

# LIBERTY

PROTECTING CIVIL LIBERTIES  
PROMOTING HUMAN RIGHTS

## **Liberty's briefing on the Immigration Bill for Second Reading in the House of Lords**

**December 2015**

## **About Liberty**

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

## **Liberty Policy**

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at  
<http://www.liberty-human-rights.org.uk/policy/>

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## Introduction

1. Second Reading consideration of the Immigration Bill in the House of Lords will take place on **Tuesday 22<sup>nd</sup> December**. The Bill includes a package of proposals which would facilitate discrimination, increase exploitation and destitution and make rights protections practically inaccessible to many.

2. Aside from provision creating a Director of Labour Market Enforcement, Liberty rejects this Bill as inhumane, divisive and ineffective as a means of enforcing immigration control. This briefing addresses our core areas of concern. It also sets out positive steps that could be taken in this Bill to strengthen rights protection and prevent exploitation.

## Discrimination and division

3. The Prime Minister is right to say that *“you can’t have true opportunity without real equality”*, but a pledge to *“end discrimination and finish the fight for real equality”* is hollow when issued against the backdrop of a Bill which will fundamentally damage race relations.<sup>1</sup> In a statement issued this month, the National Black Police Association warned that the Bill risks undermining decades of work to improve police-community relations.<sup>2</sup> Meanwhile discrimination revealed in the pilot evaluation of right to rent has been ignored and an escalation of the scheme pursued through this Bill. Notwithstanding concerns expressed by a number of MPs during Committee Stage consideration of the Bill in the Commons, the Government has failed to address the issue of speculative, spot checks carried out in-county by immigration officers in diverse areas of the UK.

### *Right to Rent (clauses 13 -16)*

4. The Government’s own evaluation of the right to rent scheme, introduced as part of the Immigration Act 2014 and piloted in the West Midlands from December 2014 – May 2015, showed discriminatory impacts. This should be read together with JCWI’s evidence that 42% of landlords they surveyed said they were less likely to consider somebody without

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<sup>1</sup> The Independent, *Tory Party Conference 2015: David Cameron’s speech in full*, 7<sup>th</sup> October 2015. Available at: <http://www.independent.co.uk/news/uk/politics/tory-party-conference-2015-david-camerons-speech-in-full-a6684656.html>.

<sup>2</sup> NBPA Press Release, Monday 14<sup>th</sup> December 2015: <http://www.nbpa.co.uk/wp-content/uploads/2015/12/Final-NBPA-Press-statement-Immigration-Bill-14-December-2015.pdf>.

a British passport and 50% of tenants felt discrimination was a factor in the refusal of a tenancy. One person was told “no passport equals no home”.<sup>3</sup>

### **The Government’s pilot evaluation**

The Home Office published the results of research evaluating the impact of the pilot implementation of the 2014 right to rent scheme (“the evaluation”) on the first day of Committee consideration of the Bill.<sup>4</sup> The pilot was carried out over a short, sixth month period, at a quiet time in the rental market. The rental market in the pilot area is further less competitive than that in other areas of the country, most notably London. The quantitative results produced by the survey are seriously undermined by the fact that the tenant group was largely comprised of students. The sample group of 68 tenants is therefore entirely unrepresentative and as the Home Office acknowledges “*should be read as primarily reflecting the views of the student community, rather than being generalised to the wider tenant group*”.<sup>5</sup> A ‘mystery shopper’ exercise was also conducted to assess the discriminatory impact of the scheme. On a number of occasions the Home Office commented on the limited reliability of the mystery shopper survey due to insufficient sample sizes. At the outset we are told that “*statistical significance testing was not conducted on the data due to the relatively modest number of individual mystery shops completed at a sub-group level*”.<sup>6</sup> In relation to the follow-up encounters, we are told “*small sample sizes inhibit the ability to draw robust conclusions around subsequent provision of property details, the source of any property details provided and offers of viewings*”.<sup>7</sup>

#### *Discriminatory*

Notwithstanding failures in research methodology, evidence of discrimination was gleaned. The evaluation accepts that risks of discrimination were identified in focus group discussions which spanned “*attitudes towards potential tenants with time-limited leave to remain, with one apparent instance of a tenancy being refused for this reason; a preference for tenants whose right to rent was easy to check...a preference for ‘lower risk’ tenants (for example people with local accents) for whom landlords felt they need not carry a Right to Rent*

<sup>3</sup> JCWI, “No Passport Equals No Home”: An independent evaluation of the ‘Right to Rent’ scheme, 3 September 2015.

<sup>4</sup> All documents available at: <https://www.gov.uk/government/collections/migration-research-and-analysis>

<sup>5</sup> Research with landlords, letting agents and tenants, p. 11.

<sup>6</sup> Mystery shopping to test the potential for discrimination within the private rental sector, p. 9.

<sup>7</sup> Mystery shopping to test the potential for discrimination within the private rental sector, p. 27.

check.”<sup>8</sup> One landlord expressed the view that “if the applicants were White and had a ‘Brummie’ accent, they didn’t need to put them through the [Right to Rent] process”<sup>9</sup> and focus groups of landlords found “a lack of understanding among some landlords (but not letting agents) around the right to rent of prospective tenants with limited leave to remain in the UK”.<sup>10</sup> Some of the landlords included in the focus groups suggested that they would not rent to potential tenants with limited as opposed to permanent leave to remain in the UK, including one who gave an example of turning down a tenant because he had eight months leave to remain left on his visa.<sup>11</sup> A focus group of letting agents produced evidence that some landlords had instructed them not to let to non-EEA nationals or to any ‘foreigners’.<sup>12</sup>

BME participants in the mystery shopper exercise were found to be less likely to receive a prompt response to an initial email inquiry in the pilot area (a discrepancy not repeated in the comparator area, where BME groups were marginally more likely to receive a prompt response) and higher proportions of the BME group were asked about a guarantor, a referee and their employment than was the case for the White British (WB) groups. Across the comparator and pilot areas, BME groups were disproportionately questioned about nationality and residency status. In the pilot area BME enquirers were less likely to be told that suitable rental property would become available in future where they were not given the opportunity to view a property and were more likely to be told about additional fees linked to renting than their WB counterparts. The ‘right to rent’ scheme was only specifically mentioned to 6 ‘shoppers’ all BME and all in the pilot area. There were also clear reports of discrimination, including an incident where a shopper was told that if he was “under the scheme” the landlord was “not going to bother because he had a local person who wanted the property and it was much easier to rent to them”.<sup>13</sup>

#### *Ineffective and unworkable*

Of the 109 individuals ‘identified’ in the first six months of the scheme only 9 were ultimately removed. Considering that just 63 of the 109 were ‘not previously known’ to the Home Office, it is at least very unclear that these individuals would not have been removed in any event. Only 22 of the 68 surveyed tenants and 22 out of 34 voluntary community services felt informed about right to rent. 70 of 114 landlord respondents felt informed, but 22 out of 37

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<sup>8</sup> Evaluation of the Right to Rent scheme, p. 24.

<sup>9</sup> Research with landlords, letting agents and tenants, p. 22.

<sup>10</sup> Research with landlords, letting agents and tenants, p. 22.

<sup>11</sup> Research with landlords, letting agents and tenants, p. 23.

<sup>12</sup> Research with landlords, letting agents and tenants, p. 22.

<sup>13</sup> Evaluation of the Right to Rent scheme, p. 24.

small-scale (1 property) landlords felt poorly or not at all informed. In the qualitative assessment, many small-scale landlords were said to be “unaware” of the scheme. The pulse check survey found that 14 out of 55 letting agents had received complaints from landlords or potential tenants about the scheme. The most frequently mentioned complaints were about discrimination and checks delaying tenancies from starting (both 9 out of 14). Other complaints mentioned were around people not understanding the immigration system (8 out of 14) and additional work for landlords (5 out of 14). Of those letting agents who had not received complaints about the scheme, 22 out of 41 indicated that this was because they believed that people had not been impacted by the scheme. In total, 52% (59 of 114) of respondents to the landlords’ survey said they had concerns about the scheme. In the landlords’ survey, in particular, there was a view, expressed by many respondents in write-in comments, that they felt the scheme meant that they were carrying out a role that should be done by Immigration Officers. As to the perceived benefits of the scheme by landlords, the report is clear and damning: “84 per cent of landlords (96 out of 114) and letting agents (46 out of 55) said they had not noticed any benefits from the scheme...”.

5. The Home Office’s research highlights some worrying examples of discrimination, which are liable to proliferate should the scheme be rolled out nationally, including to areas with extremely competitive rental markets. Changes made by this Bill to the scheme significantly increase our concerns. The Bill inserts criminal sanctions for landlords and letting agents attracting maximum custodial sentences of five years.<sup>14</sup> The Residential Landlord Association has made clear that while it “*condemns all acts of racism, the threat of sanctions will inevitably lead many landlords to err on the side of caution and not rent to anyone whose nationality cannot be easily proved*”.<sup>15</sup> It is further likely to be a cause of great alarm to landlords that they risk conviction for the offence even if they act to evict tenants without the right to rent. During Commons consideration of the Bill, the Government failed to resolve a concern that, as drafted, clause 13 would render a landlord liable to prosecution as soon as she learns or reasonably believes a tenant is disqualified, notwithstanding the fact that 28 days’ notice must be given before eviction can take place.

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<sup>14</sup> Two offences cover circumstances where a landlord or agent enters into a tenancy with a disqualified person with knowledge or the reasonable belief that the tenant was so disqualified. A further two occur where the tenant becomes ineligible to rent during the course of the tenancy and the landlord knows, or reasonably believes this to be the case, but fails to notify the Secretary of State as soon as reasonably practicable.

<sup>15</sup> Committee consideration of the Immigration Bill, 29 October 2015, Column number: 276.

6. Clause 14 grants what were described during Report stage consideration of the Bill as “Dickensian” summary eviction powers triggered by a notice from the Home Secretary.<sup>16</sup> Where a landlord receives a Secretary of State notice informing her that her tenant is disqualified from renting, she has the power to terminate the tenancy by giving 28 days’ notice. This notice stands in the place of a court order, providing for summary eviction without judicial oversight. Summary eviction provisions in the Bill will strip away a vital element of due process protection, designed to safeguard against arbitrary and erroneous decision making. This concern is compounded by the fact that there is no appeal right against either the Secretary of State notice or a notice from the landlord terminating a tenancy. The Housing Law Practitioners Association has expressed serious concerns about this dangerously unorthodox approach, arguing that:

the landlord’s notice to his tenant seems intended to have the effect of terminating the underlying tenancy and removing all security of tenure. That would appear to suggest that the landlord can simply use “self-help” to recover possession i.e. personally turn up and throw occupiers onto the street. There are clear risks in this, of potential violence to and damage to property for both landlord and tenant.<sup>17</sup>

7. Whilst the Government sought to stress the option of engaging the services of a High Court Enforcement Officer to enforce an eviction, the fact remains that this is a choice for the landlord, who can also seek to effect eviction him or herself, with potentially dangerous and violent consequences. During Commons consideration of the Bill, the SNP and Labour front bench expressed grave concerns about this retrograde step. Shadow Immigration Minister, Sir Keir Starmer warned;

Some 30 or 40 years ago, the House set its face against summary evictions for a very good reason: there were too many examples of locks being changed and families literally being put out on to the street to sleep on the pavements. Everybody agreed that there should be due process before individuals and families, particularly families with children, were evicted. The Bill cuts through that protection for no good reason.<sup>18</sup>

8. Meanwhile, the SNP Spokesperson for Immigration, Asylum and Border Control, Stuart McDonald, referred to the proposals set out in clause 14 as “*obscene proposals that*

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<sup>16</sup> Stuart McDonald, Commons Hansard, 1 Dec 2015 : Column 181.

<sup>17</sup> HLPB Briefing; Immigration Bill 2015, clauses 13 and 14, October 2015.

<sup>18</sup> Commons Hansard, 1 Dec 2015: Column 185.

would see landlords and landladies turned into not only immigration officers but High Court judges, and would see summary evictions without judicial oversight.”<sup>19</sup> Clause 16 further allows for the extension of right to rent to Wales, Scotland and Northern Ireland, absent proper parliamentary scrutiny, via secondary legislation.

9. The Government’s evaluation demonstrates that the right to rent scheme is not only having a discriminatory impact, it is reaping at best marginal and at worst no real enforcement benefits and causing consternation in the sector. The risk of discriminatory impacts and violent eviction are dramatically increased by the provisions of this Bill. **Liberty urges Parliamentarians to oppose the discriminatory and ineffective right to rent scheme in its entirety.**

*“Driving while illegal” (clauses 17-18)*

10. Clause 18 creates an offence of driving whilst in the UK unlawfully, attracting a maximum custodial sentence of 51 weeks and/ or a fine. The Bill provides for vehicle seizure where a person is arrested and for a court to order forfeiture on conviction. The implications of this provision can only be fully understood when considered in conjunction with search and seizure powers. Clause 17 provides a power for an authorised officer (police, immigration officers or third parties designated by the Secretary of State) to search premises - including a vehicle or residence an individual occupies or is present in when encountered – where the officer has *“reasonable grounds for believing”*: (i) an individual is in possession of a driving licence and is not lawfully resident; and (ii) the licence is on the premises. Authorisation should be sought from a senior officer where *“reasonably practicable”*. A further power in similar terms would allow police, IOs and designated third parties to search an individual for a driving licence.<sup>20</sup> The Bill also makes provision for seizure and retention of licences.<sup>21</sup>

11. The National Black Police Association has expressed real alarm at the potential of these provisions to undermine decades of vital work promoting good relations between police and the communities they serve. The NBPA has warned of:

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<sup>19</sup> Commons Hansard, 1 Dec 2015: Column 180.

<sup>20</sup> Where the officer has reasonable grounds for believing the person is not lawfully resident, is in possession of a licence and that licence may be concealed on the person.

<sup>21</sup> The driving licence must then be passed on to the Secretary of State. Where the licence is not ultimately revoked it must be returned to the holder.



an unwelcome return to the bad old days of SUS Laws...The potential impact of this legislation will be an undermining of community cohesion and a stirring up of racial hatred and suspicion between different racial and religious groups...and will result in the police becoming the whipping boy for the immigration service.<sup>22</sup>

12. Liberty is further deeply concerned about the interaction of the new offence with already lax traffic stop powers. Under section 163 of the Road Traffic Act 1988: “*a person driving a motor vehicle on a road must stop the vehicle on being required to do so by a constable in uniform*”. This power is not currently subject to the requirements of the PACE Code of Practice and does not require an officer to have a particular reason to stop a motor vehicle nor for the officer to explain why he or she has carried out the stop. In 2014, as part of her drive to combat discriminatory police stop and search the Home Secretary commissioned HMIC to review police use of section 163 RTA.<sup>23</sup> Given that there is no national recording requirement, HMIC was unable to provide information on the volume of traffic stops each year. HMIC asked forces to conduct self-assessments of their use of the RTA power and found that only 3 police forces have a policy on its use and only two forces reported that they collected and recorded information about the use of the power. HMIC further commissioned a survey of 10,094 members of the public about the use of the power. The survey indicates that 7-8% of white drivers who responded were stopped in their vehicles in the last two years compared with 10-14% of Black and minority ethnic drivers. The survey also suggested that BME drivers were more likely not to be provided with a reason for the stop and are more likely to have their vehicle searched. Yet, white drivers are proportionately more likely than BME drivers to be arrested or prosecuted which suggests that BME drivers are more likely to be stopped for no reason. 73% of Black respondents agreed or strongly agreed with the statement that the police unfairly target people from ethnic minorities for traffic stops.

13. As no reason is required to conduct a traffic stop, there is nothing to prevent routine stops to ascertain immigration status backed up by intrusive search and seizure powers. During Commons consideration, Met Chief Superintendent, David Snelling, told the Public Bill Committee:

We have a power to stop any vehicle to ascertain ownership and driver details. What

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<sup>22</sup> NBPA Press Release, Monday 14<sup>th</sup> December 2015: <http://www.nbpa.co.uk/wp-content/uploads/2015/12/Final-NBPA-Press-statement-Immigration-Bill-14-December-2015.pdf>.

<sup>23</sup> HMIC, *Stop and search powers 2: are the police using them effectively and fairly?*, March 2015. Available at: <https://www.justiceinspectorates.gov.uk/hmic/wp-content/uploads/stop-and-search-powers-2.pdf>.

we would then do is inquire into whether the driver has authority to drive that vehicle.... To fall within the provisions of the Bill, we would most likely need to do a further check with the immigration authorities, which at that stage would give us reasonable grounds—whether or not you could use the term “proof” is another thing—based on a search on the immigration database, to believe that that person is driving as an illegal immigrant.<sup>24</sup>

14. As this evidence demonstrates, the Bill would effectively add routine immigration checks - backed up by intrusive search and seizure powers – into a traffic stop regime which is already seen as operating in a discriminatory fashion.

15. As observed by the NBPA, the potential of clauses 17 and 18 to foster distrust and disharmony between police and the public is startling. Liberty is disappointed that a Home Secretary who has taken significant steps towards resolving issues of discrimination associated with stop and search, would pursue a measure which will damage race relations and undermine trust in the police. **Liberty urges Peers to oppose the divisive and damaging provision set out at clauses 17 and 18 of the Bill.**

#### *Speculative spot-checks*

16. Liberty further urges Peers to use the Bill as an opportunity to raise longstanding concerns about a freestanding power, claimed by the Home Office, to conduct stops to ascertain the immigration status of an individual away from the border.<sup>25</sup> The Home Office takes the 1987 case of *Singh v Hammond* as authority for the proposition that examinations under Schedule 2, paragraph 2 of the Immigration Act 1971 of those ‘*who have arrived in the United Kingdom*’<sup>26</sup> can be carried out in-country. At Chapter 31 of the Home Office Enforcement Instructions and Guidance, the Department sets out the grounds on which it believes that reasonable suspicion can be formulated:

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<sup>24</sup> Bill Committee evidence, Q145, Afternoon 20<sup>th</sup> October.

<sup>25</sup> When Liberty first heard of speculative street and transport hub-based operations being conducted in 2012 we wrote to the then UKBA questioning the authority for the practice. UKBA then suspended the operations nationwide and reviewed its guidance. The operations were then re-instated - with amended guidance –at the end of 2012. We understand that the Guidance was amended again following the high profile public backlash against the use of the powers over summer of 2013.

<sup>26</sup> Immigration Act 1971, sub-paragraph 2(1). In *Singh v Hammond*, the Court of Appeal held that a Schedule 2, paragraph 2 in-country examination can take place away from the place of entry if the immigration officer has some information which causes him to inquire whether the person is a British citizen and if not whether he may enter without leave or should be given leave. The Court of Appeal in this decades old judgement, however, was clear that “the case does turn very much on its own facts” which involved an immigration amnesty and an IO’s specific and defined suspicion of identity deception.

Reasonable suspicion that an individual may be an immigration offender could arise in numerous ways but an example might be where an individual attempts to avoid passing through or near a group of IOs who are clearly visible, wearing branded Home Office clothing, at a location which has been targeted based on intelligence suggesting that there is a high likelihood that immigration offenders will be found there. This behaviour could not necessarily be considered to be linked to, for example, evading payment of the train fare if IOs are wearing vests or other items of work wear which clearly show which agency they belong to. In such circumstances the IO could legitimately stop the individual and ask consensual questions based on a reasonable suspicion that that person is an immigration offender.<sup>27</sup>

17. It is on the basis of this woefully lax interpretation of reasonable suspicion and a spurious extrapolation of a 1987 judgment that the Home Office first started running divisive in-country fishing expeditions in ethnically diverse areas of the UK. When Liberty objected to the operations in 2012, UKBA suspended them nationwide and reviewed its guidance. The operations were then re-instated - with amended guidance - culminating in the controversial and divisive operations in London in August 2013. Anecdotal evidence suggests that members of ethnic minorities were targeted during these operations which led to public outcry.

18. As it introduces a raft of new enforcement powers for immigration officers and disturbing new criminal offences backed up with intrusive search and seizure powers, the Government can hardly claim that immigration officers are short on powers. **Liberty urges Peers to push for a statutory restriction on the ability of immigration officers to conduct speculative in-country stops.**

### **The 'hostile environment' – exploitation, abuse and destitution**

19. This Bill will certainly help to create the 'hostile environment' the Government craves, with undocumented workers criminalised and pushed into abusive and exploitative employment and mainstream asylum support provision removed from many families with small children. It is clear that the Government views destitution as a legitimate way of enforcing removal and deterring migrants from coming to the UK. This approach not only ignores the evidence, it demonstrates a callousness which is increasingly coming to characterise UK immigration and asylum policy.

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<sup>27</sup> Home Office Enforcement Guidance and Instructions, paragraph 31.19.4.

*Offence of illegal working (clause 8)*

20. Clause 8 of the Bill creates a stand-alone offence of illegal working for anyone who works while unlawfully resident, or works in contravention of a requirement of leave which prohibits employment. There are already a range of criminal offences on the statute book to deal with those who enter the country illegally, overstay or breach conditions. The Chief Inspector of Borders and Immigration has remarked on the lack of enforcement activity:

Section 24 of the Immigration Act 1971, under which those without leave to remain may be prosecuted as overstayers, is seen as ineffective by enforcement staff and is very rarely used: annual convictions for overstaying, for example have been in single figures for the last five years.<sup>28</sup>

21. The Immigration Minister confirmed, during Committee consideration of the Bill in the Commons, that the primary response to the discovery that an individual is in the UK illegally is to seek remove rather than to pursue a prosecution. An offence criminalising working is therefore an unnecessary distraction from the fair and lawful pursuit of removal, in addition to heightening vulnerability to exploitation and abuse.

22. In a 2014 Report discussed extensively during Committee consideration of the Bill, the Migration Advisory Committee emphasised the extent of the exploitation of migrant workers:

We were struck on our visits around the country by the amount of concern that was expressed by virtually everyone we spoke to about the exploitation of migrants in low-skilled jobs...During our visits to places which had experienced relatively high levels of migrants the point that migrant workers are more likely to be exploited than resident workers as they are not aware of their rights and are afraid they may be sacked/evicted/deported if they complain was raised on a number of occasions.<sup>29</sup>

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<sup>28</sup> Independent Chief Inspector of Borders and Immigration, *'An Inspection of Overstayers: How the Home Office handles the cases of individuals with no right to stay in the UK'*, May-June 2014.

Available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/387908/Overstayers\\_Report\\_FINAL\\_web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/387908/Overstayers_Report_FINAL_web.pdf) 9.7.

<sup>29</sup> *Migrants in low-skilled work*, Migration Advisory Committee Full Report July 2014, paragraphs 6.68 and 6.72. Available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/333083/MAC-Migrants\\_in\\_low-skilled\\_work\\_Full\\_report\\_2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/333083/MAC-Migrants_in_low-skilled_work_Full_report_2014.pdf).

23. Clause 8 carries grave consequences for victims of trafficking and other forms of exploitation. The Government argues it is committed to tackling modern day slavery, but Focus on Labour Exploitation has made clear that proposals to criminalise vulnerable workers will create *“the perfect conditions for the exploitation of migrant workers to thrive. We know that exploitation depends on worker vulnerability, marginalisation and fear – which will be the consequence of these new measures.”*<sup>30</sup>

24. For the employers willing to take the risk for the financial benefits of an illegal workforce, criminalisation of the worker plays into a narrative of coercion and control. Their hand will be strengthened by the introduction of a new criminal offence targeting working in particular, which will add force to threats that individuals must accept dire conditions or face not only removal but also criminal sanction. **Liberty urges Peers to oppose the creation of a free-standing offence of illegal working, which will leave the already vulnerable more open to abuse and exploitation.**

*Removal of section 95 asylum support from families with small children (Schedule 8)*

25. Asylum seekers are not allowed to work in the UK, save for limited provision for those waiting over a year for a decision on their asylum claim. The support provided to those still within the asylum system - and hitherto to families whose claims have been rejected - is provided under section 95 of the Immigration and Asylum Act 1999. This asylum support was set at a bare minimum and has since been significantly reduced. The Bill now provides for the blanket removal of section 95 asylum support from families once an asylum claim has been finally rejected.<sup>31</sup> Families with young children will have to attempt to attempt to access even lower levels of support currently provided under section 4 of the 1999 Act discussed in more detail below.<sup>32</sup> This exclusion of support follows drastic cuts in support payments for asylum seeking families introduced earlier this year.<sup>33</sup> In the frantic bid to introduce ever

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<sup>30</sup> Focus on Labour Exploitation, *‘UK IMMIGRATION BILL COULD CREATE PERFECT CONDITIONS FOR MODERN SLAVERY WARNS FLEX’*, 25th August 2015. Available at: <http://www.labourexploitation.org/#!/UK-IMMIGRATION-BILL-COULD-CREATE-PERFECT-CONDITIONS-FOR-MODERN-SLAVERY-WARNS-FLEX/chyn/55dc340e0cf20831ee3da673>.

<sup>31</sup> See Schedule 8, paragraph 7. Currently, under section 95 of the Immigration and Asylum Act 1999 (“the 1999 Act”) accommodation and financial support is available to those with ongoing asylum claims, where they are destitute, or liable to become so within a 14 day period. Section 94(5) provides for this support to continue to be provided to families after an asylum claim has been finally rejected where the household includes minor, dependent children born prior to the final determination of an asylum claim.

<sup>32</sup> Replaced by new section 95A as in inserted by the Bill at Schedule 8, paragraph 9.

<sup>33</sup> In August, section 95 support for a couple with two children fell from £178.44 to £147.80 and for a couple with one child from £125.48 to £110.85. Support for a single parent with two children fell from £149.86 to £110.85 and for a single parent with one child from £96.90 to £73.90.

more severe and biting hardships, the Government is willing to see children left without the basic necessities of life.

26. The Government argued in its recent consultation document that the removal of asylum support is a way to “reinforce our immigration controls” and suggested that, when support is removed, “some failed asylum seekers will necessitate less enforcement activity”.<sup>34</sup> In the Impact Assessment accompanying the consultation proposals, however, the Government acknowledged that the prospect of behavioural change is too speculative to form part of a cost-benefit analysis of the proposals:

...the financial value of support available is small in comparison to the benefits of living and working in the UK, and as the behavioural response to the withdrawal or restriction of support is difficult to evidence, even after changes have been introduced, we have not made any estimate of additional savings resulting from any behavioural response to the measures proposed.<sup>35</sup>

27. The counter-productive nature of policy which relies on destitution as an enforcement tool was neatly summarised by the current Secretary of State for Work and Pensions, Iain Duncan Smith, in a 2008 report:

If asylum is refused, asylum seekers are often left without support and usually without permission to support themselves through work... It also appears that a British government is using forced destitution as a means of encouraging people to leave voluntarily. It is a failed policy: only one in five leaves voluntarily. This contrasts diametrically with Sweden, where, this year, only one in five had to be forced to leave. The rest did so voluntarily. Sweden achieves this by treating refused asylum seekers in a humane and reasonable manner...<sup>36</sup>

28. Arguments about the enforcement benefits of withdrawal or reduction of support to families are even more directly met by reference to a 2005 Home Office pilot of a current power, rarely used, to halt support for families.<sup>37</sup> That provision, much like the present

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<sup>34</sup> *Reforming support for failed asylum seekers and other illegal migrants: Impact Assessment*, page 5 and 13.

<sup>35</sup> *Impact Assessment*, page 6.

<sup>36</sup> *Restoring Trust in the UK Asylum System*, The Centre for Social Justice: Asylum and Destitution Working Group, December 2008. Preface by Iain Duncan-Smith at page 4.

<sup>37</sup> Section 9 of the Asylum and Immigration (Treatment of Claimants) Act 2004. Explored in *FAMILY ASYLUM POLICY THE SECTION 9 IMPLEMENTATION PROJECT*. Available at:

proposal, was justified as an enforcement measure. Data collected at the end of the year-long pilot period, however, found that those subject to the power to remove support were no more likely to leave the UK than a control group, but that those in the pilot group were almost twice as likely to have their asylum support removed. Significantly, the evaluation report also noted that, “[e]vidence suggests a significant number of the families may have absconded from accommodation because of concerns about the section 9 process”.<sup>38</sup> Unsurprisingly, the Home Office concluded that the power to remove section 95 support from families:

...did not significantly influence behaviour in favour of co-operating with removal... this suggests that the section 9 provision should not be seen as universal tool to discourage departure... We therefore do not propose that the section 9 provision should be used on a blanket basis by Border and Immigration Agency case owners in the future.<sup>39</sup>

29. The recommendation was that a power to remove support should be retained and could be considered on a case-by-case basis by case-owners if it was felt this could encourage removal in particular circumstances. 8 years on from the publication of this analysis of the evidence, the Government seeks to introduce a broader measure than that piloted in 2005. The changes set out in the Bill offer similarly poor prospects of facilitating removal but carry crushing and far-reaching human consequences. **Liberty urges Peers to call for the continuation of section 95 support for families while they remain in the UK.**

*No appeal rights for those refused section 95A support (Schedule 8)*

30. Current section 4 provision for cashless support for migrants who would otherwise be destitute is repealed by the Bill and replaced with provision to be included in a new section 95A to the 1999 Act. Section 4 support is paid onto cards and is set at a lower rate than section 95 support. We anticipate a similar approach will be taken to support under section 95A where the Home Secretary decides to provide it. The Bill expressly allows for section 95A support to be provided in the form of vouchers.<sup>40</sup> Unlike section 4 support, section 95A support is to be restricted to asylum seekers whose claims have failed and their dependants, where they are destitute or likely to become so within a prescribed period, face a genuine obstacle to return and meet such other requirements as may be prescribed. Support will be

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<http://webarchive.nationalarchives.gov.uk/20140110181512/http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithasylumseekers/section9implementationproj.pdf>.

<sup>38</sup> *Family Asylum Policy: The Section 9 Implementation Project*, paragraph 2.2.

<sup>39</sup> *Family Asylum Policy: The Section 9 Implementation Project*, para 4.3.

<sup>40</sup> Schedule 6, para 10(3)).

excluded for those who have not made asylum claims, save for limited provision elsewhere in the Bill for bail accommodation and minimal related support when a person is released from detention on immigration bail.<sup>41</sup> Provision is to be for what the Secretary of State deems to be essential living needs (further prescription in this regard is left to regulations) and accommodation. Much of the detail of the section 95A scheme is left to secondary legislation, with the Secretary of State left to describe in regulations what criteria must be met in determining whether or not to provide support or to continue to do so; what condition must be met to access support; what amounts to a genuine obstacle to return; and the extent of support, including making particular provision for a class of cases.

31. Significantly, there will be no right of appeal against a decision to refuse or discontinue support. During Commons consideration of the Bill, Shadow Immigration Minister, Sir Keir Starmer, sought to draw attention to the high error rate in Home Office decision making on asylum support. From September 2014 to August 2015, the Asylum Support Tribunal received 2,067 applications for appeals against Home Office refusal of support. 62% of those succeeded due to a successful appeal (44%) or the remittal of decisions to the Home Office for an erroneous decision to be re-taken (18%).<sup>42</sup> Furthermore, the Asylum Support Appeals Project records:

In 2014–15 ASAP assisted 674 appellants, of which 64.5% were able to access support as a result of their appeal. In the first quarter of 2015-16 (April – June) ASAP assisted 221 appellants, 73% of which either won their appeal or had it remitted resulting in them accessing support they had previously been denied.<sup>43</sup>

32. To ensure a bare minimum of protection against widespread destitution caused by administrative error, **Liberty urges Peers to call for the inclusion of a right of appeal against the refusal of section 95A support.**

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<sup>41</sup> Schedule 5, paragraph 7 reinserts some of the provision made at section 4 of the Immigration and Asylum Act 1999. It provides for the Secretary of State, in exceptional circumstances, to arrange for “*facilities for accommodation*” to be provided to a person released on bail where the Secretary of State has provided the bail address and the person would not, without this intervention, be able to support him or herself at the address. As under section 4, where a person is able to stay with a friend or family member and so names a bail address of his or her on choice, they would not qualify for any assistance. A payment may be made to the individual – again only in exceptional circumstances - to allow them to comply with other conditions of bail.

<sup>42</sup> Public Bill Committee, 5<sup>th</sup> November, Column number: 415.

<sup>43</sup> ASAP’s response to ‘Reforming support for failed asylum seekers and other illegal immigrants’. Available at: <http://www.asaproject.org/wp-content/uploads/2015/09/ASAP-response-to-HO-Consultation-on-Asylum-Support-7-9-15.pdf>



### *The prohibition on working for asylum seekers*

33. Proposed changes to asylum support do not constitute an effective means of enforcement or deterrence and the savings they create for central Government will largely be transferred to local authorities. If the Government seeks to find financial savings from the asylum support system there are many more constructive and humane ways to do so, most obviously by allowing more asylum seekers to work whilst their claims are processed, generating additional tax revenue and significant savings from the asylum support system. Amendments calling for asylum seekers to be able to work where claims are not determined within six months – the Home Office target time for a decision on asylum claims - were tabled at Committee and Report stage in the Commons. During the Committee debates, the Shadow Immigration Minister, Sir Keir Starmer, stressed that:

One of the injustices here is that those who have to exist on the low rates that the Committee has just discussed must do so under a system that prohibits them from working. More than 3,600 asylum seekers currently wait more than six months for an initial decision on their cases. They are the individuals surviving on just over £5 a day...<sup>44</sup>

34. At Report Stage, an amendment tabled by Liberal Democrat Home Affairs Spokesperson, Alistair Carmichael, calling for asylum seekers to be able to work after six months received strong support from the SNP front bench.<sup>45</sup> **Liberty urges Peers to call for a change in the rules to allow asylum seekers to work if their asylum claim is not determined within the Home Office target time of six months.**

### **Human rights not citizens' privileges**

35. If human rights are to mean anything they must be accessible to everybody in this country. The trend towards deprivation of rights on the grounds of nationality is continued in the Bill with the removal of in-country appeal rights for those seeking to rely on human rights protections before the Immigration and Asylum Tribunal. The resurrection, in April 2012, of the notorious tied visa for overseas domestic workers removed vital protections against modern day slavery for overseas domestic workers. This Bill is an opportunity to end the tied

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<sup>44</sup> Public Bill Committee, 10<sup>th</sup> November, Column number: 458.

<sup>45</sup> "My colleagues and I recognise that this is a positive step forward, and it has our backing." Stuart McDonald, Commons Hansard, 1 Dec 2015 : Column 246.

visa for overseas domestic workers in line with the recommendation of James Ewins published on 17<sup>th</sup> December.<sup>46</sup> The use of limitless immigration detention remains one of the great stains on this country's human rights record. The right not to be deprived of liberty without due process protections found expression in the Magna Carta and has been a mainstay of both common law and statute from the Habeas Corpus Act of 1679 to the Human Rights Act 1998 ("the HRA"). There is now broad consensus inside and outside of Parliament on the need for a time-limit.

#### *Removing in-country appeal rights (clause 34)*

36. Clause 34 of the Bill deals with appeal rights, dramatically extending a system of Home Secretary certification resulting in the removal of in-country appeal rights. The 2014 Act introduced certification and the removal of in-country appeal rights to deportation appeals raising human rights issues.<sup>47</sup> The present Bill proposes the extension of these provisions to all immigration appeals (not asylum). Part 4 of the Bill is designed to target Article 8 cases involving the right to respect for private and family life. Where a claim to remain in the UK to reside with, for example a British spouse, a minor child or an elderly relative requiring care, is refused by the Home Office, the applicant will be forced to return to his or her country of origin and to attempt to bring an appeal from there, save where the Home Office considers that removal itself would represent a human rights violation.<sup>48</sup>

37. If implemented, these proposals will not only result in the temporary separation of families for many months while appeal hearings are allocated and appeals determined, it will substantially reduce the prospect of fair hearings, leading to permanent injustice. Many family life cases are refused by the Home Office on the grounds that it does not accept the genuineness of a relationship. It is hard to fathom how a couple would be able to establish the strength and genuineness of their relationship with one party excluded entirely from proceedings. This situation is exacerbated by well-acknowledged practical difficulties of

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<sup>46</sup> James Ewins, *Independent Review of the Overseas Domestic Workers Visa*, 16<sup>th</sup> December 2015. Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/486532/ODWV\\_Review\\_-\\_Final\\_Report\\_6\\_11\\_15\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486532/ODWV_Review_-_Final_Report_6_11_15_.pdf).

<sup>47</sup> Section 94B of the Nationality, Immigration and Asylum Act 2002 removes the in-country appeal right wherever the Home Secretary 'considers' that removal would not breach human rights. This requirement is elaborated at subsection 94B(3) as including, in particular, a conclusion that removal would not expose the appellant to 'a real risk of serious irreversible harm'.

<sup>48</sup> Nationality, Immigration and Asylum Act. ss 94(3)B and in particular where the Home Secretary considers there is "a real risk of serious and irreversible harm"

accessing and using video link technology in an appeal. Individuals further have no access to legal aid for the purposes of appeals on Article 8 grounds.<sup>49</sup>

38. All this must be seen in the context of notoriously low quality Home Office decision making. Tribunal statistics 2014-2015, reveal that 40% of immigration and asylum appeals were allowed by the First Tier Tribunal. In the face of consistent reports of bad administration, inefficiency and poor-quality decision making, rather than attempting to improve the system, the Government apparently wishes to insulate itself from effective challenge. Long-standing concerns about the quality of Home Office decision making further mean that assessments of whether serious and irreversible harm would be occasioned by removal simply cannot be relied upon. The possibility of raising a challenge to unlawful certification in judicial review proceedings remains at the moment, but if the residence test for access to legal aid is ultimately implemented, it will not be practically possible for an individual to challenge a Home Office decision to certify. An inability to challenge the assertion that an individual's human rights will be violated by return will lead to obvious and irreversible harm. **Liberty urges Peers oppose the removal of in-country appeal rights which will render the courts inaccessible to many and risk wide-spread human rights violations.**

#### *The tied visa and overseas domestic workers*

39. Liberty was deeply critical of changes to the Domestic Overseas Workers Visa, introduced in April 2012, which provide for domestic workers to be tied to their employers. We warned that it would institutionalise abuse and force already vulnerable workers into a position of exploitation or destitution. Following an intense Parliamentary battle during the passage of the Modern Slavery Act 2015, Peers voted through an amendment that would ensure that these vulnerable individuals are able to change their employer, renewing their visa at annual intervals whilst they remain in employment. This progress was undone in the Commons, but the Government commissioned expert, James Ewins, to conduct an independent review in March 2015. He was asked to assess how far existing arrangements for the admission of overseas domestic workers are effective in protecting workers from abuse and exploitation, and to make recommendations. The Ewins Report, published by Government on 17<sup>th</sup> December after a protracted period of Home Office delay, stated in no uncertain terms:

the existence of a tie to a specific employer and the absence of a universal right to

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<sup>49</sup> Save in the event that exceptional funding.

change employer and apply for extensions of the visa are incompatible with the reasonable protection of overseas domestic workers while in the UK.<sup>50</sup>

40. The Report recommends that ODWs be entitled to change employer and apply for annual extensions of their visa up to a total period of 2 ½ years. James Ewins made clear that:

...for those who are abused in any way at all, the universal right will give them a real and practical way out of that abuse without the current possibility of a subsequent precarious immigration status and threat to livelihood.<sup>51</sup>

41. If the Government will not respond to the recommendations of this expert review, Liberty urges parliamentarians to push for an amendment to the current Bill bringing this inhumane system to an end. The tied visa overturned rules in place for over 14 years which allowed domestic workers to switch employer – but not work sector - once they were in the UK and has had no effect on the number of people arriving each year on domestic worker visa (a tiny fraction of the overall migration figure).<sup>52</sup> James Ewins is not alone in calling for this long overdue change. The Joint Committee on the Draft Modern Slavery Bill took evidence from a wide range of individuals and organisations and concluded that:

In the case of the domestic workers visa, policy changes have unintentionally strengthened the hand of the slave master against the victim of slavery. The moral case for re-visiting this issue is urgent and overwhelming.<sup>53</sup>

42. It recommended that:

the Home Office reverse the changes to the Overseas Domestic Worker Visa. This would at the very least allow organisations and agencies to remove a worker from an abusive employment situation immediately. It would also enable the abuse to be reported to the police without fear that the victim would be deported as a result. This in turn would facilitate the prosecution of modern slavery offences.<sup>54</sup>

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<sup>50</sup> Ewins Report, paragraph 10.

<sup>51</sup> Ewins Report, paragraph 12.2.

<sup>52</sup> This figure has stayed largely constant notwithstanding the change made in 2012. See the Ewins Report, page 54. 2008: **16,659** , 2009: **14,890** , 2010: **15,360** , 2011: **16,209** , 2012: **15,548** , 2013: **16,511** , 2014: **16,756**.

<sup>53</sup> Joint Committee on the Draft Modern Slavery Bill, Report Session 2013–14. Paragraph 5.

<sup>54</sup> Ibid., paragraph 51.

43. In 2014, the Joint Committee on Human Rights further stressed:

We regard the removal of the right of an Overseas Domestic Worker to change employer as a backward step in the protection of migrant domestic workers, particularly as the pre-2012 regime had been cited internationally as good practice. We recommend that the [Modern Slavery] Bill be amended to reverse the relevant changes to the Immigration Rules and to reinstate the pre-2012 protections in the Bill.”<sup>55</sup>

44. On the 2<sup>nd</sup> December 2015, The London Assembly joined the fight for an end to the tied visa system, calling on the Mayor of London to make the case to the Home Secretary for its repeal.<sup>56</sup>

45. The experience of nearly 4 years of the new tied visa shows that exploitation of domestic workers has increased. Kalayaan – the lead organisation providing assistance to migrant domestic workers in the UK – registered 188 domestic workers between 1<sup>st</sup> April 2014 and 31<sup>st</sup> March 2015. Kalayaan found that:

Of those 188 workers, reports of abuse made by 64 tied workers are proportionately consistently higher than the (also unacceptably high) levels reported by the 124 other workers.<sup>57</sup>

46. Specifically 28% of those on the tied visa reported abuse compared to 11% of those who weren't tied. 68% of tied workers report being prohibited from leaving the house freely compared to 38% from the untied group. 70% of tied workers had no time off compared to 49% of the other domestic workers. These statistics show that the eradication of a tied visa is an absolutely essential first step in the battle against the abuse and exploitation of ODWs.

47. Overseas domestic workers are uniquely vulnerable, frequently coming as from backgrounds of extreme poverty and dependent on their employer for both accommodation

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<sup>55</sup> Joint Committee on Human Rights, Legislative Scrutiny: (1) Modern Slavery Bill and (2) Social Action, Responsibility & Heroism Bill, Third Report of Session 2014-15, published 13<sup>th</sup> November 2014, available at - <http://www.publications.parliament.uk/pa/jt201415/jtselect/jtrights/62/62.pdf>.

<sup>56</sup> London Assembly, *Release Migrant Workers from Tied Visas*, 2<sup>nd</sup> December. Available at: <https://www.london.gov.uk/press-releases/assembly/release-migrant-workers-from-tied-visas>.

<sup>57</sup> Kalayaan, *Migrant domestic workers in the UK three years after the introduction of the tied Overseas Domestic Worker visa*, May 2015. Available at: <http://www.kalayaan.org.uk/wp-content/uploads/2014/09/Kalayaan-3-year-briefing.pdf>.

and wages. The tied visa leaves them even more vulnerable – making them dependent on their employer for their immigration status and ability to lawfully remain in the UK. The tied visa allows abusive employers to act with impunity as workers are much less likely to report their actions to the police for fear of deportation choosing instead to sustain ill-treatment or remain in the UK undocumented. In a 2014 report on the experiences of migrant domestic workers, Human Rights Watch report that “*several migrant domestic workers who had escaped cited fear of police discovering their undocumented status as the main reason they did not file a complaint*”.<sup>58</sup> Tied visas are a mechanism well known to regimes with shameful records on human rights and particularly the rights of women. There may be a limited amount we can do secure the safety of the vulnerable women held and treated as slaves by their employers in Qatar, but we can fight against slavery on our own soil. **Liberty urges Peers to call for an end to tied visa system for overseas domestic workers.**

#### *Limitless immigration detention*

48. There now a growing consensus both inside and outside of Parliament that it a time-limit on immigration detention is desperately needed. In March, the cross-party Parliamentary Inquiry into Immigration Detention in the UK (“the Inquiry”) recommended a 28 day limit, concluding:

The United Kingdom is an outlier in not having a time limit, both within the EU and further afield, on the length of time an individual can be detained for immigration purposes... detainees are held indefinitely, which creates a stressful and anxious environment. This has significant mental health costs for detainees. Additionally, long-term detention is not correlated with an increase in the likelihood that the Government will be able to effect removal – indeed the opposite is true.<sup>59</sup>

49. The Inquiry’s recommendations were endorsed by the House of Commons following a detailed debate on 10<sup>th</sup> September. The unanimous motion calling for a positive response to the Inquiry’s findings and the overwhelming support voiced throughout the debate shows just how far we have come on this issue. Fifteen years after the detained fast track was introduced by Tony Blair’s Government, Labour MPs rose to proudly support the Party’s manifesto commitment to end unlimited detention. SNP members were unanimous in their calls for what Spokesperson for the Scotland Office, Margaret Ferrier, described as the need

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<sup>58</sup> Hidden Away, Abuses against Migrant Domestic Workers in the UK, 31 March 2014, available at - [http://www.hrw.org/sites/default/files/reports/uk0314\\_ForUpload.pdf](http://www.hrw.org/sites/default/files/reports/uk0314_ForUpload.pdf).

<sup>59</sup> Ibid., page 24.

to “introduce some humanity into the cold mechanics of the home office”.<sup>60</sup> Liberal Democrat Alistair Carmichael was similarly unequivocal – if he could make one change to the system it would be to place a time limit on detention.<sup>61</sup> Whilst all those who spoke did so with courage and conviction, the real wake-up call for Government lies in the number and strength of contributions from its own benches. Senior conservative backbenchers, Richard Fuller and David Burrowes, sponsored the debate along with Labour colleague Paul Blomfield – all three served on the parliamentary inquiry and were scathing in their critique of the detention system.

50. Passionate opposition to limitless detention has continued at every stage of the Commons passage of the Immigration Bill. At Report stage an amendment calling for a strict 28 day limit was supported by Conservative, Labour, SNP, Liberal Democrat and Green MPs and extensively debated. Conservative Richard Fuller told the House this was an issue central to his ethical code. He spoke of the British sense of justice, and of the appetite across Parliament for reform of our inhumane detention system.<sup>62</sup> He was joined in his calls for reform by Conservative colleague David Burrowes, who invoked respect for British traditions of fair play and highlighted the many vulnerable people who end up in detention, including pregnant women and victims of torture. SNP lead Stuart McDonald told the House his party wanted to move immediately towards a 28-day limit and Shadow Immigration Minister, Sir Keir Starmer, reminded MPs of the words of the cross-party Inquiry: “*We believe that the United Kingdom has a proud tradition of upholding justice and the right to liberty. However, the continued use of indefinite detention puts this proud tradition at risk.*”<sup>63</sup>

51. In August, in a harrowing report into the systemic failings at Yarl’s Wood IRC, HMIP added its voice to the growing consensus that limitless detention must end.<sup>64</sup> HMIP found the centre failed to meet the most basic standards of safety and respect for detainees. Healthcare standards had deteriorated markedly since the last inspection, with physical and mental health needs unmet. Medical assessments were woefully inadequate. Overall, HMIP found “*a corrosive culture of disbelief*”. The majority of staff in contact roles were men, with male officers undertaking intimate health assessments, “*barging into bedrooms unannounced*”, present during rub-down searches and “*inappropriately used to provide constant support for women in acute crisis*”. The report also revealed that, of 894 women

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<sup>60</sup> Commons Hansard, 10 Sep 2015 : Column 586.

<sup>61</sup> Commons Hansard, 10 Sep 2015 : Column 582.

<sup>62</sup> Commons Hansard, 1 Dec 2015 : Column 191.

<sup>63</sup> Commons Hansard, 1 Dec 2015 : Column 186.

<sup>64</sup> *Report on an unannounced inspection of Yarl’s Wood Immigration Removal Centre*, HM Chief Inspector of Prisons, 13 April – 1 May 2015. Available at: <https://www.justiceinspectors.gov.uk/hmiprisons/wp-content/uploads/sites/4/2015/08/Yarls-Wood-web-2015.pdf>.

released from immigration detention in the six months before inspection, just 443 were ultimately removed. The reality is that immigration detention is not an effective tool to facilitate removal. It's simply a waste of public funds and a futile assault on individual liberty.

52. The situation at Yarl's Wood is inexcusable, but it has arisen because the system is fundamentally inhumane. The desperation, self-harm and trauma documented result from unlimited incarceration of vulnerable people purely for the administrative convenience. Detention without limit is always an invitation to abuse - and the most vulnerable suffer the most.

53. Current policy stipulations which dictate that detention should be "*used sparingly and for the shortest period necessary*" have proved meaningless in practice.<sup>65</sup> The UK has one of the largest detention estates in Europe and in 2013/14 the cost of running it estate stood at £164.4 million. The longer an individual is detained, the less likely it is that that person's detention will end in removal.<sup>66</sup> Of the 178 people detained for 12 months or more and released from detention in the year ending March 2015, 38% were removed compared to the 57% ultimately released.<sup>67</sup> In recent years the Home Office has repeatedly been found to have unlawfully detained individuals for protracted periods. In 2014, the High Court found the 11 month detention of a woman seeking to join her husband in the UK under the refugee family reunion rules to be a violation of both Article 5 (right to liberty) and Article 3 (freedom from torture, inhuman and degrading treatment) as protected by the Human Rights Act.<sup>68</sup> In 2012, the Court of Appeal found that a claimant of disputed nationality, detained for an overall period of 22 months, had been unlawfully detained in circumstances where there was insufficient prospect of removing him within a reasonable period.<sup>69</sup> In the same year, the Home Office were found to have falsely imprisoned a Zimbabwean man detained under immigration powers over a 13 month period when he could not be returned due to a Government policy to suspend removals.<sup>70</sup> Between 2011 and 2014, £15 million was paid out in compensation for unlawful detention.

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<sup>65</sup> Home Office Enforcement Instructions and Guidance, Chapter 55.1.3.

<sup>66</sup> Report, page 23.

<sup>67</sup> Immigration Statistics, paragraph 13.3. Available at: <https://www.gov.uk/government/publications/immigration-statistics-january-to-march-2015/immigration-statistics-january-to-march-2015>.

<sup>68</sup> *R (MD) v Secretary of State for the Home Department* [2014] EWHC 2249 (Admin).

<sup>69</sup> *Bizimana, R (on the application of) v Secretary of State for the Home Department* [2012] EWCA Civ 414 (02 April 2012).

<sup>70</sup> *AM v Secretary of State for the Home Department*, Central London County Court, 2012, judgment available at:



54. Immigration detainees further have no automatic right to have their detention reviewed by the courts. Instead new arrivals must wait a week before they are permitted to apply to for bail; if no application is made, detention is not reviewed by the Tribunal.<sup>71</sup> The requirement that a detainee initiate a bail application is practically concerning, particularly for the significant number of detainees with poor or no literacy, who speak no English or who have mental health problems. At a more general level, concerns have been repeatedly expressed about failures to adequately explain the existence of, and the procedure for, accessing immigration bail.<sup>72</sup> Liberty supports the Parliamentary Inquiry on the Use of Immigration Detention's calls for the introduction of a "*robust system for reviewing the decision to detain early in the period of detention.*"<sup>73</sup> Increased judicial oversight would ensure that the decision to detain is treated with the gravity it deserves. A time limit would help to reduce ineffective case-working and poor practice, which is a major contributor to protracted detention.<sup>74</sup>

55. Liberty believes that the use of limitless detention – unashamedly for administrative convenience and far removed from the enforcement of removal decisions – represents one of the greatest stains on this country's human rights record in recent decades. **We Peers to call for a statutory time-limit on immigration detention of 28 days as an absolute minimum of protection. We further hope Peers will draw attention to the need for automatic bail hearings and regular judicial oversight of detention.**

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<sup>71</sup> Immigration Act 1971, Schedule 2, paragraph 22(1)(a) and (1B).

<sup>72</sup> In a December 2012 report, HM Inspectorate of Prisons and the Independent Chief Inspector of Borders and Immigration remarked: "*During our interviews, we were surprised that of those detainees held for more than six months, nine (19%) said they had never made a bail application. This may have been because detainees were unaware of bail processes and/or had poor legal advice. A number of detainees said they did not know how to apply for bail or clearly needed help to navigate the process.*" *The effectiveness and impact of immigration detention casework: A joint thematic review by HM Inspectorate of Prisons and the Independent Chief Inspector of Borders and Immigration*, December 2012, para 4.9.

<sup>73</sup> *The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom*, 3 March 2015, available at: <https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf>. Page 9.

<sup>74</sup> A team leader from the Prisons Inspectorate told the Inquiry that "*a quarter of the prolonged detention cases they looked at were as a result of inefficient case-working*". *Ibid.*, pg 19.