



House of Lords
House of Commons
Joint Committee on
Human Rights

Asylum & Immigration (Treatment of Claimants, etc.) Bill: New Clauses

Fourteenth Report of Session 2003-04



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*Report, together with formal minutes and
appendices*

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Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

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Lord Lester of Herne Hill
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The Reports and evidence of the Joint Committee are published by The Stationery Office by Order of the two Houses. All publications of the Committee (including press notices) are on the internet at www.parliament.uk/commons/selcom/hrhome.htm. A list of Reports of the Committee in the present Parliament is at the back of this volume.

Current Staff

The current staff of the Committee are: Paul Evans (Commons Clerk), Nicolas Besly (Lords Clerk), Murray Hunt (Legal Adviser), Róisín Pillay (Committee Specialist), Duma Langton (Committee Assistant) and Pam Morris (Committee Secretary).

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Summary

The Committee repeats its previously stated view that it regards it as unacceptable that amendments having obvious implications for human rights should be introduced at such a late stage in a Bill's passage through Parliament, without adequate warning and without a clear explanation of the Government's view of the human rights implications. Such a practice undermines proper democratic scrutiny of the human rights implications of legislation.

The Committee considers that there is a significant risk that making the provision of accommodation to failed asylum seekers conditional on their performance of community work (new clause 10) is in breach of the prohibition of forced or compulsory labour in Article 4(2) ECHR.

The Committee considers that there is a significant risk that singling out failed asylum seekers from the class of those in need of emergency social assistance to prevent destitution, and requiring them to perform community work as a condition of entitlement to such assistance, is in breach of Article 14 ECHR in conjunction with Article 4(2) or Article 4(3)(d) ECHR, because it is a difference of treatment on grounds of nationality for which there is no objective and reasonable justification.

The Committee considers that there is a significant risk that refusing or withdrawing the provision of accommodation to or from a failed asylum seeker who is unable to return to their country, on the ground that they refuse to perform community work, will be in breach of Article 3 ECHR.

On the understanding that a former asylum-seeker remains free to apply for housing in the area of an authority where he has family associations, the Committee does not consider the local connection deeming provision in new clause 11 to give rise to a significant risk of incompatibility with the right to respect for family life in Article 8 ECHR.

On the assumption that the Government can provide Parliament with the evidence which demonstrates that the value of the benefits in kind provided to asylum-seekers is equivalent to the value of back-payments of benefits being abolished, the Committee does not consider there to be any significant risk of a breach of Article 23 of the Refugee Convention or Article 14 ECHR in conjunction with Article 1 Protocol 1 in the abolition of back-dated payments of benefits (new clause 12).

The Committee considers that there is a significant risk that the new procedures for marriage are incompatible with the right to marry because they introduce restrictions on that right which are disproportionate and which may impair the very essence of the right.

The Committee considers there to be a significant risk that the marriage provisions discriminate on grounds of religion and belief, and on grounds of nationality, without objective and reasonable justification, contrary to Article 14 ECHR in conjunction with the right to marry in Article 12 and the right to manifest one's religion in Article 9(1).

The Committee is unable to reassure Parliament that the power to remove rights of appeal against entry clearance decisions (new clause 29) is compatible with human rights in the absence of an express statement on the face of the Bill indicating more specifically the type of cases in which the power can be exercised.

1 Report

Background

1. We have reported on this Bill a number of times,¹ most recently in our Thirteenth Report of this Session in which we reported on the human rights implications of the Bill in light of the Government's response to our earlier reports, and reported for the first time on the important new provisions introduced on 4 May 2004 replacing the ouster clause.²

2. On 9 June 2004 the Government tabled a number of further new amendments to the Bill. The amendments were debated in the House of Lords less than a week later, on 15 June 2004. In our view, some of these amendments have obvious and serious implications for human rights. We were given no advance notice of the substance of these amendments, and neither we nor the House of Lords were given any written explanation of the Government's reasoning in relation to the compatibility of the proposed measures with human rights.

3. We have made it clear in a number of reports that we regard it as unacceptable that amendments having significant implications for human rights should be introduced at a late stage in a Bill's passage through Parliament, without a clear explanation of the Government's view of the human rights implications.³ We find it particularly regrettable that we find ourselves once again in the very same position so soon after having made clear that such a practice undermines parliamentary scrutiny of legislation for compatibility with human rights. Such scrutiny is crucial to the democratic legitimacy of the Human Rights Act 1998. We once again draw this to the attention of each House.

New Clause 10: Making "Hard Case Support" Conditional on Performance of Community Work

4. New clause 10 of the Bill gives the Secretary of State power to make regulations providing for the continuation of the provision of accommodation for a failed asylum seeker to be conditional upon his performance of or participation in community activities.⁴

5. The provision of accommodation for failed asylum seekers is made under s.4 of the Immigration and Asylum Act 1999 and has become known as "hard case support".⁵

1 Joint Committee on Human Rights, Third Report of 2003–04, *Scrutiny of Bills: Progress Report*, HL Paper 23, HC 252; Fifth Report of 2003–04, *Asylum & Immigration (Treatment of Claimants, etc.) Bill*, HL Paper 35, HC 304.

2 Thirteenth Report of Session 2003–04, *Scrutiny of Bills: Sixth Progress Report*, HL Paper 102, HC 640, paras 1.1–1.143. At para. 1.5 of that Report we envisaged that it might be necessary to return to the Bill in a future progress report in the event of further Government amendments.

3 See for example, Eighth Report of Session 2003–04, *Scrutiny of Bills: Third Progress Report*, HL Paper 49, HC 427 at para. 5.7, concerning the Planning and Compulsory Purchase Bill.

4 Cl. 10 inserts additional provisions into s. 4 Immigration and Asylum Act 1999. The regulation-making power is in new s. 4(5). The power to require the performance of community work as a condition of entitlement to the provision of accommodation is contained in new s. 4(6)(a).

5 Section 4 of the Immigration and Asylum Act 1999 provides:

(2) The Secretary of State may provide, or arrange for the provision of, facilities for the accommodation of a person if –

(a) he was (but is no longer) an asylum-seeker, and

Section 4 of the 1999 Act provides a wide power to provide support in the form of board and lodging for asylum seekers who are no longer eligible for asylum support and do not qualify for social security benefits, and would be destitute but for the provision of such support. Most recipients of hard cases support under s. 4 are individuals whose claims for asylum have been rejected but who are unable to return voluntarily, for example because there is no viable route, because conditions in their country are currently too dangerous, or because they are not fit to travel due to illness or pregnancy. Accommodation is also provided under s. 4 to those who have been granted permission to apply for judicial review of the decision that they are not to be allowed to remain in the UK.

6. The Government's purpose in making community work a condition of entitlement to such support is said to be to require those who are receiving such support to give something back to the community in exchange, and so demonstrate to UK citizens and taxpayers that they are not receiving "something for nothing".⁶ This is said to be necessary to preserve social cohesion.

The human rights engaged

7. Article 4(2) ECHR prohibits forced labour:

No one shall be required to perform forced or compulsory labour.

Article 4(3) excludes certain forms of labour from the definition of "forced or compulsory labour" in Article 4(2):

For the purpose of this article the term 'forced or compulsory labour' shall not include:

- (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
- (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
- (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
- (d) any work or service which forms part of normal civic obligations.

(b) his claim for asylum was rejected.

(3) The Secretary of State may provide, or arrange for the provision of, facilities for the accommodation of a dependant of a person for whom facilities may be provided under subsection (2)."

6 Lord Rooker, HL Deb 15 June 2004, cols. 634–636 and 648–649.

The human rights issues

8. The human rights issues raised by the new clause 10 are:

(1) whether making the provision of accommodation to failed asylum seekers conditional on their performance of community work is in breach of the prohibition of forced or compulsory labour in Article 4(2) ECHR;

(2) whether requiring only failed asylum seekers to perform community work as a condition of entitlement to social assistance is in breach of Article 14 ECHR in conjunction with Article 4(2) or Article 4(3)(d) ECHR;

(3) whether withdrawing the provision of accommodation from a failed asylum seeker who is unable to return home, on the ground that they refuse to perform community work, is in breach of Article 3 ECHR.

Compatibility with Article 4(2) ECHR

9. Apart from the exclusions in Article 4(3), what constitutes “forced or compulsory labour” is not defined by Article 4. The Court of Human Rights, however, has taken as its starting point for interpretation of Article 4 the definition of the term in ILO Convention No. 29, *Forced Labour Convention*, 1930: “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”.⁷

10. In addition to the feature of involuntariness under menace of a penalty, the European Court of Human Rights has also interpreted “forced or compulsory labour” under Article 4(2) as characterised by an obligation which is unjust or oppressive or an avoidable hardship.⁸ The Court’s approach is to have regard to all the circumstances of the case in the light of the underlying objectives of Article 4 to determine whether an obligation to perform a service falls within the prohibition of forced or compulsory labour.

11. The question therefore is whether the obligation to perform community work as a condition of continued entitlement to accommodation, as envisaged by the new section 4(6)(a) Immigration and Asylum Act 1999, constitutes forced or compulsory labour within the meaning of Article 4(2) ECHR, as interpreted by the European Court of Human Rights, or is within the scope of any of the forms of labour expressly excluded from that definition by Article 4(3) ECHR, particularly the category of work or service which forms part of normal civic obligations in Article 4(3)(d).

12. The consequence for a failed asylum seeker who refuses to perform the community work required is the withdrawal of the state support which, by definition, prevents them from being destitute. In a recent case, the House of Lords rejected the argument that asylum seekers were resident in a particular area “of their own choice” because they had a choice between accepting accommodation in that area and destitution.⁹ It was held that it

⁷ *Van Der Musselle v Belgium* (1984) 6 EHRR 163 at para. 32, invoking Article 2(1) of ILO Convention No. 29.

⁸ *Ibid.*, para. 37.

⁹ *Al-Ameri v Kensington and Chelsea Royal London Borough Council* [2004] UKHL 4, [2004] 2 WLR 354.

was wholly unrealistic to characterise this as a choice by the asylum-seeker: the true position was that they were given no choice about where to reside, but were offered accommodation and the means to subsist in one place only.¹⁰ The same would appear to apply to the proposed new provision. The threat of destitution amounts to the “menace of a penalty”, and it would be difficult to argue that the work required to be performed, on pain of refusal or withdrawal of support, was offered voluntarily.

13. It appears to us that the additional requirement in Article 4(2), that the obligation to perform the work is unjust or oppressive, is also likely to be satisfied, having regard to all the circumstances in the light of the underlying objective of Article 4. Two features in particular appear to us to be relevant to this conclusion. First, failed asylum seekers are prohibited from taking paid employment and it is therefore not through any choice of theirs that they are unable to make a contribution to the community as employees.¹¹ Second, it is surely discriminatory if failed asylum seekers would be the only recipients of emergency social assistance who are required to perform community work as a condition of that entitlement.

14. The obligation to perform community work as a condition of entitlement to hard case support is likely to amount to “forced or compulsory labour” unless it is within the scope of any of the excluded forms of labour in Article 4(3) ECHR. The Government asserts that requiring the performance of such work by failed asylum seekers is compatible with Article 4 ECHR because what is required of them “would not go beyond what we would regard as the individual’s normal civic duty”;¹² in other words, the Government argues that the obligation to do community work is within the scope of Article 4(3)(d) ECHR.

15. We are not persuaded that requiring failed asylum seekers to perform community service as a condition of receiving support to avoid destitution can be said to form part of “normal civic obligations”. An obligation to perform community service as a condition of receiving emergency social assistance is not a “normal civic obligation” in the UK. On the contrary, it appears to us to be without precedent or even analogy.

16. We conclude that there is a significant risk that making the provision of accommodation to failed asylum seekers conditional on their performance of community work would be in breach of the prohibition of forced or compulsory labour in Article 4(2) ECHR. We draw this to the attention of each House.

Discrimination on grounds of nationality

17. The power in the new clause 10 singles out failed asylum seekers for treatment which no other class of person in the UK receives in relation to the provision of the sort of emergency state assistance provided under s. 4 of the Immigration and Asylum Act 1999.

¹⁰ See for example, Lord Bingham, *ibid.*, at para. 17.

¹¹ It was this feature of the regime imposed on asylum seekers denied support under s. 55(1) of the Nationality, Immigration and Asylum Act 2002 that persuaded the Court of Appeal in *R (“Q”) v Home Secretary* [2003] 3 WLR 365 that such asylum seekers were exposed to “treatment” by the State which engages Article 3: “the imposition by the legislature of a regime which prohibits asylum-seekers from working and further prohibits a grant to them, when they are destitute, of support amounts to positive action directed against asylum-seekers and not to mere inaction” (para. 57).

¹² Lord Rooker, HL Deb 15 June 2004, col. 651.

18. An asylum seeker whose claim for asylum has been rejected and who has exhausted their rights of appeal, but who is unable to return to their country for reasons beyond their control, and who has no other means of support, is in an analogous position to a UK citizen or any other person in the UK who is entitled to emergency state assistance to prevent destitution. Clause 10 would treat them differently, on grounds of their status.

19. This is a difference of treatment in the enjoyment of their right under Article 4(2) not to be made to do forced or compulsory labour. Even compulsory labour which is within the scope of “normal civic obligations” in Article 4(3)(d) ECHR (and therefore not in breach of Article 4(2) ECHR) must be non-discriminatory in its application.¹³ The application of the clause 10 obligation only to failed asylum seekers is therefore a difference of treatment which requires justification under Article 14 ECHR.

20. The Government has not suggested a justification for treating failed asylum seekers who cannot return to their country differently from others who need state assistance to avoid destitution. The Government’s justification for the measure is the need to tackle the “something for nothing culture”, and to show UK taxpayers that failed asylum seekers are not taking something for nothing. But this reasoning is of general application to any recipient of emergency state assistance; it does not explain why the requirement to perform community service as a condition of receiving state support is only to be applied to failed asylum seekers.

21. We conclude that there is a significant risk that singling out failed asylum seekers from the class of those in need of emergency social assistance to prevent destitution, and exceptionally requiring them to perform community work as a condition of entitlement to such assistance, would be in breach of Article 14 ECHR in conjunction with Article 4(2) or Article 4(3)(d) ECHR, because it is a difference of treatment on grounds of nationality/immigration status for which there is no objective and reasonable justification. We draw this matter to the attention of each House.

Inhuman or degrading treatment

22. The introduction of the obligation to perform community work as a condition of entitlement to board and lodging in clause 10 inevitably contemplates a refusal to provide accommodation, or the withdrawal of such accommodation, where an individual refuses to perform the community service required as a condition of entitlement. The failed asylum seeker will then suffer destitution.

23. The Court of Appeal has recently confirmed in *Limbuela* that exposure to destitution as a result of a denial of state assistance may constitute inhuman or degrading treatment in breach of Article 3 ECHR.¹⁴ The Government has already accepted in relation to clause 9 of

13 *Schmidt v Germany* (1994) 18 EHRR 513 (requirement that all male adults must serve as firemen or pay a fire service levy in lieu held to be discriminatory on grounds of sex and therefore in breach of Article 14 ECHR in conjunction with Article 4(3)(d)).

14 *Secretary of State for the Home Department v Limbuela, Tesema and Adam* [2004] EWCA Civ 540 (21 May 2004). The Court of Appeal had already established in *Q* (see Footnote 11) that the State is under a positive obligation under Article 3 to take measures designed to ensure that individuals within its jurisdiction are not subjected to inhuman and degrading treatment, and that this required the state to ensure that help could be obtained by individuals whose suffering as a result of their destitution crossed the Article 3 threshold. The Court of Appeal in *Limbuela*, by a 2–1 majority, went further and held that the Secretary of State’s policy is in breach of Article 3 ECHR because its

the Bill that its obligation to prevent inhuman and degrading treatment under Article 3 is absolute, and cannot be avoided on the basis that the individual concerned is responsible for his own misfortune. The decision in *Limbuela* indicates that the positive obligation to prevent inhuman and degrading treatment requires the state to have a policy to assist those who would otherwise be destitute.

24. We conclude that there is a significant risk that refusing or withdrawing the provision of accommodation to or from a failed asylum seeker who is unable to return to their country, on the ground that they refuse to perform community work, would be in breach of Article 3 ECHR. We draw this matter to the attention of each House.

New Clause 11: Deemed Local Connection with Area to which Asylum Seeker Dispersed

25. New clause 11 amends the relevant part of the homelessness legislation¹⁵ to provide that a person has a local connection with the district of a local housing authority if he was at any time provided with NASS accommodation¹⁶ in that district.

26. The purpose of this provision is to amend the homelessness legislation following the decision of the House of Lords in *Al-Ameri v Royal Borough of Kensington and Chelsea* that residence in an area to which an asylum-seeker has been dispersed is not capable of establishing a local connection with that area because his residence there was not “of his own choice” as required by the homelessness legislation to count as a local connection.¹⁷ Local housing authorities can refer an applicant who has no local connection with its area to the local housing authority for the area with which the applicant does have a local connection. Under the current law, as interpreted by the House of Lords, where an asylum seeker is given leave to remain in the UK and is eligible for homelessness assistance, he cannot be required to apply to the local housing authority for the area to which he was dispersed as an asylum-seeker, because he did not reside in that area “of his own choice”.¹⁸

27. The Government’s policy is to encourage and help asylum seekers who are granted leave to remain to settle in their dispersal area, to reduce pressure on social housing and other local government services in areas such as London and the south-east. The new clause is designed to give effect to this policy by deeming asylum seekers to have a local connection with the area to which they have been dispersed, so that the local housing authority in that dispersal area has the responsibility to secure accommodation for them.

28. The new clause has potential implications for the right to respect for family life in Article 8 ECHR. A former asylum-seeker who has been granted leave to remain may have been dispersed to an area in the UK which is far removed from where other members of his family reside. Once granted indefinite leave to remain, he or she may wish to reside as close to their family as possible. The positive obligation on the State under Article 8 to

effect is that for a substantial number of people denial of food and shelter will take the individual across the threshold of inhuman and degrading treatment in Article 3.

15 Section 199 of the Housing Act 1996.

16 Under s. 95 Immigration and Asylum Act 1999.

17 [2004] UKHL 4, [2004] 2 WLR 354.

18 The preferences of the asylum-seeker are expressly required to be disregarded when asylum support accommodation is offered to an asylum seeker under s. 95 of the 1999 Act.

respect family life is likely to require the state to have a system for allocating social housing which takes preferences about proximity to family into account, as the current statutory framework on homelessness does. A regime which treated such considerations of family life as irrelevant, and required all former asylum-seekers to be housed only in the areas to which they had been dispersed without regard to such considerations would be likely to fall foul of this requirement.

29. This is not how we understand the new clause will operate, however. Under the relevant provision of the homelessness legislation, a local connection with an area can be established because of, among other things, “family associations”.¹⁹ Where a former asylum-seeker has local connections with two areas, his dispersal area as a result of the new clause and the area with which he has family associations, we can see nothing in clause 11 which requires him or her to apply to the housing authority in his dispersal area.

30. On the understanding that a former asylum-seeker remains free to apply for housing in the area of an authority where he has family associations, we do not consider the local connection deeming provision in new clause 11 is likely to give rise to a significant risk of incompatibility with the right to respect for family life in Article 8 ECHR.

New Clause 12: Abolition of Back-Dated Payment of Benefits to Refugees

31. New clause 12 provides for the abolition of back payments of income support and other related benefits to refugees who have been granted refugee status. Under the current law, an asylum seeker whose claim for asylum succeeds is entitled to back-dated payments of income support equivalent to the 30% differential between NASS support and income support. The new clause abolishes the right to such back-payments, and new clause 13 establishes a new “integration loan” for refugees, using the money saved by the abolition of back-payments of income support and other benefits.

32. The Government’s reason for abolishing back-payment of benefits is that it is no longer necessary, because recipients of asylum support also receive other benefits in kind, such as accommodation, payment of utility bills and household items, and that this “in kind support” is broadly equivalent to what would have been received had the asylum seeker been in receipt of income support.²⁰ As a result, even without the back-dated payments asylum seekers are in a broadly comparable financial situation to UK citizens.

33. The Refugee Convention contains a principle of non-discrimination in relation to benefits provided to refugees. Article 23 provides:

The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

¹⁹ Section 199(1)(c) Housing Act 1996.

²⁰ Lord Rooker, HL Deb 15 June 2004 cols 665 and 669–670.

34. Article 14 ECHR in conjunction with Article 1 Protocol 1 similarly requires that there be no unjustified discrimination against non-nationals in the provision of certain benefits.²¹

35. We note that the Government has not provided Parliament with the detailed evidence which demonstrates that the value of the benefits in kind provided to asylum-seekers is equivalent to the value of back-payments of benefits being abolished. However, on the assumption that this evidence can be provided, we do not consider there to be any significant risk of a breach of Article 23 of the Refugee Convention or Article 14 ECHR in conjunction with Article 1 Protocol 1.

New Clauses 19–25: Restrictions on the Right to Marry of Persons Subject to Immigration Control

The effect of the new provisions

36. New clauses 19 to 25 of the Bill introduce a new procedure for marriage for persons subject to immigration control.²² Persons subject to immigration control for this purpose are defined as non-EEA nationals who require leave to enter or remain in the UK (whether or not such leave has been given).²³

37. The Government's purpose in introducing the marriage provisions was explained by the Minister on recommitment.²⁴ The aim of the measures is to prevent the circumvention of immigration controls by "sham marriages". A sham marriage is statutorily defined as a marriage entered into by a non-EEA national for the purpose of avoiding the effect of immigration control.²⁵

38. The Government states that the number of sham marriages is increasing. Since 1 January 2001 registration officers have been under a duty to report "suspicious marriages" to the Secretary of State without delay, where they have reasonable grounds for suspecting that the marriage will be a sham marriage.²⁶ In 2003, 2,700 such reports were received from registrars. The total for 2004 is set to be much higher: by 15 June 2004, 2,251 such reports had already been received. The Government relies on this increase in the number of reports from registrars as an indication that sham marriages are on the increase. It also states that registrars are reporting increased levels of fraudulent documentation being

21 *Gaygusuz v Austria*

22 References to clauses are to the Bill as amended in Committee on recommitment, HL Bill 87 (published 15 June 2004).

23 Cl. 19(4)(a).

24 HL Deb 15 June 2004 cols 681–682.

25 Section 24(5) of the Immigration and Asylum Act 1999 provides:

"(5) 'Sham marriage' means a marriage (whether or not void)—

(a) entered into between a person ("A") who is neither a British citizen nor a national of an EEA State other than the United Kingdom and another person (whether or not such a citizen or such a national): and

(b) entered into by A for the purpose of avoiding the effect of one or more provisions of United Kingdom immigration law or the immigration rules."

26 Section 24(3) Immigration and Asylum Act 1999. The information to be contained in such a report of a suspicious marriage is prescribed by regulations: Reporting of Suspicious Marriages and Registration Of Marriages (Miscellaneous Amendments) Regulations 2000 (SI 2000 No 3164), reg. 2 and Schedule 1. The information required to be provided includes the nationality of each party to the marriage, the nature of the evidence produced in respect of nationality, and the reason for making the report.

presented in support of notifications for marriage at UK register offices. The Government also states that organised crime is becoming increasingly involved in this abuse of the immigration system.

39. The general aim of the new measures is therefore to strengthen the Government's ability to deal with this abuse of immigration control and to protect the integrity of marriage ceremonies.²⁷ They are specifically designed to tackle marriage abuse at the earliest opportunity: that is, before a sham marriage has taken place rather than after.

40. The new procedure introduces two new requirements for persons subject to immigration control who wish to marry in the UK.

41. First, it requires that notice of a marriage can *only* be given to the registrar of a registration district specifically designated for this purpose by the Secretary of State in regulations.²⁸ The purpose of restricting the number of districts at which notice can be given of a marriage involving a person subject to immigration control is to enable the Home Office's enforcement efforts against marriage abuse to be more focused.²⁹

42. The second new requirement is that notice of a marriage involving a person subject to immigration control is not to be entered by the registrar into the marriage book unless satisfied that the person subject to immigration control:³⁰

- has an entry clearance granted expressly for the purpose of enabling him to marry in the UK;
- has the written permission of the Secretary of State to marry in the UK; or
- falls within a class specified for this purpose in regulations made by the Secretary of State (such regulations to be made by negative resolution procedure³¹).

43. The registrar must be satisfied that one of these conditions is satisfied by the provision of "specified evidence", meaning such evidence as may be specified in guidance issued by the Registrar General.³²

44. Clause 19(3) is therefore in effect a prohibition on persons subject to immigration control marrying (other than in a Church of England religious ceremony) without specific authorisation to do so, either in the form of an entry clearance granted expressly for that purpose, or written permission of the Secretary of State (referred to in debate by the Minister as "a Home Office certificate of approval"), or by falling within an exempt class to be defined by the Secretary of State in regulations.

45. The Bill is silent about the criteria by which the Secretary of State will decide whether to grant permission to marry to non-EEA nationals who are already in the UK, or whether to

27 Ibid., col. 682.

28 Clause 19(2). The Minister indicated that the Government is thinking of having about 50 such designated districts: HL Deb, 15 June 2004 col. 683.

29 HL Deb, 15 June 2004 col. 682.

30 Clauses 19(3)(a)–(c).

31 Clause 20(3)(c).

32 Clauses 19(3) and (4)(d).

refuse it and require them to return to their country to reapply for entry clearance. The Minister, on recommitment, stated that they will be set out in detail in administrative guidance, and indicated that permission would be refused where the individual is in the UK unlawfully, or when they have leave to remain for less than 6 months, and when it is reasonable for that person to return to their country of origin and apply from there for entry clearance in order to marry.³³

46. The legislation is also silent about the purpose of the open-ended power in the Secretary of State to exempt certain classes of individuals subject to immigration control from the new requirements. There is no indication of the sort of differentiations which might be made between different categories of people.

47. The new procedures apply to marriages which are to be solemnised on the authority of certificates issued by a registrar.³⁴ They do not therefore apply to religious marriages in the Church of England, which do not require the involvement of a civil registrar.³⁵ They do, however, apply to other religious marriages, which require the involvement of the registrar of marriages to be recognised, and to non-religious registry office marriages.³⁶

The human rights engaged

48. The provisions in clauses 19 to 25 engage both the right to marry and the right not to be discriminated against in the enjoyment of that right, both of which are guaranteed in the Universal Declaration of Human Rights (“the UDHR”), the International Covenant on Civil and Political Rights (“the ICCPR”) and the European Convention on Human Rights (“the ECHR”).

Article 12 ECHR provides:

Men and women of marriageable age have the right to marry and to found a family according to the national laws governing the exercise of this right.

Article 14 ECHR provides:

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Articles 12 and 14 ECHR reflect similarly worded provisions in the UDHR and ICCPR. Article 16(1) of the UDHR provides:

Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family.

³³ HL Deb, 15 June 2004 col. 684. The Minister indicated that it might be unreasonable to expect a person to return to their home country to reapply for entry clearance if that person is an asylum seeker or a pregnant woman: *ibid.* col. 699.

³⁴ Clause 19(1)(a).

³⁵ Part II of the Marriage Act 1949.

³⁶ Part III of the Marriage Act 1949.

Article 2 UDHR provides:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 23(2) ICCPR provides:

The right of men and women of marriageable age to marry and to found a family shall be recognised.

Article 26 ICCPR provides:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The human rights issues

49. The provisions concerning the new procedures for marriage for persons subject to immigration control raise the following human rights issues:

(1) whether they are in general, and in particular the requirement in clause 19(3) that express authorisation be obtained, in breach of the right to marry in Article 12 ECHR because they reduce the right to such an extent that the very essence of the right is impaired;

(2) whether they are in breach of Article 14 in conjunction with Articles 12 and 9, because they discriminate between different religions and beliefs; and

(3) whether they are in breach of Article 14 in conjunction with Article 12, because they discriminate, on grounds of nationality, and without objective and reasonable justification, between people of marriageable age who wish to marry.

Breach of the right to marry

50. Under Article 12 ECHR the right to marry is expressed to be “according to the national laws governing the exercise of this right.” This has not been interpreted to mean, however, that the right to marry in Article 12 is entirely subordinate to national law. It has long been established in the Strasbourg case-law that the wording of Article 12 “does not mean that the scope afforded to national law is unlimited. If it were, Article 12 would be redundant. The role of national law, as the wording of the article indicates, is to govern the exercise of the right”.³⁷

51. National laws can therefore lay down rules governing matters such as notice, publicity, and the formalities whereby marriage is solemnised, as well as more substantive rules on matters such as capacity and consent. National laws can also introduce limitations and

³⁷ *Hamer v United Kingdom* 24 DR 5 (1979), 14, Eur Comm HR, para. 60.

restrictions on the right to marry, including prohibitions serving generally recognised considerations of public interest, such as prohibitions on bigamous marriages and based on degrees of consanguinity.

52. Any restrictions, limitations or prohibitions, however, must be in pursuit of a legitimate aim and must be proportionate. Proportionality includes the requirement that they must not restrict or reduce the right in such a way or to such an extent that the very essence of the right is impaired. “National law may not otherwise deprive a person or category of persons of full legal capacity of the right to marry. Nor may it substantially interfere with their exercise of the right”.³⁸

53. In a case brought against the UK concerning restrictions on the right of prisoners to marry, the European Commission of Human Rights held that there was no justification for the UK to refuse to make arrangements to allow prisoners to marry, thereby delaying the date at which they could marry until they were released from detention.³⁹ It held that the fact that national law did not allow the applicant to marry in prison and the fact that the Home Secretary would not allow him temporary release so that he could marry elsewhere amounted to an interference with the exercise of his right to marry. The Commission stated that “the essence of the right to marry is the formation of a legally binding association between a man and a woman. It is for them to decide whether or not they wish to enter such an association in circumstances where they cannot cohabit”.⁴⁰ It held that the imposition of any substantial period of delay in the exercise of this right must in general be seen as an injury to its substance.

54. The question therefore is whether the restrictions on the right to marry imposed on persons subject to immigration control by new clauses 19–25 restrict or reduce the right in such a way or to such an extent that the very essence of the right is impaired, so as to be disproportionate to any legitimate aim pursued and in breach of the right in Article 12.

55. We regret that, because of the very late stage at which these amendments have been introduced, we do not have the benefit of the Government’s considered reasoning as to why these provisions are compatible with Articles 12 and 14 ECHR. All there is as a matter of public record is the assertion of the Minister on recommitment that the new procedures are compatible with those Convention rights.⁴¹

Legitimate aim

56. Preventing the evasion of immigration control by marriages which are not genuine marriages is a legitimate aim. We also accept that there is evidence to suggest that such evasion is taking place in the UK. We therefore accept that there is a need for some regulation of the right to marry in order to achieve the legitimate aim of preventing circumvention of immigration control. The question is whether the measures which are being proposed are proportionate to the achievement of that legitimate aim.

38 *Ibid.*, para. 62.

39 *Ibid.*

40 *Ibid.*, para. 71.

41 HL Deb, 15 June 2004 col. 699.

57. Firm evidence of the scale of the problem to be addressed by these measures has not so far been made available by the Government. The increase in the number of reports of suspicious marriages from registrars raises a number of more detailed questions about the extent to which this increase demonstrates an increase in the scale of abuse. How many refusals of leave to remain have there been arising out of the 2,251 reports of suspicious marriages from registrars? What explains the striking discrepancy between the large number of such reports (2,251 so far this year) and the relatively small number of criminal charges (37)? With what offences were the 37 people charged? How many were convicted? What are the “other intelligence sources” relied on by the Government as demonstrating an increase in the number of sham marriages?

58. In the absence of this more detailed evidence, it is very difficult to conduct any meaningful proportionality scrutiny of the measures which are said to be necessitated by the scale of marriage abuse. We hope that this evidence will be provided to Parliament in the course of the debates on these measures.

59. Nevertheless we proceed to consider the compatibility of the proposed measures with the right to marry in Article 12 on the assumption that the Government can demonstrate by evidence that the number of sham marriages is increasing on the scale alleged.

Proportionality

60. The Government argues that “the right to marry under Article 12 can be subject to the requirements of immigration control”.⁴² The Court of Human Rights has established in *Abdulaziz, Cabales and Balkandali v UK*, that although the right of a foreigner to enter or remain in a country was not as such guaranteed by the Convention, nevertheless immigration controls had to be exercised consistently with Convention obligations.⁴³ Even the wide margin of appreciation which is accorded to states under Article 12 is not without limit: restrictions on the right to marry are still required to be proportionate to their legitimate aim and must not take away the very essence of the right.

61. Three factors in particular persuade us that there is a significant risk that the proposed restriction on the right to marry may be disproportionate.

62. First, there appears to be a lack of clear rational connection between the purpose of the measures, namely to prevent sham marriages, and the criteria to be applied by the Secretary of State when deciding whether to grant permission to marry under clause 19(3)(b). Proportionality requires that there must be a rational connection between the end which it is sought to achieve by a particular measure (in this case, the prevention of “sham marriages”) and the measure itself, in the sense that the measure must be logically related to the achievement of the aim.

63. The criteria which it has been suggested will be applied by the Secretary of State in deciding whether or not to approve of a marriage in an individual case will not be based on

⁴² Lord Rooker, HL Deb, 15 June 2004, col. 699.

⁴³ (1985) 7 EHRR 471 at para. 59.

an assessment of the genuineness of a marriage.⁴⁴ They will include whether the person is lawfully resident, whether they have been granted over six months' leave or are a visitor, and whether it is reasonable or unreasonable to expect them to return home to apply for entry clearance from outside the UK. The length of time for which a person has leave to remain in the UK, for example, has nothing to do with the genuineness or otherwise of any marriage into which he or she proposes to enter. This criterion will effectively operate as a statutory presumption that a marriage involving a person with less than six months leave to stay is not a genuine marriage. But there is no necessary or logical connection between the genuineness of a proposed marriage and the length of time for which a person has leave to stay in the UK.

64. Second, the measures are drawn very widely; they potentially affect more people than is necessary to achieve their purpose of preventing sham marriages. The new procedures for marriage apply to non-EEA nationals who require leave to enter or remain “whether or not leave has been given”.⁴⁵ It is not confined to those who are unlawfully in the UK (overstayers and illegal entrants). The express permission of the Home Office to marry will therefore be required by those with indefinite leave to remain, refugees, work permit holders, overseas students and ordinary visitors. In the absence of further justification for this wide application, there is a significant risk that the measures are disproportionate. In the debate on recommittal, the Minister appeared to state that a Home Office certificate of approval would be granted automatically to anyone who is entitled to remain in the country for more than six months.⁴⁶ This would restrict the scope of the provisions considerably, but we consider that it would be desirable for such a restriction to be explicit on the face of the legislation, and not left to ministerial assurances to Parliament about the way in which an overbroad power will be exercised in practice by the Secretary of State.

65. Third, there appears to us to be a significant risk that the new procedures on marriage will prove excessively burdensome to individuals who are within the scope of the new requirements but who wish to enter into a genuine marriage. In particular, the requirements that notice be given in only designated registration districts, and that a fee of between £155 and £250 be paid, are likely to operate in practice as considerable disincentives to genuine marriages, given the nature of the class of people affected.

66. In our view there is also a significant risk that the imposition of what is in effect a prior permission requirement on non-EEA nationals who wish to marry in the UK may impair the very essence of the right to marry.

67. An individual who is refused permission to marry by the Home Office will still have the opportunity to apply for entry clearance to enter the UK for the purposes of marriage. However, the effect of the provisions for such an individual will be to impose a substantial period of delay in the exercise of his or her right to marry and, as the European Commission of Human Rights held in the case concerning prisoners' right to marry while

44 “We are not dealing with whether people love each other, whether they are going to get on with each other or whether the marriage is genuine. That is not our purpose; it is not the function of Government to be involved with that” (Lord Rooker, HL Deb, 15 June 2004 col. 696); “We will not be considering ... whether immigration is the primary purpose of the marriage” (ibid., col. 699).

45 Clause 19(4)(a)(ii).

46 Ibid., col. 699.

still in prison, the imposition of any substantial period of delay in the exercise of this right must in general be seen as an injury to its substance.⁴⁷

68. We conclude that there is a significant risk that the requirement to obtain permission to marry, as presently drawn, will be incompatible with the right to marry because it introduces restrictions on that right for a wide class of people which are disproportionate to the legitimate aim of preventing sham marriages and which may impair the very essence of the right.

Discrimination on grounds of religion/belief

69. The restrictions on the right to marry contained in clauses 19–25 apply only to marriages which are to be solemnised on the authority of certificates issued by a superintendent registrar. To be valid in English law, a marriage must observe all the formalities contained in the Marriage Acts. A marriage may be solemnised in one of two ways: according to the rites of the Church of England⁴⁸ or under a superintendent registrar’s certificate.⁴⁹

70. The restrictions on the right to marry do not therefore apply to marriages in the Church of England. They do, however, apply to all other religious marriages, because any other religious ceremony which takes place without any civil formalities is not effective as a solemnisation of marriage.⁵⁰ They also apply to non-religious marriages in a registry office between people who do not wish to go through a religious ceremony.

71. The marriage provisions are therefore discriminatory on their face: by prescribing procedures for marriages which apply to all religious marriages except those in the Church of England, and to all non-religious marriages, they treat differently people who are in an otherwise analogous position, on grounds of their religion or belief. This gives rise to the possibility of a breach of the right not to be discriminated against in the enjoyment of Convention rights in Article 14 in conjunction with the right to marry in Article 12 and the right to manifest one’s religious beliefs in Article 9.

72. To be compatible with Article 14 there must be an objective and reasonable justification for such differential treatment. The justification which has been offered by the Government is that “there is no evidence of sham marriages in the Church of England”.⁵¹ We are not persuaded that this is a sufficiently weighty justification for such a clear difference of treatment on grounds of religion or belief in relation to a matter which affects almost everybody in one of the most fundamental aspects of their private lives.

73. We consider that the exemption of Church of England marriages from the proposed restrictions leads to a significant risk that the provisions will discriminate on grounds

47 *Hamer v UK*, op cit.

48 Part II of the Marriage Act 1949.

49 Part III of the Marriage Act 1949.

50 The Minister stated that the right of a person to have a religious marriage is not affected: HL Deb, 15 June 2004 col. 696. While in a narrow sense this is correct, in that nothing in the amendment prevents such a marriage from taking place, the amendment does prevent such marriages from being recognised as valid because such recognition depends on the involvement of a registrar.

51 Lord Rooker, *ibid.*, col. 696.

of religion and belief without objective and reasonable justification. We draw this to the attention of each House.

Discrimination on grounds of nationality

74. Article 14 ECHR is also engaged in conjunction with Article 12, because the marriage provisions apply only to non-nationals. The provisions impose restrictions on the right to marry which affect only non-nationals, and which amount to less favourable treatment of people wishing to marry who, but for their nationality, are in an analogous position to nationals wishing to marry. The measures therefore call for justification under Article 14.

75. We accept that it is a legitimate aim to regulate the exercise of the right to marry in order to prevent it from being used as a means of circumvention of immigration control. We accept also that in principle this is capable of justifying the imposition of a prior authorisation requirement in relation to individuals who are in the UK unlawfully. However, for the reasons explained above in relation to Article 12, we are concerned that the measures as currently drawn are disproportionate in their effect and not rationally connected to the aim they seek to achieve.

76. We consider that there is a significant risk that the provisions relating to marriage would discriminate, on grounds of nationality, without objective and reasonable justification, between people of marriageable age who wish to marry.

New Clause 29: Power to Remove Rights of Appeal

77. New clause 29 gives the Secretary of State a power to remove the right to appeal against refusal of entry clearance if the decision to refuse is taken on grounds which relate to a provision of immigration rules and are specified for this purpose by the Secretary of State.⁵² The power is exercisable by order made by affirmative resolution procedure.⁵³ The power cannot be used to take away existing rights of appeal on grounds of race discrimination and human rights.⁵⁴

78. The Minister introducing this amendment stated that the Government intends to use this power “only in respect of provisions in the Immigration Rules that are based on objective criteria”.⁵⁵ The reasoning is that the decision that an applicant for entry clearance fails to meet such a specified requirement is a question of fact, and there is little point in having a right of appeal in such cases. It is envisaged that the power will be used to preclude a right of appeal against refusals based on a failure to meet new objective requirements which might be introduced into the Immigration Rules. The only specific example provided of a possible use of the power was in relation to “bogus colleges”. The Immigration Rules might be amended to make it a specified requirement for entry clearance as a student that the applicant be enrolled at an institution which is included in a register of *bone fide* colleges. The power might then be used to preclude any appeal against

52 New clause 29(1), inserting new s. 88A into the Nationality, Immigration and Asylum Act 2002.

53 New clause 29(2), inserting new s. 112(3A) into the 2002 Act.

54 New s. 88A(2).

55 Lord Rooker, HL Deb, 15 June 2004, col. 708.

a refusal of entry clearance on the ground that the applicant was not enrolled at a registered college.

79. The removal of rights of appeal against entry clearance decisions raises issues of compatibility with the right to an effective remedy in respect of Convention violations under Article 13 ECHR and the right not to be discriminated against under Article 14 ECHR in conjunction with Article 13 and Article 6(1) (right of access to court).⁵⁶

80. Not providing a right of appeal in cases where the basis of the refusal is the failure to meet a requirement which turns on an objectively ascertainable fact is likely to be unobjectionable in human rights terms.⁵⁷ However, the breadth of the power conferred on the Secretary of State by new clause 29, without specifying on the face of the legislation the types of case in which the power can be used, is a matter of concern. Parliament is being asked to authorise in advance a very wide power which is capable of being exercised in a way which may impede access to an effective remedy or unjustifiably discriminate between different classes of applicant for entry clearance.

81. Unless the Bill expressly states the specific cases in which the power to remove rights of appeal can be exercised, we are unable to reassure Parliament that this is a power which is compatible with human rights. We draw this matter to the attention of each House.

56 See Thirteenth Report of Session 2003–04, *Scrutiny of Bills: Sixth Progress Report*, op cit., paras 1.38–1.59.

57 Section 88 of the Nationality, Immigration and Asylum Act 2002 already restricts the grounds on which an appeal is available in certain categories of case, such as where a requirement in respect of age, nationality or documentation is not met.

Formal Minutes

Wednesday 30 June 2004

Members Present:

Jean Corston MP, in the Chair

Lord Bowness

Mr Kevin McNamara MP

Lord Campbell of Alloway

Mr Richard Shepherd MP

Lord Judd

Lord Plant of Highfield

The Committee deliberated.

* * * * *

Draft Report [Asylum & Immigration (Treatment of Claimants, etc.) Bill: New Clauses], proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 81 read and agreed to.

Resolved, That the Report be the Fourteenth Report of the Committee to each House.

Ordered, That certain papers be appended to the Report.

Ordered, That the Chairman do make the Report to the House of Commons and that Lord Bowness do make the Report to the House of Lords.

[Adjourned till Wednesday 7 July at a quarter past Four o'clock.]

Appendix

Letter from Refugee Legal Centre re Government amendments to the Asylum (Treatment of Claimants, etc.) Bill introduced by Baroness Scotland on 9 June 2004

1. We write further to our previous letters to your Committee concerning the Asylum (Treatment of Claimants, etc.) Bill.

2. On 9 June 2004, the Government introduced amendments to the Bill as it stood following the report stage in the House of Lords. We believe that the Government amendments raise serious human rights concerns, which we would seek to summarize in this letter, and draw to the attention of your Committee. We attach a copy of ILPA's briefing on the new provisions with which we are in agreement.⁵⁸

RESTRICTIONS ON THE RIGHT TO MARRY OF THOSE SUBJECT TO IMMIGRATION CONTROL

3. The Government proposes to introduce after existing Clause 14, a new Clause headed: "Person subject to immigration control: procedure for marriage: England and Wales" regulating marriages in England and Wales where a party to the marriage is subject to immigration control.

4. Analogous Clauses follow in respect of marriages in Scotland and Northern Ireland. There are also three supplemental clauses dealing with the consequential amendments, and a further clause conferring on the Secretary of State a power to make regulations concerning the prescribed form, content and fee for applying for permission to marry under the regime set out in the amendment.

5. The amendment applies where a party to a marriage (not conducted in accordance with the rites of the Church of England or with a license from an ecclesiastical authority) is subject to immigration control. Its effect is broadly twofold:

- 1) to limit the registration districts to whose registrars a notice of the marriage can be given under the Marriage Acts to those specified by the Secretary of State;
- 2) to prevent a marriage from proceeding unless the registrar is satisfied by specified evidence that the party subject to immigration control:
 - has entry clearance for the purpose of the marriage; or
 - has the written permission of the Secretary of State to marry; or
 - falls within a class specified by regulations to be made by the Secretary of State.

6. The second of these effects constitutes a restriction on the right to marry, a right conferred on all within the UK pursuant to Article 12 of the European Convention on Human Rights. We are concerned that the operation of the restriction on the right is discriminatory in that it applies only to non-nationals subject to immigration control, and that on this account, it is appropriate for us to draw the Amendment to your Committee's attention.

⁵⁸ Not printed here

CONSULTATION ON THE PROPOSED RESTRICTIONS ON THE RIGHT TO MARRY

7. Whilst not directly material to the complaint concerning the proposed Government amendment restricting the rights of those subject to immigration control to marry, the Refugee Legal Centre would draw to the Committee's attention that the consultation exercise on proposals recently floated by the Government, has in our view, been flawed.

8. The Home Office's press notice 202/2004 states that the purpose of the amendment is to:

require non-EEA foreign nationals to demonstrate they have entered the UK lawfully (and have permission to be here) before giving notice of an intended marriage at a designated registry office.

9. In the note 5 of the notes to editors contained in the press release it is stated that:

The Government's plans to tackle abuse of the marriage laws were announced on 22 April (HO press notice 157/2004).

10. Press notice 157/2004 is headed: "New measures to tackle student and marriage immigration abuse". The press notice confirms that:

The proposals for consultation on marriages are:

- allowing only designated register offices to authorise marriages involving foreign nationals, working closely with the immigration service. This will enable a targeted, major new enforcement effort against sham marriages;
- changes to marriage laws to empower registrars to refuse to conduct a marriage suspected to be carried out for the purposes of illegal immigration while it is investigated.

11. The proposals contained in the Government amendment go far beyond empowering "registrars to refuse to conduct a marriage suspected to be carried out for the purposes of illegal immigration while it is investigated", and have not been the subject of consultation so far as the Refugee Legal Centre is aware.

12. Copies of press releases 202/2004 and 157/2004 are appended to this letter.⁵⁹

MAKING SUPPORT FOR FAILED ASYLUM SEEKERS CONDITIONAL ON THE FAILED ASYLUM SEEKER UNDERTAKING COMMUNITY SERVICE

13. Failed asylum seekers who (a) cannot return to their country of origin, for example because there is no safe route, and (b) have no other means of avoiding destitution, are currently able to apply to the Secretary of State to be supported (i.e. fed and accommodated) pursuant to section 4 of the Immigration and Asylum Act 1999 as amended by the Nationality Immigration and Asylum Act 2002.

14. The Government proposes to introduce after existing Clause 9, a new Clause headed: "Failed asylum seekers: accommodation". The effect of the amendment would be to make support of destitute failed asylum seekers who cannot be returned to their country of origin conditional on the completion of some form of community service. This

59 Not printed here

would potentially violate their rights under Article 3 (see R (Limbuela) v SSHD [2004] EWCA Civ 540)

15. The Refugee Legal Centre is concerned that such community service, admirable though it may appear to many, will for some be equivalent to forced servitude engaging Article 4 of the European Convention on Human Rights.

DISCRIMINATORY PROVISION OF SOCIAL HOUSING

16. We are also concerned about the discriminatory application of section 193 of the Housing Act 1996, although due to time constraints we are unable to provide a legal analysis sufficient to do more than raise this as an issue which the Refugee Legal Centre may seek to follow up with the Committee in due course, if so advised.

17. If further representations would assist, we would readily do our best to provide them to the Committee.

16 June 2004

Reports from the Joint Committee on Human Rights since 2001

The following reports have been produced

Session 2003–04

First Report	Deaths in Custody: Interim Report	HL Paper 12/HC 134
Second Report	The Government's Response to the Committee's Ninth Report of Session 2002-03 on the Case for a Children's Commissioner for England	HL Paper 13/HC 135
Third Report	Scrutiny of Bills: Progress Report	HL Paper 23/HC 252
Fourth Report	Scrutiny of Bills: Second Progress Report	HL Paper 34/HC 303
Fifth Report	Asylum and Immigration (Treatment of Claimants, etc.) Bill	HL Paper 35/HC 304
Sixth Report	Anti-terrorism, Crime and Security Act 2001: Statutory Review and Continuance of Part 4	HL Paper 38/HC 381
Seventh Report	The Meaning of Public Authority under the Human Rights Act	HL Paper 39/HC 382
Eighth Report	Scrutiny of Bills: Third Progress Report	HL Paper 49/HC 427
Ninth Report	Naval Discipline Act 1957 (Remedial) Order 2004	HL Paper 59/HC 477
Tenth Report	Scrutiny of Bills: Fourth Progress Report	HL Paper 64/HC 503
Eleventh Report	Commission for Equality and Human Rights Structure, Functions and Powers	HL Paper 78/HC 536
Twelfth Report	Scrutiny of Bills: Fifth Progress Report	HL Paper 93/HC 603
Thirteenth Report	Scrutiny of Bills: Sixth Progress Report	HL Paper 102/HC 640

Session 2002–03

First Report	Scrutiny of Bills: Progress Report	HL Paper 24/HC 191
Second Report	Criminal Justice Bill	HL Paper 40/HC 374
Third Report	Scrutiny of Bills: Further Progress Report	HL Paper 41/HC 375
Fourth Report	Scrutiny of Bills: Further Progress Report	HL Paper 50/HC 397
Fifth Report	Continuance in force of sections 21 to 23 of the Anti-terrorism, Crime and Security Act 2001	HL Paper 59/HC 462

Sixth Report	The Case for a Human Rights Commission: Volume I Report	HL Paper 67-I HC 489-I
Seventh Report	Scrutiny of Bills: Further Progress Report	HL Paper 74/HC 547
Eighth Report	Scrutiny of Bills: Further Progress Report	HL Paper 90/HC 634
Ninth Report	The Case for a Children’s Commissioner for England	HL Paper 96/HC 666
Tenth Report	United Nations Convention on the Rights of the Child	HL Paper 117/HC 81
Eleventh Report	Criminal Justice Bill: Further Report	HL Paper 118/HC 724
Twelfth Report	Scrutiny of Bills: Further Progress Report	HL Paper 119/HC 765
Thirteenth Report	Anti-social Behaviour Bill	HL Paper 120/HC 766
Fourteenth Report	Work of the Northern Ireland Human Rights Commission	HL Paper 132/HC 142
Fifteenth Report	Scrutiny of Bills and Draft Bills: Further Progress Report	HL Paper 149/HC 1005
Sixteenth Report	Draft Voluntary Code of Practice on Retention of Communications Data under Part 11 of the Anti-terrorism, Crime and Security Act 2001	HL Paper 181/HC 1272
Seventeenth Report	Scrutiny of Bills: Final Progress Report	HL Paper 186/HC 1278
Eighteenth Report	The Government’s Response to the Committee’s Tenth Report of Session 2002-03 on the UN Convention on the Rights of the Child	HL Paper 187/HC 1279
Nineteenth Report	Draft Gender Recognition Bill Vol I: Report	HL Paper 188-I/HC 1276-I
Nineteenth Report	Draft Gender Recognition Bill Vol II: Evidence	HL Paper 188-II/HC 1276-II

Session 2001–02

First Report	Homelessness Bill	HL Paper 30/HC 314
Second Report	Anti-terrorism, Crime and Security Bill	HL Paper 37/HC 372
Third Report	Proceeds of Crime Bill	HL Paper 43/HC 405
Fourth Report	Sex Discrimination (Election Candidates) Bill	HL Paper 44/HC 406
Fifth Report	Anti-terrorism, Crime and Security Bill: Further Report	HL Paper 51/HC 420
Sixth Report	The Mental Health Act 1983 (Remedial) Order 2001	HL Paper 57/HC 472

Seventh Report	Making of Remedial Orders	HL Paper 58/HC 473
Eighth Report	Tobacco Advertising and Promotion Bill	HL Paper 59/HC 474
Ninth Report	Scrutiny of Bills: Progress Report	HL Paper 60/HC475
Tenth Report	Animal Health Bill	HL Paper 67/HC 542
Eleventh Report	Proceeds of Crime: Further Report	HL Paper 75/HC 596
Twelfth Report	Employment Bill	HL Paper 85/HC 645
Thirteenth Report	Police Reform Bill	HL Paper 86/HC 646
Fourteenth Report	Scrutiny of Bills: Private Members' Bills and Private Bills	HL Paper 93/HC 674
Fifteenth Report	Police Reform Bill: Further Report	HL Paper 98/HC 706
Sixteenth Report	Scrutiny of Bills: Further Progress Report	HL Paper 113/ HC 805
Seventeenth Report	Nationality, Immigration and Asylum Bill	HL Paper 132/ HC 961
Eighteenth Report	Scrutiny of Bills: Further Progress Report	HL Paper 133/ HC 962
Nineteenth Report	Draft Communications Bill	HL Paper 149 HC 1102
Twentieth Report	Draft Extradition Bill	HL Paper 158/ HC 1140
Twenty-first Report	Scrutiny of Bills: Further Progress Report	HL Paper 159/ HC 1141
Twenty-second Report	The Case for a Human Rights Commission	HL Paper 160/ HC 1142
Twenty-third Report	Nationality, Immigration and Asylum Bill: Further Report	HL Paper 176/ HC 1255
Twenty-fourth Report	Adoption and children Bill: As amended by the House of Lords on Report	HL Paper 177/ HC 979
Twenty-fifth Report	Draft Mental Health Bill	HL Paper 181/ HC 1294
Twenty-sixth Report	Scrutiny of Bills: Final Progress Report	HL Paper 182/ HC 1295