residential Housing Provisions – NC2

2. NHS

Summary:

The Bill proposes an amendment to the 'ordinary residence' test thus making all migrants who do not have indefinite leave to remain (ILR) to be liable to a charge for NHS services. This is a much more restrictive interpretation than the test currently in place.

A migrant levy to contribute to the cost of NHS services has been proposed.

Determination of which groups will be impacted, how much they will have to pay and how the surcharge will operate will be decided by way of secondary legislation. MAX is concerned that certain long term migrants will effectively be paying twice for the NHS and an extra charge on those who come to work here is a disincentive and unnecessary given that these people contribute to the NHS through taxes and national insurance contributions.

Given the significance of these charging proposals it is vital that any statutory instrument is subject to widespread consultation and the affirmative procedure, rather than a negative resolution not subject to parliamentary debate or scrutiny.

Briefing:

Impact of changing the Ordinary resident:
The current understanding of 'ordinary residence' has developed over time through case law and is understood as:

"living lawfully in the United Kingdom voluntarily and for settled purposes as part of the regular order of their life for the time being, whether they have an identifiable purpose for their residence here and whether that purpose has a sufficient degree of continuity to be properly described as 'settled'."

Case law has also established that short term visitors (less than 6 months entry), illegal migrants and those with temporary admission do not meet the ordinary residence test and are <u>not</u> entitled to free NHS secondary care. Therefore, the current ordinary residence test already filters out those who are not settled here and those the Government is trying to deter.

The Government states that the *"NHS exists because at its heart, is an agreement that taxpayers will pay for a comprehensive health service that is free at the point of delivery to all those who live here and are committed to our society."*

Ordinary residents by their very definition are 'settled' in this country and are part of British society contributing to the economy and therefore to the NHS and should be entitled to free access to the NHS. ILR can only be achieved after 10 years of lawful residence in the country.

Only allowing those who have ILR to access free NHS services unfairly discriminates against those who have made the UK their home and are settled here, work here, pay taxes and contributions (income tax, national insurance contributions, VAT), a significant percentage of which will go towards the NHS and yet are not entitled to access it without further cost.

The Home Office confirms that the main categories of temporary migrants who meet the current ordinary residence test are students, workers and dependent family members. The case for

classifying workers and their families who make the UK their home as ordinary residents is obvious in terms of their tax contribution, yet under the proposed new test they would not qualify for free NHS treatment unless they had obtained ILR which requires them to meet various requirements including residing in the UK for ten years. In the case of students, foreign students pay hefty fees to universities and colleges for the privilege of studying here and this provides the Exchequer with significant revenue. They also contribute to the economy by their expenditure on goods and services, rent/mortgages and payment of council tax. They too are settled in the UK for the duration of their study and should be deemed ordinary residents for this period.

The change in the test would unfairly prevent the above people from free access to the NHS.

The current ordinary resident definition avoids linking eligibility to specific immigration or residency status (categories which are subject to regular change by the Home Office) and it avoids the risk of unintentionally excluding certain groups which by any reasonable measure should expect healthcare entitlement, for example people granted humanitarian protection.

The Government appears to have proposed that it will initially pass an order if the Bill becomes law to charge foreign non EU students a levy of £150. This will hardly impact the NHS budget but will be another disincentive to foreign students, many of whom are already choosing to study elsewhere. This will have a further detrimental effect on British universities who can ill afford to lose this revenue.

MAX submits that there is no need to change the ordinary residence test.

Department of Health's Consultation Response published 30th December 2013

The proposals are not in the Bill and it is understood will not require new primary legislation, changes are to be introduced by statutory regulations in 2014. However, they form part of the greater package of changes to the NHS which MAX fears will be costly to implement, discriminatory and could pose a serious risk to public health. The key proposals we are concerned about are as follows:

- Extending charging rules to A&E departments
- Keeping GP and nurse consultations free for all patients (but minor surgeries performed by GPs could be chargeable) but extending charging to other primary care settings (dental, optical, pharmaceutical). Chargeable migrants would pay higher rates for services.
- Extending charging to care outside hospitals e.g. community rehabilitation and care provided under the NHS by non-NHS providers.
- Creating a new 'integrated IT system' of NHS registration which would incorporate information about chargeability status.

These are sweeping changes to the NHS and residents of this country that require proper parliamentary scrutiny and debate and should not be brought in without proper due process. MAX/JCWI will be providing a separate briefing on these proposed changes.

Charging vulnerable groups:

Charging vulnerable groups who have health care issues but cannot afford the care is morally wrong and risks public health if untreated infectious diseases spread. Whilst the Department of Health is going to look at exemptions it has stated in its consultation that failed asylum seekers who cannot be returned and are forced to remain in the UK will still be charged. These people have no rights in the UK and are not allowed to work but nor can they be returned home. Denying them hospital treatment because they cannot pay goes against basic humanity.

Conclusion:

MAX considers clauses 33 & 34 should not stand part of the Bill.

Ensuring those who should be paying for NHS services under current legislation e.g. visitors, EU nationals do so, is only right and proper and that's where the Government's focus should be. There is no need to change the ordinary resident test to levy a charge on those who are settled in the UK.

3. Appeal Rights[13]

Summary:

The Bill removes the right of appeal on any grounds other than asylum or human rights. It denies any independent review of immigration decisions as it substitutes appeals with 'administrative review' which is carried out by the same department that made the original decision. Without a right of appeal an unlawful decision will only be challengeable by way of judicial review, a costly procedure that many will not be able to afford and one which the Government is currently trying to limit. Judicial review in the High Court should not be a substitute for a tribunal.

At the same time as wanting to drastically reduce appeal rights, the Government has slashed legal aid and is proposing further cuts whilst also trying to curtail judicial reviews. The combination of these proposals significantly undermines justice and fairness in our legal system.

On average between a third and a half of all appeals are successful, thereby confirming that the Home Office gets far too many decisions wrong. There is no evidence of an improvement in decision making, yet the Government wants to remove a fundamental safeguard in an area of law that fundamentally affects people's entire lives.

Briefing:

The right of appeal is a fundamental safeguard providing independent judicial scrutiny of immigration decisions. A right of appeal against a range of immigration decisions was created by the Immigration Act 1971, following the recommendations of the *Report of the Committee on Immigration Appeals*[14]. The Committee recommended that there should be a right of appeal because of the 'basic principle' that:

"However well administered the present [immigration] control may be, it is fundamentally wrong and inconsistent with the rule of law that power to take decisions affecting a man's whole future should be vested in officers of the executive, from whose findings there is no appeal…. The safeguards provided by such a procedure serve not only to check any possible abuse of executive power but also to private individual a sense of protection against oppression and injustice, and of confidence in his dealings with the administration which are in themselves of great value. We believe that immigrants and their relatives and friends need the same kind of reassurance against their fears of arbitrary action on the part of the Immigration Service."

As immigration law has become increasingly complex the necessity for a right of appeal has grown. The Bill proposes to remove the 17 current immigration decisions that can be appealed to four, restricting in essence the right of appeal to an asylum or human rights claim. Visitors who are

[13] Information of this section has additionally been provided by Ronan Toal, Barrister, Garden Court Chambers, London
[14] August 1967, Cmnd. 3387

refused visas have already lost the right of appeal. These provisions now mean that those who are here under the managed migration scheme, i.e. have work or student visas, will no longer be able to appeal a refusal of extension of stay request (temporary or permanent), or indeed a revocation of their permission to stay. Again, this impacts those lawfully here for economic reasons.

The Government's justification is that it wants a faster, fairer system. Appeals to the tribunal do not take particularly long, with most being resolved in 12 weeks. The Abu Qatada case which appears to be the catalyst for this change was totally different and quite exceptional and would not have had a different outcome even if the current Bill had been in place as law, as that case revolved around Article 3 prevention of torture. This could still be raised as it is a fundamental human right.

Appeal statistics show that the immigration system would be far from fair if the right of appeal was taken away. Success rates have increased over the years as decision making has got worse. On average 40% of all appeals succeed. In managed migration cases almost 50% of all appeals succeed.

Year	First Tier Appeals[15]	Managed Migration Appeals[16]
2007/08	34%	34%
2008/09	39%	43%
2009/10	41%	52%
2010/11	48%	56%
2011/12	45%	51%
2012/13 (April – June)	42%	48%
2012/13 (annual total)	44%	49%
2013/14 (April-June)	45%	52%

As the 'Wilson Committee' said in 1967, long before human rights were justiciable in UK courts and tribunals:

"it is fundamentally wrong and inconsistent with the rule of law that power to take decisions affecting a man's whole future should be vested in officers of the executive, from whose findings there is no appeal".

Conclusion:

MAX considers clause 11 should not stand part of the Bill and endorses the amendment below.

[15] *Tribunal Statistics Quarterly (including Employment Tribunals and EAT): April to June 2013* Ministry of Justice, 12th September 2013, Table 2.5 'Number of First Tier Tribunal (Immigration and Asylum) Appeals Determined at Hearing or on Paper, by Outcome Category and Case Type, 2007/08 to 2013/14

[16] *Tribunal Statistics Quarterly (including Employment Tribunals and EAT): April to June 2013* Ministry of Justice, 12th September 2013, Table 2.5 'Number of First Tier Tribunal (Immigration and Asylum) Appeals Determined at Hearing or on Paper, by Outcome Category and Case Type, 2007/08 to 2013/14

Amendment:

An amendment has been laid down by Yvette Cooper, Mr. David Hanson, Phil Wilson, Helen Jones and Sarah Teather. MAX supports this amendment.

Page 8, line 19, leave out clause 11.

4. Deportation

Summary:

The Government wants to 'ensure foreign criminals can be deported first and appeal after, unless that would cause serious irreversible harm'.

Briefing:

Not allowing somebody the right to appeal their deportation before removing them is grossly unfair and can have severe consequences on family members, especially children. It would seem that this policy is also a legacy of the Secretary of State's struggle with Abu Qatada, which was a highly exceptional case. It must be remembered that not everyone who faces deportation is a hardened criminal, despite the Government's public rhetoric on this and for many the UK will have been home for the majority of their lives, even though they have not acquired British nationality.

A sentence over 12 months generates an automatic deportation process. All foreign criminals are tarred with the same brush, from those caught with false ID documents (low level crimes) through to serious criminal offences, and not all are temporarily in this country. Many have been in the UK most of their lives, but if they are not British citizens they can be deported irrespective of whether or not they have indefinite leave to remain. Many will have British children.

The success at appeal demonstrates that automatic tick boxing does not work. In 2012/13[17] Tribunal statistics show 32% of all deportation appeals were successful; The Home Office gets decisions wrong too frequently, as discussed above. Removing somebody from the country they live in, whether or not they have been incarcerated, should be done only if it is properly justified, taking into account the best interest of any children involved and in the public interest. Removing somebody before listening to their appeal, especially where fundamental rights are concerned, goes against the principles of justice.

The Bill and the impact assessment completely ignore the needs of children in the UK who will be separated from their parents by deportation. The Government is bound by s.55 of the Borders, Citizenship and Immigration Act 2009 which incorporates the UN Convention on the Rights of the Child into domestic law and ensures that the best interest of the child is a paramount consideration in an immigration decision. Please see BID's briefing, which is attached, for further details on the impact on children.

There are very significant practical barriers to bringing an appeal from abroad which include access to advice and evidence gathering.

[17] Home Office 15/7/12 Impact Assessment of Reforming Immigration Appeal rights, p7 http:bit.ly/1cygmWm

Conclusion:

MAX considers clause 12 should not stand part of the Bill.

5. Article 8 of the ECHR

Summary:

The Government has tried to reduce the scope of Article 8 of the ECHR, the right to family life - by prescribing limitations to its application in the Immigration Rules. However, British judges have overruled this by clearly stating that the Home Secretary's interpretation goes against established case law. The Bill now incorporates the Secretary of State's understanding of Article 8 and advocates to judges that '*little weight'* should be given to family life claims made by those people being deported/removed from the UK.

Briefing:

Clause 14 requires Courts to interpret Article 8 of the European Convention of Human Rights (ECHR) in a limited way and defines what public interest consists of. It states that it is in the public interest that persons who seek to enter or remain in the UK are able to speak English because they are less of a burden on taxpayers and are financially independent because they are able to integrate into society. These are un-evidenced statements of opinion of this Government.

Whilst the Government's public rhetoric has focused on 'foreign criminals', this clause will affect anyone involved in bringing a claim under their right to family life, including law abiding migrants and British citizens.

The Immigration Rules give the Secretary of State's views on immigration policy and are adhered to in immigration claims. Article 8 of the ECHR is a provision we are treaty bound to honour. However, it is not an absolute right and has built-in qualifications, allowing immigration control to be a justifiable interference in someone's private or family life. The Secretary of State has a wide margin of appreciation in how she implements immigration control in Britain's economic interest. But it is up to the judiciary to establish on the facts on any case whether in light of all factors an interference is proportionate and therefore justified and this independent scrutiny is only right and proper. It is therefore unnecessary and inappropriate to bring forth definitions which attempt to restrict the application Article 8. This will only give rise to legal challenges domestically and in the European Court of Human Rights.

More specifically, this clause once again does not consider the best interest of the child, which the UK is treaty bound to do and which is part of our existing primary legislation[18]. Indeed, it suggests that it should be routinely subordinated to immigration control. For example, in the case of a foreign criminal his deportation is deemed in the public interest and only in 'extremely rare' circumstances will this not be the case, despite the presence of children and irrespective of the detriment to them. The only relationship with a child that will be counted to any extent is one with a 'qualifying child'. This is somebody who is British or has lived in the UK for a continuous period of seven years, thus making inconsequential a child who may have been born here and be six and a half, no matter how detrimental to his welfare the separation from his parent may be.

[18] UN Convention on the Rights of the child and s.55 of the Borders, Citizenship and Immigration Act 2009

Conclusion:

MAX considers clause 14 should not stand part of the Bill. In the alternative, the amendment below should be incorporated**.**

Amendment:

Sarah Teather has laid an amendment removing the term 'qualifying child' and inserting a requirement that a court or tribunal consider the child's best interest before considering the other public interest factors. MAX supports this amendment.

(Note: page & line numbers as per original Bill not as amended)
Clause 14, page 12, line 22, at end insert –
(za) "first, to the best interests of any child affected by a decision as specified in section 117A(1)."

Clause 14, page 13, line 11, leave out "qualifying"

Clause 14, page 13, line 12, leave out "reasonable to expect" and insert "in the best interests of".

Clause 14 page 13, line 44 leave out from the beginning to end of line 3 on page 14.
[and also take out "for a continuous" in line 2]

6. Removal

Summary:

Clause 1 of the Bill makes new provisions for administrative removal from the UK. This applies to all those who require leave to remain but do not have it (unlike deportation which is for those who have committed criminal offences).They will now be given a refusal letter stating they are liable to removal and will not be served with a separate notice of removal.

Briefing:

The aim of this provision is to provide a single decision informing a person that they are liable to removal. This would also apply to their family members. The Immigration Minister explained that it is a requirement of the Immigration Act 1971 to give written notice of a decision to refuse leave and this clause ensures there is no need for a further removal decision or notice.[19] The aim is to bring about efficiency and certainty and prevent the need for multiple notices. The Minister also confirmed that a notice would be given 72 hours in advance of removal.

Mr. David Hanson laid an amendment to ensure a removal notice was issued but withdrew it on the Minister's reassurance as stated above.

MAX fears that this will bring about anything but efficiency and certainty. A refusal of leave notice does not equate to a removal notice and the two events do not necessarily happen simultaneously.

[19] See debate Public Bill Committee: Immigration Bill (05 November 2013)

The one notice may well be given 72 hours before departure but it could be many months or years before removal is enforced and an individual and his family will be left facing complete uncertainty of their removal.

It is also vital that a family member who will also be removed is given notice. Clause 1 (6) (c) implies that this might not be necessary. The second amendment below drafted by ILPA removes this doubt.

Conclusion:

MAX advocates the amendments below should be incorporated**.**

Amendment:

It is vital that people are properly aware of their removal and must be given notice of this prior to the event occurring. We urge for the amendment 15 by Mr. David Hanson, Helen Jones and Phil Wilson to be laid again.

Clause 1, page 1, line 10, after 'it', insert 'and the Secretary of State has given the person written notice of his liability to removal'. Clause 1, page 2, line 30, leave out 'whether' and insert 'where'. Clause 1, page 2, line 30, leave out 'to be'. Clause 1, page 2, line 31, leave out 'and, if so'. (second and third amendments are consequential)

7. Bail

Summary:

Clause 3 amends the right to bail. It requires the Secretary of State's consent before a person is released on bail if removal directions have been set within a 14 day period. It also requires the Tribunal Procedure Rules to be amended so that a person cannot be released within 28 days of a previous bail refusal unless there has been a material change in circumstances. The right to liberty is a fundamental human right for all human beings including migrants and these changes highlight casual disregard for those detained under immigration control.

Briefing:

Immigration detention should be used for the shortest time possible, but this is not always the case. Case law, both domestic and from the European Court of Human Rights, set limits to the detention powers of the state. Under Article 5 ECHR, detention must be proportionate to the objective (i.e. removal), and alternatives to detention such as the use of sureties, reporting restrictions and electronic monitoring must have been properly considered for detention to be lawful. However, there is no statutory limit to the length of immigration detention and cases of individuals being detained under immigration powers for several years are no longer unusual. The decision to detain is made by an individual immigration officer and is not automatically subject to independent review at any stage. The Immigration and Asylum Act 1999 provided for automatic bail hearings after seven and thirty-eight days but this was never implemented, and has since been repealed by the

Nationality, Immigration and Asylum Act 2002. Many detainees have no legal representation. BID has reported on the impact of detention on individuals, demonstrating an increase in mental illness. In 2012 there were 208 incidents of self-harm (including attempted suicides) requiring medical attention and 1804 detainees were formally recognised as being at risk of such harm.[20]

Currently, if a bail application is refused and individuals reapply they have to show the Tribunal that there has been a change in their circumstances, or that there are additional grounds for applying. Therefore it appears completely unnecessary to propose a 28 day ban on a reapplication of bail and demonstrates complete disregard for what a month without liberty signifies. In addition, what will ensue are disputes on what constitutes a 'material change'.

Why, if an independent tribunal deems it appropriate to release an individual on bail despite removal directions within 14 days, is it necessary for the secretary of state to give consent? A judge is only likely to grant bail if removal directions are imminent in exceptional circumstances and with very good reason. This provision demonstrates a lack of trust for the judiciary and undermines its independence. It is also conceivable that the secretary of state could set repeated removal directions, thus preventing an individual from ever obtaining bail. Removal directions being set and cancelled and re-set due to technical or logistical difficulties faced by the Home Office is not uncommon.

Conclusion:

MAX considers clause 3 should not stand part of the Bill. In the alternative, the amendment below from ILPA should be incorporated**.** In addition, should sub paragraph 6 remain, the word material should be deleted, see second amendment.

Amendment:

Clause 3, page 3, line 1, leave out subsection (2). Clause 3, page 3, line 10 leave out sub-sections (3), (4) & (5) [these are consequential changes] Clause 3, page 3, line 44 remove "material"

8. Marriage/Driving Licences/Bank Accounts

Summary:

The merits in any of these provisions are dubious as checks in all three areas already exist. Further checks makes border guards out of ordinary citizens and will result in racial profiling and discrimination especially against black and ethnic minority communities. This undermines social cohesion and will exacerbate racial tensions within society which we should be very wary of.

Briefing:

Driving licenses are not issued and banks accounts cannot be opened without identity checks and documentation. The Home Office has not produced any evidence that the current registration requirements are not working, or need reform. Instigating systems which result in further IT

[20] Response to Freedom of Information requests www.ctbi.org.uk/96

databases and extra checks increases red tape and costs for the institutions concerned. The Home Office proposes immigration status checks against an anti-fraud organisation or a data matching public authority that will be designated by the Home Secretary. How will this be funded, who will administer it to ensure it works and will it be accurate and up to date? Inaccuracies by third parties working for the Home Office such as Capita are well documented, as is the fact that the Home Office's own records are not up to date and its IT systems do no work properly. We repeat our quote from the Home Secretary on 28th March 2013:

"*UKBA's IT systems are often incompatible and are not reliable enough. They require manual data entry instead of automated data collection, and they often involve paper files…The agency is often caught up in a vicious cycle of complex law and poor enforcement of its own policies…UKBA has been a troubled organisation for so many…it will take many years to clear the backlogs and fix the system,…"*[21]

Although the UKBA has been renamed and divided the problems still remain. Sarah Rapson, the interim Director General of the new UK Visas and Immigration told the Home Affairs Select Committee in June of this year that she doesn't think the organisation is going to be fixed.[22]

More worryingly, these proposals will make all migrants and those from ethnic minorities, whether or not they are British, feel under scrutiny, constantly having to prove themselves and their status. The potential for racial profiling and for systems not working, thereby resulting in people wrongly being denied a driving license or bank account are all too real.

MAX is concerned that the overall tone of these measures, which will cost financially to implement, will have a greater social cost by preventing migrants from undertaking daily and routine activities without feeling that they are under suspicion. The measures will undoubtedly result in racism and discrimination against many from ethnic minority backgrounds. It will also be a particularly unwelcoming environment for legal migrants who are new to this country and once again will harm Britain's reputation as open, inclusive and welcoming.

The Bill increases the notice period for all marriages and civil partnerships in England and Wales from 15 days to 28 days and allows for it to be extended to 70 days where 'intelligence-based risk profiles and factors or other relevant information establish that there are reasonable grounds to suspect that a marriage or civil partnership is a sham'[23]. Notices of marriage or civil partnership involving a non-EEA national have to be referred to the Home Office where a person could gain an immigration advantage from the marriage or civil partnership. This will apply where the non-EEA national does not have settled status or an EU law right of permanent residence in the UK and is not exempt from immigration control or holding a marriage or civil partnership visa. There have been many reported cases where the Home Office gets it completely wrong and genuine marriages have been stopped with much distress to the parties concerned.[24] The increase in the notice period is not going to improve the Home Office's intelligence but is yet another measure making it difficult for migrants to live in British society.

[21] Hansard HC Deb 6 Mar 2013: Column 1500

[22] Oral evidence given on 11 June 2013, published at HC 232-1

[23] Home Office Factsheet 12 on Marriages and Civil Partnerships published on 10 October 2013

[24] The Camden New Journal was asked to accompany the Immigration Officials as they tried to stop a suspected sham marriage which turned out to be completely genuine. See newspaper for November 6th 2013.

Conclusion:

These measures appear to be political posturing with little gain and great expense for society. MAX considers clauses 35-36, 41-42 and Part 4 should not stand part of the Bill.

9. *Further Amendments*

For a list of further amendments supported by MAX please see the attached ILPA proposed amendments.

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Further documents (attached)

- Immigration Law Practitioners Association (ILPA) Proposed Amendments

- South Yorkshire Migration & Asylum Action Group (SYMAAG) Briefing
- Bail for Immigration Detainees (BID) Briefing Cl 12 & 14
- Bail for Immigration Detainees (BID) Briefing Cl 3-6
- Refugee Action Briefing
- Migrants Rights Network Briefing

- Race Equality Foundation Equality Impacts