



Home Office

Rt Hon James Brokenshire MP  
Immigration Minister

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Mr Geoff Raw  
Chief Executive  
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*Dear Mr Raw,*

Thank you for your letter of 8 February to the Home Secretary about the Immigration Bill. I am replying as Immigration Minister.

The Immigration Bill is currently being debated in Parliament and contains measures to reform our immigration system and to prevent abuse and the flouting of the law by people who should not be here. Whilst we want to continue to attract the brightest and best migrants to come here and contribute to our economy and society and play by the rules, it is vital that we tackle those who abuse the system. The Bill will support working people, clamp down on illegal immigration, protect our public services, tackle the exploitation of low-skilled workers and increase sanctions for those involved in such practices.

When developing the measures in the Bill, the Government drew upon a wide range of evidence, including written evidence submitted by third parties and three public consultations. As well as Impact Assessments and Policy Equality Statements on individual measures, an overarching Impact Assessment has also been conducted. All documents related to the Bill can be found at: [www.gov.uk/government/collections/immigration-bill-2015-16](http://www.gov.uk/government/collections/immigration-bill-2015-16).

The House of Commons Public Bill Committee also heard two days of evidence from recognised experts, many of whom also provided written submissions. A record of these evidence sessions and the written evidence considered by the Committee can be found at: [services.parliament.uk/bills/2015-16/immigration/committees/houseofcommonspublicbillcommitteeontheimmigrationbill201516.htm](http://services.parliament.uk/bills/2015-16/immigration/committees/houseofcommonspublicbillcommitteeontheimmigrationbill201516.htm).

You raise concerns about the pressures the support measures in the Bill will have on local authorities. The reformed support provisions have been carefully framed to avoid placing additional financial burdens on local authorities, but we have made clear that we will address any such impacts with local authorities in accordance with the new burdens doctrine.

The measures, which were set out in a consultation paper published last August, are designed to rebalance the support system so that it does not incentivise failed asylum seekers and other illegal migrants to remain in the UK where they have no lawful basis for doing so.

The changes will mean that failed asylum seekers with children will no longer automatically continue to be supported if their asylum claim and any appeal are rejected. People who have been refused asylum can generally avoid the consequences of destitution by leaving the UK, and in our view it is wrong in principle to continue to provide them with support from public funds in circumstances where they can do that. Where there is a genuine obstacle to departure, the Bill will enable support to continue to be provided until the obstacle is removed.

The Bill also reforms arrangements for local authority support to other classes of migrants without immigration status, providing a simplified system that provides for their accommodation and subsistence pending final resolution of their immigration status or departure from the UK.

You also request that there is an effective right of appeal or administrative review for those whose leave is curtailed or revoked. In the majority of cases in which leave is curtailed, the person is left with a short period of leave (normally 60 days) during which they may apply for a further period of leave or make plans to leave the UK. There has never been a right of appeal against a decision to curtail leave such that the person is left with a short period of leave. Where a person has their leave curtailed or revoked with immediate effect, it will be because of their unacceptable conduct. Such individuals should not be able to extend their leave by pursuing an appeal or administrative review.

The Home Office does, however, have an error correction policy for decisions to curtail leave. This does not extend immigration leave but allows claimed errors to be raised with and corrected by the Home Office. The Home Office therefore considers that the current processes are proportionate and strike the right balance between providing for the correction of errors and maintaining effective immigration control.

The Government has no intention of removing the right to rent policy, as you request. Before the introduction of the Immigration Bill 2013, the Government conducted a public consultation on the right to rent policy, and the provisions were subjected to scrutiny as the Bill went through Parliament.

As a result of the concerns raised, the Government agreed to a phased introduction to enable an informed evaluation to take place to assess how the measures work in practice

The Government convened a panel of experts, which included representatives from the housing sector, local authorities, housing charities and the Equality and Human Rights Commission, to monitor the impact of the policy in the first phase area. The panel conducted an evaluation which found no hard evidence that the policy had resulted in an increase in discrimination, homelessness or burdens upon local authorities. I considered the advice of the expert panel and the findings of the evaluation in deciding how to roll out the right to rent checks which were extended to the rest of England on 1 February this year.

With regard to giving asylum seekers permission to work, this is allowed if the person has not received a decision on their asylum claim within 12 months and they are not responsible for the delay. Employment must be in one of the list of shortage of occupations published by the Home Office. This policy has been purposefully designed to ensure there is a clear distinction between economic migration and asylum. It protects the resident labour market and prioritises access to employment and business opportunities for those entitled to reside and work in the UK, including those recognised as refugees, and discourages those who do not need protection from claiming asylum for economic reasons.

We must guard against providing incentives for people to make unfounded asylum claims so that we can continue to make progress towards a fair and efficient asylum system in which most asylum seekers receive a decision on their claim within six months – and those who really do need our protection are granted asylum without unnecessary delay. There is also a real risk that earlier access to employment for asylum seekers would act as an incentive for more people to risk their lives on hazardous journeys into and across Europe to claim asylum here rather than claim in the first safe country they reach. This is not a risk that the Government is prepared to take.

Lastly, you request that the Government end the indefinite detention of asylum seekers. It is already not possible to detain indefinitely under immigration powers. There are significant, long standing and highly effective protections against the arbitrary use of administrative detention by the state in this country.

It is a basic principle of English law that the burden is on the person who is exercising the power to detain to show that the lawful authority to detain exists. This right is ancient in origin, from Magna Carta to the 1688 Bill of Rights. In the immigration context, there are further well established principles set out in case law – known as the *Hardial Singh* principles – which state that for detention under immigration powers to be lawful, there must be a realistic prospect of removal within a reasonable timeframe.

The Home Office has a published policy and internal processes to safeguard against unnecessary or arbitrary detention: there is a presumption in favour of temporary admission or release, and all cases must be considered on their individual circumstances. Detention must be used sparingly and for the shortest period necessary. Regular reviews of detention must be undertaken to ensure it remains lawful and proportionate, and individuals can apply for bail and challenge the legality of detention by Judicial Review or habeas corpus applications.

An arbitrary time limit would potentially allow criminals and non-compliant individuals to play the system, knowing that if they refuse to cooperate with removal for long enough they will be released.

I hope this letter offers you some reassurance that the matters you have raised have been fully considered in developing the Bill, and during subsequent Parliamentary debate.

Yours ever,

A handwritten signature in black ink, appearing to read 'James Brokenshire', written in a cursive style.

**Rt Hon James Brokenshire**