# Asylum and Immigration (Treatment of Claimants etc) Bill

BRIEFING FOR SECOND READING 17 DECEMBER 2003

**Two very powerful people**

In the same parliamentary session that sees Bills abolishing the Lord Chancellor and reforming the House of Lords, with debates rich in references to accountability, checks and balances, two people are given powers beyond the dreams of their peers.

The **President** of the renamed Asylum and Immigration Tribunal (Clause 10, new s.81) is, by this Bill, freed from the supervision of any higher court (Clause 10, new s.108A). By this Bill, no court in the land can touch the President - or indeed any members of the Tribunal. This is because no court can even "entertain proceedings" where the President or members of the Tribunal act without jurisdiction; where they commit errors of law; where their decisions are based on irregularity or where they breach natural justice. But in case anything has been missed proceedings cannot be entertained either in respect of "any other matter" (Clause 10, new s. 108A(3)).

The only person who can ask the Court of Appeal to look at the President's decisions, and then only on "a point of law", is ……. the President. But the Court of Appeal cannot make a decision on the point. All it can do - during the course of proceedings of which the President remains seised - is to give its "opinion" to the President who will then decide the case (Clause 10, new s.108B).

Meanwhile, ruling by fiat, the President can require members of the new Tribunal to follow a particular decision of the Tribunal chosen by the President, whether on law, on fact, or on procedure (Sched. 2, para 22) and decide who hears which case and place some Tribunal members under the supervision of others (Sched.2, para 21).

In the new single tier Tribunal (Clause 10, & Sched 1), there is no room for jurisprudence or precedent, there is only…The President. There is no rule of law. It is difficult to see how someone who believes in the rule of law could accept this appointment. The Lord Chancellor has power to give the President a new title (Sched 1, new Sched. 4 para 4); we look forward to your suggestions.

Not to be outdone, the **Home Secretary** by this Bill also relieves himself, his departmental officials and immigration officers of any need for concern about judicial scrutiny of their actions. There is to be none. Removal decisions, deportation decisions or "any action in connection with" such decisions, where the removal or deportation is "in consequence of an immigration decision" (which basically means wherever an immigration officer or the home office has reached a decision on an application made – whether an asylum claim, an application to enter made by a business visitor, a spouse or work permit holder, or even someone arriving at the airport who claims to be British but has lost his or her passport) will be incapable of being challenged before the higher courts (clause 10, new s. 108(2)(e)). Quite simply "no court may entertain proceedings

for questioning" any such decisions or actions. Never mind the fundamental importance of the ancient writ of *habeas corpus* to protect individuals from arbitrary detention or removal in such circumstances. This is plainly a "proceeding" which will not be able to be brought. Why should the Home Secretary seek to take such powers so as to make his decisions and those of his officials above legal scrutiny? Whither next?

Furthermore, in many areas the Home Secretary shrugs off the supervision of even the President. Elaborate lists of "safe" countries are detailed in Schedule 4, but they are irrelevant: the Secretary of State can certify a country as safe for any one individual and brush the lists aside (Clause 12 & Sched. 4, Part 4). He can set fees for any immigration application or process without reference to the costs of the service provided (Clauses 20 & 21). If he places an electronic tag on any adult or disputed minor, the Bill makes no provision for them to challenge this restriction on their liberty (Clause 15). His immigration officers are given wide-ranging powers of arrest without warrant, despite systems of accountability that anyone accustomed to supervision of the police would miss if they blinked (Clause 8).

**Trafficking in people**

ILPA welcomes the criminalisation of trafficking in people for exploitation, including labour exploitation (Clauses 4 & 5). It is ironic that the clause appears in a Bill that both strangles the developing jurisprudence on the need for victims of trafficking for protection (Clause 10, see above) and criminalises those victims, adults and children, for example for having destroyed their passport on the instructions of their trafficker (Clause 2, see 2(5)(iii)). Clause 6, which seeks to deem the victims liars too, does not, in our view, change the status quo.

**Families with children**

Have no doubt, the biggest threat in this bill to any family with children seeking asylum is the risk that in the new system their need for international protection as refugees will not be detected (see Clause 10 above). Among the families of "failed asylum-seekers" from whom this Bill seeks to withdraw support (Clause 7) will be people who would, in a fair system, have been recognised as refugees. Refugees or not, we deplore the misery that this Bill seeks to inflict on them by depriving them of support. However, we sound a note of caution now that there may be attempts to harness the outrage this proposal has provoked to deflect attention away from the violence being done them by Clause 10 and others.

**Regulating immigration services**

ILPA has long worked to maintain the highest standards of advice on immigration and asylum and carries no torch for those who do not meet these standards. We welcome the enhanced powers to deal with such cases (Clauses 16 to 19). More irony, however: the changes to the system of funding for representation in immigration and asylum, being developed in tandem with this legislation, are likely to eradicate the best practitioners, and the best practice from the field, long before these measures eradicate the cowboys and the incompetent.

**We are sorry the government forgot…**

- To improve the quality of first instance decision-making ……

As more asylum-seekers fail in their appeals through the combined actions because of the measures described above, we shall be told (again) that a low success rate on appeal proves that the Home Office are making a good job of deciding cases. They are not.

- To repeal provisions denying in-country rights of appeal against those home office decisions …….

- To ban the detention of children under immigration act powers ……

- To repeal s.55 of the 2002 Act …..

This provision has created suffering by denying support to those who do not claim asylum on arrival without reasonable excuse, and chaos because the High Court is having to assist the Home Office, on what is almost a case by case basis, to understand what "on arrival" and "reasonable means" and to remind them that no one has repealed the Human Rights Act….yet.

ILPA can provide detailed written briefings for those wishing to speak in debates, or improve their own understanding of this field and experts to speak to individual and groups of parliamentarians. **Please do not hesitate to contact the ILPA office on 0207 251 8383.**

ILPA members are barristers, solicitors and advocates practising in all aspects of immigration and asylum. Academics, NGOs and others working in this field are also members. The Association exists to promote and improve the giving of advice on immigration and asylum, through teaching, provision of high quality resources and information. It represents members on numerous government and Tribunal Stakeholder and Advisory Groups.

ILPA has advised parliamentarians of all parties on 5 immigration and asylum acts in the last 10 years: drafting amendments, briefing; sitting in the Advisor's box – we are busy people, but this matters to our clients: we know your procedures, and we are happy to help.