

MOVEMENT AGAINST XENOPHOBIA

Immigration Bill

Committee Stage: House of Lords



<http://movagxen.wordpress.com>

Amendments and Briefing on Healthcare Charging



Joint Council for the Welfare of Immigrants - Secretariat for MAX

MAX: Affiliated Organisations

These are the 80 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.

- 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
- 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
- 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.

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 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

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.

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.

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. Currently, students have been selected as the migrant group who will face a levy of £150. The impact of this is discussed in the briefing below but the provisions of clause 34 allow for the charge to be applied to all legal migrants in this country who are not British citizens or do not have indefinite leave to remain.

Given the significance of these charging proposals, should these provisions be enacted, 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.

Amendments already laid:

- Lord Patel has asked for students to be exempted.³
- The Earl of Listowel and Baroness Cumberlege have asked for pregnant women to be exempt from the charge.⁴
- Lord Patel has also sought an exemption for children under 18 years⁵
- Baroness Smith of Basildon and Lord Rosser have asked the Secretary of State to report on the income and expenditure from the charge after a year of implementation.⁶
- Baroness Meacher has sought an exemption from charge for victims of domestic violence and female genital mutilation and a further amendment requiring the Secretary of State to provide details of the charges at individuals request and when they apply for immigration permission.⁷

³ See Notice of Amendments 12 February 2014 <http://www.publications.parliament.uk/pa/bills/lbill/2013-2014/0084/amend/am084-a.htm>

⁴ ditto

⁵ ditto

⁶ ditto

⁷ See Notice of Amendments 25 February 2014 <http://www.publications.parliament.uk/pa/bills/lbill/2013-2014/0084/amend/am084-d.htm>

- Baroness Cumberlege seeks an amendment to treat pregnant women as ‘ordinarily resident’ for the purposes of s.34 except where there is evidence that the women has entered the UK for the purpose of obtaining health care.⁸
- Lord Ramsbotham has sought an exemption from charges for those who are detained and for continuing treatment that commenced whilst the person was originally in detention.⁹

Whilst MAX supports the individual exceptions tabled they demonstrate the concerns we have with changing the current ordinary resident test and with introducing a charging regime for the NHS which will significantly impact the most vulnerable groups in our society. Allowing a change in the ordinary resident test opens up a slippery slope for a charging regime against all legal migrants that will change the NHS at its core.

Accordingly, MAX urges peers to oppose clauses 33 and 34 as stand part of the Bill and for there to be a detailed debate on the other proposals put forward by the department of health which the Government wishes to introduce by way of statutory legislation (a brief summary is provided below on page 4).

The above-named Lords give notice of their intention to oppose the Question that Clause 33 and 34 stand part of the Bill.

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 not 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.”*

⁸ ditto

⁹ See Notice of Amendments 26 February 2014 <http://www.publications.parliament.uk/pa/bills/lbill/2013-2014/0084/amend/am084-e.htm>

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. Forty percent of new migrants are international students and Government figures show they contribute £10.2 billion to the economy. 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. Many peers have spoken at the second reading of this Bill about the damage to the British economy and Britain’s ability to recruit talented individuals. Charging a levy on young healthy students is a further disincentive to foreign students coming to this country. If we want talented individuals to contribute to this country we should not be dissuading those wishing to pursue higher education here on a fee paying basis.

The Government has 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, almost always low users of the NHS, from coming to study in this country. The numbers of international students coming to the UK have already dropped especially in science technology, engineering and mathematics.¹⁰ This levy will have a further detrimental effect on British universities who can ill afford to lose this revenue. The other provisions of this Bill, withdrawal of appeal rights and documentation checks for migrants amongst others, create an unwelcoming package for migrants and tarnish Britain’s reputation as a welcoming, forward thinking, liberal country.

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.

MAX submits that there is no need to change the ordinary residence test and clause 34 should not stand part of this Bill.

¹⁰ See figures of STEM subjects in which there has been a drop and figures and further detail provided by Lord Patel and Lord Winston in the 2nd reading debate on this Bill. Lords Hansard text for 10 Feb 2014.

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 and cannot be tolerated in a civilised society such as the one we purport to be. It could also create a serious public health risk and the Government has been warned about this from the BMA and Doctors of the World.

Conclusion:

MAX considers clauses 33 & 34 should not stand part of the Bill. Peers are asked to urge for a debate on the proposed changes to the NHS.

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