



IMMIGRATION LAW PRACTITIONERS' ASSOCIATION

SUBMISSION TO THE SECRETARY OF STATE on

EXCLUSION OR DEPORTATION FROM THE UK ON NON- CONDUCTIVE GROUNDS: CONSULTATION DOCUMENT

1. ILPA understands that the Secretary of State seeks to promote further legislation in order to be vested with the power to deport or exclude those non-United Kingdom citizens who, in effect, represent an *indirect* threat to national security, public order or the rule of law, or the United Kingdom's good relations with a third country.
2. In the Consultation Document, it is stated that hitherto the power to deport or exclude non-citizens has been "as a general rule" exercised against those who represent a *direct* threat to those aims.
3. This has not been our understanding or experience. In ILPA's view these proposals pose a number of problems. First, there is a problem of definition and, therefore of legal certainty, particularly as regards national security. Firstly, since the *Rehman*¹ case in the House of Lords, national security remains largely an undefined subjective concept, where the government's assessment of any threat to it rules the day.
4. Secondly, because of the excessive secrecy attached to national security, it is usually impossible for members of the public or their lawyers to know whether the government are talking about direct or indirect threats to Britain's national security.
5. Thirdly, although the Judges in *Rehman* avoided a clear definition of national security, preferring to leave it to the Home Secretary, they did

¹ *Rehman v SSHD* [2001] UKHL 47 [2001] 3 WLR 877 [2002] INLR 92 [2002] Imm AR 98, affirming *Secretary of State for the Home Department v Rehman (Shafiq ur)* [2000] INLR 531.

make it clear that **indirect** threats to British national security, brought about by the promotion of terrorism abroad, were included in the definition. They made it clear that the promotion of terrorism against any state, although not a direct threat to Britain, is capable of being a threat to the UK's national security, since increasingly the security of one country is dependent upon the security of others, so that any activity likely to create a risk of adverse repercussions, including conduct which could have an adverse effect on the UK's relationship with a friendly state, could threaten the UK's national security. Thus planning and organisation in the UK of terrorist acts abroad could be a basis for deportation.²

6. Fourthly, the open evidence in the Belmarsh detainees' cases was based in part upon evidence of activities which could only be described, at their highest, as posing an indirect threat to Britain's national security, such as obtaining supplies, including boots and blankets, for Chechnian rebels fighting against the Russians. Our estimation is that many, if not most, of the attempts to deport foreign nationals accused of terrorist activities have been based on allegations of activities which amount to indirect threats to the UK's security.

7. In ILPA's view, therefore, there is no need for the Secretary of State to seek to persuade Parliament to grant further deportation or exclusion powers. The existing powers are plainly wide enough to secure the deportation of those for which new powers are sought

8. ILPA further urges that the proposed "list of unacceptable behaviours" must not become a determinative or near-determinative pointer towards deportation or exclusion. Where deportation is concerned, what is always required is the balancing of the public interest against the private interest. Under existing law, deportation is only warranted if that balance is struck properly and lawfully against the individual concerned. Where it has not been properly struck, or where there is a violation of a Convention right, deportation will not be permissible. Where exclusion is concerned, a balance will be required if a Convention right is engaged (eg. free speech), where the motive for the exclusion is to defeat the exercise of that Convention right.

9. ILPA is concerned at the imprecise and subjective nature of this list. "Terrorism", "freedom fighting", "insurgency" and a host of other words may be used to describe the same actions or events and the government at one period may "consider" views or actions differently from another. This has been stated frequently but it is still important, when the need to debate and spread information about threats to this society and about the best means to counter them is so vital. ILPA would be concerned if these powers were to be used to stifle debate mainly because the views expressed were unacceptable to a government.

² See *Rehman* (HL), per Lord Slynn at para 18, Lord Steyn (para 28), Lord Hoffmann (para 49). See also *R v Secretary of State for the Home Department, ex p Singh (Raghib)* [1996] Imm AR 507, CA, at 510.

10. ILPA would also query the underlying policy of the new proposals. The new measures are not being directed against those wanted in other countries for crimes committed or to serve prison sentences imposed by a court. They are presumably people who cannot be charged or tried either here or over there. If they were it would be abusive to use deportation rather than extradition.³ Making conducive deportation for unwanted supporters of terrorism seem easier and catching a wider net of nasties undoubtedly meets some of the popular clamour expressed in the more authoritarian sections of the media – the “kick ‘em out” philosophy – but does it meet the needs of the situation facing the UK? As the headline in a Sunday broadsheet article⁴ put it, “throwing people out will not stop terrorism but just send it elsewhere.” If the UK is facing a new international threat from an ideology that feeds a network of loosely associated terrorist cells, as the evidence before SIAC alleged, then how does it make it safer to have unwanted terrorist agitators in Beirut or Amman rather than in London?

11. ILPA’s view, in summary, is that the new powers are unnecessary in the light of existing law and practice and that the underlying policy is a form of shuffling off responsibility for dealing with unwanted terrorist suspects and agitators to other countries, where they can regroup and carry on their activities. These powers will therefore not contribute to making the world a safer place.

ILPA
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³ See *R v Horseferry Road Magistrates’ Court ex parte Bennett* [1994] 1 AC 42; *R v Mullen* [1999] 2 Cr App R 143, CA.

⁴ John Rentoul, Independent on Sunday 14 August 2005.