

UK Legislation may lead to Inhuman and Degrading Treatment

Humankind cannot bear very much reality – For TS Eliot, this reality was the tension between “the heavy burden of the growing soul”, and the “shaft of sunlight” which provides illumination. Part of our Quaker role is to find that “shaft of sunlight” which, rather than lure us into the belief that our world is unbroken, will help us to face head-on the desecration which we see all around us, including in our own country. Instead of being in denial about the direction in which we are heading, we will be able to call things by their name, unmask the powers which seem to be in control, and make our small contribution to improving the state of the world.

This Briefing focuses on two frightening developments in UK legislation –the **Nationality and Borders Bill**, which has as its primary aim to remove the possibility of a successful asylum claim for individuals who make their own way to the UK; and the **Police, Crime, Sentencing and Courts Bill**, which is ultimately about state control and will open the gates for degrading treatment to those who are caught in its net.

Nationality and Borders Bill ¹

Q-CAT has reported in the past on the way the UK’s treatment of asylum-seekers is in breach of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (see Briefings No 68, April 2021, No 47 October 2015, No 41 April 2014)

The proposed legislation will severely curtail the rights of refugees to enter the UK and is a fundamental rejection of the principle of refugee protection. Any refugee who has not benefited from a place on a resettlement programme is likely to have their claim declared inadmissible and be expelled. If any status is eventually granted, this will only be temporary with restricted rights to support and family reunification. It makes provision for the offshore processing of asylum applications. It introduces severe penalties which will criminalise asylum-seekers for exercising their legal right to seek asylum. If this legislation is passed, it will be challenged in the courts at all levels, which will not only be expensive for the government but will throw asylum-seekers into limbo.

Almost all aspects of this Bill should be opposed, but in this Briefing we are focusing particularly on the implications in relation to the Conventions for the Prevention of Torture and Inhuman or Degrading Treatment to which the UK is a signatory. Here, we simply report the facts and will leave it up to our readers to decide whether or not these attitudes and proposals are worthy of a civilised country.

Threat of death to those seeking to arrive in the UK via the Channel

We have a Home Secretary who believes that people crossing the channel in dangerous small boats do so because they want to stay in our hotels. ² It is therefore not surprising that she is

¹ <https://bills.parliament.uk/bills/3023>

² <https://www.independent.co.uk/news/uk/home-news/priti-patel-asylum-seekers-channel-hotels-uk-b1946223.html>

planning to give the Border Force new powers to stop and divert vessels suspected of carrying “illegal migrants”, <https://bills.parliament.uk/bills/3023> and it is proposed that they will have indemnity in the event of these actions causing deaths of those migrants.³ The Border Force has stated that it will not carry out such instructions because of the fear that it will lead to the death of some of those attempting the crossing.⁴ Likewise, the RNLi has stated that it is prepared to risk prison sentences in order to help people crossing the Channel, as they will always help people in danger and that it would be against international law not to do so.⁵

Psychological damage to those seeking asylum

The Bill would allow asylum-seekers to be removed from the UK and held elsewhere while their asylum claims are processed. Australia has tried this model, which was declared unlawful by the International Criminal Court. It is likely to lead to very cruel treatment in the camps where the asylum-seekers would be held. The government has in any case failed to reach agreements with other countries to set up such processing centres.

Clause 10 of the Bill creates a distinction between those who come on a government-sponsored route (after being selected in the persecuting country) and those who come independently, without papers, who have passed through other countries, or who did not claim asylum immediately. As there are hardly any “official” routes, and because people fleeing for their lives do not have the luxury of choosing how they will travel, this inevitably means that most people will be deemed “irregular” and will live in constant fear of expulsion.

The Bill will be challenged at all levels in the courts and will subject the claimants to an even longer period of waiting in limbo. Those who, after possibly many years, are granted Leave to Remain for only 30 months, will have no chance to rebuild their lives or reunite with their families.

Those who are allowed to remain in the country will face a much harsher regime to determine their claim. It would raise the necessary threshold of proof to an unrealistic level, and would require decision-makers to question the claimants’ “good faith” – i.e. starting from the assumption that they are lying. Already, those making the decisions demand a degree of detail which is impossible for traumatised people thinking about events which may have happened some time ago, and they already start out from the position that people are lying. This Bill formalises and entrenches suspicion of asylum-seekers in law and is contrary to the constitutional right to be deemed innocent until proved guilty – and that by a court, not by the government or members of staff of the Home Office.

Possible imprisonment just for arriving in this country

Clause 37 of the Bill contains provisions for imprisoning those who arrive in this country by “irregular” means without good reason. The prison sentences can be up to 12 months merely for irregular entry to the UK. More severe sentences apply if someone has previously been subject to a deportation order.

The Bill will further criminalise people who have been forced to rely on smugglers in order to gain entry to the UK. They will be treated as accessories to the crime upon arrival.

The government has been clear that it wishes to remove asylum-seekers who have been classified as “illegal” as quickly as possible. However, nothing in the present international climate leads us to

³ <https://www.thetimes.co.uk/article/channel-migrants-patel-seeks-immunity-for-border-force-if-new-tactics-cause-deaths-w9n2qtqpm>

⁴ <https://www.thetimes.co.uk/article/border-force-refusing-to-turn-back-migrant-boats-8mv9mbjqw>

⁵ <https://www.ft.com/content/1c1ac60f-b4c9-4c9f-b0a0-1e9201aebca2>

suppose that removal will be a quick or easy option, given that Britain has withdrawn from the Dublin Regulations and has yet to establish its new post-Brexit authority on the world stage. It is therefore likely that increasing numbers of rejected asylum-seekers and other overstayers will experience a prolonged time in limbo and subjected to seemingly endless rounds of litigation, which will be demoralising for the claimants and damaging to their often already fragile mental health.

Inhuman and Degrading treatment in accommodation

The Bill proposes new large-scale accommodation centres, without providing details of what these would look like. However, we know from recent experience (e.g. at Napier Barracks) that these would be prison-like structures where the mental health of those held there deteriorates rapidly. There has already been a High Court ruling that this type of accommodation failed to meet minimum standards and that there was a failure to identify victims of torture and trafficking⁶, although the Home Office ignored this and decided that Napier Barracks can continue to be used for a further five years.⁷

The Jesuit Refugee Service, which worked to support people accommodated there, called the site “prison-like and isolated and frequently cold with residents often struggling to get enough to eat and suffering from chronic sleep deprivation and anxiety”.

Response to the proposed legislation

The United Nations High Commissioner for Refugees (UNHCR) took the unusual step of strongly and publicly opposing the proposed legislation, saying that if implemented, ***it will undermine the 1951 Refugee Convention and the international protection system, not just in the UK, but globally.***

Many charities and expert civil society organisations are opposed to the Bill in its totality. As many Quakers are already involved with City of Sanctuary, this is a good place to find out more about the Bill and **what action you can take:**

<https://bordersbill.cityofsanctuary.org/>

For further analysis of the Nationality and Borders Bill, see:

Joint Council for the Welfare of Immigrants:

<https://www.jcwi.org.uk/evidence-to-the-human-rights-committee-on-the-nationality-and-borders-bill>

Jesuit Refugee Service:

<https://www.jrsuk.net/eight-things-you-should-know-about-the-nationality-and-borders-bill/>

QARN (Quaker Asylum and Refugee Network) and Quakers in Britain have made a joint submission to the Joint Committee on Human Rights for its work in scrutinising the Bill.⁸

⁶ <http://www.matthewgold.co.uk/high-court-rules-home-secretary-acted-unlawfully-in-accommodating-asylum-seekers-in-inadequate-napier-barracks/>

⁷ <https://www.bbc.co.uk/news/uk-england-kent-58362536>

⁸ <https://www.quaker.org.uk/documents/quakers-submission-to-jchr>

Police, Crime, Sentencing and Courts Bill ⁹

The Police, Crime, Sentencing and Courts Bill was published in March 2021.

The Bill, which is some 300 pages long, runs to 177 sections and 20 schedules. At the time of writing, it has reached the House of Lords, where it is currently at committee stage. This will be followed by report stage and third reading. It is not possible to say how long this will take, but probably not as long as one might think given its length – the Bill cleared all stages in the House of Commons remarkably quickly!

The final stages are “Consideration of amendments”, and Royal Assent. If by the time you read this it has still not received the Royal Assent, it would be worth pressing for proper consideration of any amendments put forward by the Lords. For the most part, the Act (assuming it is passed) will come into effect when the Home Secretary decides.

The Bill is very wide ranging, but areas of particular concern include those relating to public order (part 3) and unauthorised encampments (part 4), and other provisions which would extend the authority and discretion of the police in certain circumstances.

Public order

The Bill seeks to extend the powers of the police and the Home Secretary to control public protest. Police already have the power to impose restrictions on protests which they consider likely to cause “serious public disorder, serious damage to property or serious disruption to the life of the community”. The Bill goes further, allowing the imposition of restrictions on a protest which “*may* (emphasis added) result in serious disruption to the activities of an organisation”. “Serious disruption” is not defined in the Bill; the Home Secretary will be able to make provision about the meaning of the phrase by statutory instrument.

The Bill also allows the imposition of restrictions if the noise level “may result in serious disruption to the activities of an organisation” or may “have a relevant impact on persons in the vicinity of the protest”. It also makes causing “serious annoyance or inconvenience” a crime punishable by up to ten years' imprisonment.

Unauthorised encampments

It is widely known that trespass is, at present, a civil law offence. The Bill would make it into a criminal offence – so trespassers really could be prosecuted. It would become an offence to reside on land without consent in or with a vehicle. This would be an existential threat to the way of life of travellers. Although only around a quarter of Gypsy, Roma and Traveller groups still live nomadically, they have the right to do so, and there are already insufficient sites for them. The provisions of the Bill would effectively criminalise this way of life. A vehicle (never mind that it's someone's home) could be impounded and destroyed. The same provisions could be used against homeless rough sleepers.

Stop and Search

Police will be able, under the proposals in the Bill, to stop and search people previously convicted of knife crime offences without reason or suspicion. Apart from the likelihood that this will disproportionately impact young black men, to make individuals subject to such treatment even after they've served their sentences or fulfilled any conditions imposed by the courts is surely inhuman and degrading treatment.

⁹ <https://bills.parliament.uk/bills/2839>

Response to the Bill

There has certainly been a wide response to the Bill, not only from civil liberties organisations, but from many media sources, ranging from the *Socialist Worker* to the *Independent*. Liberty have published a list of famous protests – including silent vigils and actions to persuade companies to be more ethical - which would have been threatened had the proposed legislation been in force at the time.¹⁰

The government have responded by publishing a very authoritative looking “protest powers factsheet” describing the new proposals as “a modest reset of the scales”.¹¹

Rule of Law

The independent British Institute of International and Comparative Law (BIICL) has pointed out that, even apart from human rights implications, there are serious concerns regarding the proportionality and necessity of provisions within the Bill. Their paper questions the basis of many of them. Concern is expressed that key phrases are not defined in the Bill itself, but left to the Home Secretary, and that “ought to know” as a test of breaching a police condition is not sufficiently clear.¹²

Other measures

Although not the focus of this Briefing, readers might wish to note two other recent developments which form part of the same pattern.

Judicial Review and Courts Bill

The Judicial Review and Courts Bill, seeks to impose restrictions on the right to challenge government decisions in the courts. This Bill, published in July, is currently at Committee Stage in the Commons; now is the time to oppose it.

Human Rights Act

The government announced, at the recent Conservative Party Conference, its intention to review the Human Rights Act.

The Human Rights Act incorporates into British law the provisions of the European Convention on Human Rights. It guarantees basic human rights (Convention Rights), including freedom from torture and inhuman or degrading treatment, <https://www.equalityhumanrights.com/en/human-rights/human-rights-act> gives full details of the Act.

Article 1 of the European Convention says that states must secure the rights of the Convention in their own jurisdiction. In the UK this is done by the Human Rights Act – so any attempt to dilute the HRA could be open to challenge on this basis – the Convention is a convention of the Council of Europe, of which Britain remains a member. Brexit makes no difference. The incorporation of the Convention into British domestic law means that you can seek redress in a British court – you do not have to go to Strasbourg with all the delay and expense that could cause.

¹⁰ <https://www.amnesty.org.uk/blogs/campaigns-blog/10-famous-protests>

¹¹ <https://www.gov.uk/government/publications/police-crime-sentencing-and-courts-bill-2021-factsheets/police-crime-sentencing-and-courts-bill-2021-protest-powers-factsheet>

¹² <https://binghamcentre.biicl.org/publications/the-police-crime-sentencing-and-courts-bill-a-rule-of-law-analysis>

Liberty has short briefings on both these matters.

<https://www.libertyhumanrights.org.uk/issue/justice-secretary-threatens-to-overhaul-the-human-rights-act/>

<https://www.libertyhumanrights.org.uk/issue/liberty-responds-to-judicial-review-bill-vote/>

How to respond?

Quakers in Britain have spoken out against both the Bills discussed in this Briefing, and information about our response to the Policing Bill can be found on the BYM website. In relation to the Nationality and Border Bill, QARN has been working with the coalition Together with Refugees and other groups.

Regarding the Judicial Review and Courts Bill, and the government's intention to review the Human Rights Act, these are issues which are of course of considerable concern and which we may find it necessary to return to at a later date.

It is difficult to engage with these Bills without running the risk of your life being overtaken by what you feel you need to do; it is perhaps wise to decide which of those Bills terrifies you most, or fits in with your ongoing activities, and put your efforts there.

About the Nationality and Borders Bill:

<https://qarn.org.uk/new-plan-for-immigration/>

About the Policing Bill:

<https://quaker.org.uk/news-and-events/news/quakers-speak-out-on-policing-bill>

Please contact your MP about these developments, expressing your concern that they are undermining our commitments undertaken in international conventions, as well as being a real threat to our democracy.

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