Written evidence submitted by Amnesty International

Amnesty International UK is a national section of a global movement. Collectively, our vision is of a world in which every person enjoys all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments. Our mission is to undertake research and action focused on preventing and ending grave abuses of these rights. We are independent of any government, political ideology, economic interest or religion.

Introduction:

1. In this submission, Amnesty International UK (AIUK) focuses on the final of the seven specified questions within the inquiry's terms of reference.

2. We have earlier in the year made a submission to the Committee's *Immigration inquiry*,[1] which was launched before this year's general election. That inquiry closed prior to its conclusion due to parliament's dissolution. Our submission to that inquiry is relevant to the question of what the UK's immigration system should look like in future, and what principles should underpin it. That submission highlights how the system currently fails to pay due regard to the experience of those whose lives it seeks to regulate – specifically their rights, interests and needs. It also highlights how this failure in turn undermines the efficacy of the system and confidence in it. We, therefore, invite the Committee to draw on that submission in its considerations for the current inquiry.

3. We are aware that the Committee is separately conducting an inquiry entitled, *Immigration policy: principles for building consensus*, with which this inquiry would appear to have significant overlap. While we understand that submissions to the previous *Immigration inquiry* will be considered in that other inquiry, we strongly urge the Committee not to treat the two current inquiries as entirely separable.

4. How the immigration system treats people subjected to it should ultimately be considered holistically. This question should not be compartmentalised to distinguish people whom are (but in future will not be) exercising free movement rights in the UK under EU law, people whom are not doing so but currently have the right to do so (but in future will not) and people to whom such rights do not apply. That is not to deny the distinct questions which arise now regarding the future of those in the first group. Rather, it is to say that to secure an immigration system that operates fairly, effectively and commands wider confidence there is an urgent need to avoid additional complexity, confusion or unfairness that may arise if an holistic approach is not adopted.

What principles should underpin a future immigration system and to what extent does the existing system meet them?

[1] http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/immigration/written/46663.html#_ftn8

5. In 2007, the Border and Immigration Agency (then the part of the Home Office responsible for the immigration system) published a consultation on *Simplifying Immigration Law*.[2] A weakness in the short consultation paper was that it proposed principles to underpin what was conceived as the process to simplify immigration law rather than principles directly to underpin the immigration system and the law establishing it.

6. Certain of the proposed principles have merit, albeit their presentation in that consultation was somewhat opaque. They included transparency, efficiency, clarity and predictability, plain English and public confidence – each of which the consultation proposed should be 'maximised'. More is said in this submission on these objectives (but not their specific formulation in the earlier consultation).

7. As a starting point, immigration law should meet the UK's international human rights obligations while facilitating the entry and stay of people entitled to be in the UK.[3] To these ends, it ought to be founded on an understanding and respect for the rights, needs and lives of the people subjected to, and affected by, it.

8. There are, however, additional reasons to found immigration law on such an understanding and respect. An abiding feature of the immigration system over many years is that it does not command public confidence. This has remained so, or become more manifest, even as the system has been repeatedly invested with ever wider powers, remit and reach – often claimed to be necessary to secure the confidence that is lacking. One explanation for why this approach to seeking public confidence has failed, even exacerbated lack of confidence, is given in a policy briefing of the All-Party Parliamentary Group on Migration in July 2011.[4] That briefing essentially argued that immigration policy is caught in a cycle of over-promising and failing to deliver.

9. A further explanation arises from the extension of immigration policy into so much of ordinary daily life – visibly regulating access to work,[5] healthcare,[6] rented accommodation,[7] education,[8] marriage[9], banking[10] etc. – thereby demanding the

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[2] http://webarchive.nationalarchives.gov.uk/20100406133344/http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/simplification1stconsultation/consultationdocument.pdf?view=Binary

[3] This includes ensuring the UK respects the right to seek and enjoy asylum (Article 14, 1948 Universal Declaration of Human Rights), but in various contexts extends to, amongst others, avoiding disproportionate or arbitrary interference with private and family life, protecting people against slavery and other forms of abuse, avoiding excessive, arbitrary or unnecessary detention and respecting the best interests of children.

[4] https://ec.europa.eu/migrant-integration/index.cfm?action=media.download&uuid=FBCAA551-F90F-EFB1-559618DD26324946

[5] Access to employment has long been regulated, but the complexity and intrusiveness of that was substantially extended by the civil penalty scheme introduced under sections 15-26 of the Immigration, Asylum and Nationality Act 2006.

[6] Sections 38-39 of the Immigration Act 2014 introduced a National Health Service surcharge on most non-visitor applications for leave to enter or remain. Recent years have also seen extensive development of data sharing between NHS providers and the Home office, and increased restriction on access to free NHS provision – most recently via the National Health Service (Charges to Overseas Visitors) (Amendment) Regulations 2017, SI 2017/756.

[7] Landlord checks have been introduced initially under civil penalty and later under criminal sanction by the Immigration Acts 2014 and 2016.

engagement of public officials and private citizens in its regulation. This has more forcefully given the impression that immigration is something for the public to be concerned or even fearful about. At the same time, the expansion of immigration powers and functions has greatly extended the scope for the immigration system to make dramatic and harmful mistakes, or simply fail to do that which it is claimed it will do. Such failings may arise from inefficiency, arbitrariness or capriciousness – all of which made more likely if the demands on the system are expanded even as the system is made more complex[11] and the means for oversight and providing a remedy to error are reduced.[12]

10. Over many years, Home Secretaries have been critical of the Home Office and its delivery of the immigration system. Among the most severe criticisms are those from the Rt Hon the Lord John Reid when in that office in 2006[13] and the current Prime Minister when Home Secretary in 2013.[14] These criticisms suggested chaos. They specifically identified states of 'dysfunction' and 'crisis', and highlighted 'lack of transparency and accountability', 'closed, secretive, defensive' cultures, complexity and incompatible and unreliable IT systems. Yet, these criticisms were not followed with attempts to more narrowly focus the remit or powers of the Home Office, nor any extension of the checks and balances available to those most affected by the unfitness and chaos these ministers highlighted. On the contrary, in their terms of office they, as others, expanded Home Office powers and reduced the means by which those subjected to these powers could protect themselves against their excessive and wrongful use. Particularly more recently, the expansion has been into many other areas of daily life such that the impact of any dysfunction, crisis or incapacity at the Home Office is now felt not only in the actions and decisions of that department but in the actions and decisions of a wide range of public officials, corporate bodies and private citizens.

11. The increased public, media and political attention given to the circumstances of EU citizens and their family members, as the prospect nears of their becoming fully

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[8] Access to higher education has long been constrained by provisions relating to access to home student fees and student loans, which may turn on immigration status. More recently, the expansion of information sharing with the Home Office was for a time extended via the collection of children's country of origin and nationality data from schools.

[9] Sections 19-25 of the Immigration and Asylum (Treatment of Claimants, etc.) Act 2004 introduced regulation of access to marriage in the UK. That was expanded by Part 4 of the Immigration Act 2014.

[10] Access to banking facilities has become regulated by provisions of and made under the Immigration Acts 2014 and 2016.

[11] The simplification process began with the *Simplifying Immigration Law* consultation in 2007. It was followed by publication of a draft Bill and later *the Simplifying Immigration Law: a new framework for Immigration Rules* consultation in 2009. Yet, the system and the rules have only become significantly more complex and inaccessible since then. So much so, that higher courts have on several occasions complained at the complexity; including, for example, highlighting how the Home Office view on the meaning of its own rules had changed during the course of the particular litigation: *R (Mirza & Ors) v Secretary of State for the Home Office* [2016] UKSC 63 *per* Lord Carnwath.

[12] Several immigration acts have curtailed access to appeal rights, but none so dramatically as Part 2 of the Immigration Act 2014, which removed wholesale immigration appeals against decisions on non-asylum and non-human rights based applications. While an internal review to the Home Office against its decisions was introduced for most decisions made under the rules, decisions to curtail (take away) someone's leave to enter or remain were not provided even with this limited remedy.

[13] http://news.bbc.co.uk/1/hi/uk_politics/5007148.stm

[14] *Hansard* HC, 26 Mar 2013 : Columns 1500-1501

subject to the immigration system, is beginning to shine a more public light on how this system affects and harms individuals, their families and communities. It is also highlighting how the state of uncertainty, which is the lot of people subjected to that system (not least as the complex rules with which they are called upon to comply and the fees demanded of them change frequently and with no or little warning, the latter seemingly inexorably upwards), is damaging for others too – such as the National Health Service and other employers. To a diminishing degree, most EU citizens remain shielded from the worst of the immigration system[15] – though the prospect of becoming subject to that system can only increase the sense of uncertainty experienced by those set to lose free movement rights. Yet, even British citizens and those born in the country and entitled to its citizenship can be and are harmed by it – sometimes by decisions and actions taken against their family members,[16] sometimes more directly.[17] [18]

12. Others harmed by this system include people, whom the Government strongly asserts a determination to protect – most particularly, people subjected to domestic abuse, trafficking and other exploitation. This is because people's vulnerability to abuse and abusers is heightened both by the way the immigration system has set out to block or hinder people from entering or maintaining a 'regularised' status in conformity with the system and has co-opted a plethora of public services, corporate bodies and private citizens into its enforcement against non-conformity. It is well known that abusers use the threat of immigration enforcement to influence and control their victims.[19] As more and more ordinary social and public engagement becomes closed off to victims, or those vulnerable to becoming victims, the influence of abusers grows and the opportunity for intervention to end or prevent abuse diminishes.[20]

13. The general direction of policy and the practice that follows, however, remains unchanged. Indeed, the promise from the current Immigration Minister writing in Conservative Home is to continue in this same vein.[21] For example, in 2008, the High

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[15] In recent years, there has nonetheless been an extension of the use of immigration detention and deportation powers against EU citizens, a matter it is reported that the European Commission is investigating: https://www.theguardian.com/politics/2017/sep/30/brussels-uk-deported-eu-citizens

[16] Among the most widely reported of cases this year concerning family is that of Irene Clennell; see e.g. http://www.bbc.co.uk/news/uk-england-tyne-41052984; a more recently reported case is that of Paulette Wilson, detained for removal despite her being 61 years old, having lived in the UK for fifty years, being fully entitled to remain here, and having a British daughter and grandchildren in the UK: http://www.bbc.co.uk/news/uk-england-41749426v

[17] The reporting of the cases of Shane Ridge and Cynsha Best concern Home Office action to remove British citizens from the UK: http://www.independent.co.uk/voices/home-office-deportation-british-citizens-told-to-leave-theresa-may-a7923696.html

[18] The Project for the Registration of Children as British Citizens has, in particular, highlighted a substantial concern regarding many children born in the UK and entitled to British citizenship, whom for various reasons are impeded or otherwise unable to access that entitlement and wrongly subjected to the immigration system: https://prcbc.wordpress.com/what-we-do/

[19] This was referred to in our submission to the previous *Immigration inquiry* (see footnote 40), specifically in relation to refugees. It is a wider concern, however, and accordingly is specifically referenced in the 2017 Anti-Slavery Charter to which a range of NGOs have signed: https://www.antislavery.org/anti-slavery-charter/

[20] Our submission to the previous *Immigration inquiry* (see footnote 33) highlighted, by way of example, the undermining of efforts to improve NHS service providers' recognition of victims of exploitation by the deterring of contact, or trust and confidence, with those self-same providers.

[21] See https://www.conservativehome.com/platform/2017/11/brandon-lewis-our-immigration-policy-taking-back-control-with-compassion.html

Court found that the Home Office had been maintaining detention under the terms of an unlawful and unpublished policy – the existence of which it had withheld from detainees, their lawyers and courts.[22] Nine years on, the Hight Court has once again found the Home Office to be unlawfully exercising powers, this time to impose curfew restrictions on people liable to immigration detention, under a policy it has not made public.[23] This lack of transparency mirrors the attempt currently included within the Data Protection Bill[24] to exempt personal information taken, stored, used and shared in the name of 'immigration control' from the most basic safeguards – such as ensuring its accuracy, that the individuals to whom it relates are aware both of its being held and its contents, and the opportunity for those individuals to have it corrected or deleted when that is either necessary or appropriate.

14. The defensiveness of which the Prime Minister spoke in 2013 is writ large in such a sweeping exemption from safeguards in that Bill. It was again exposed when the Home Office in 2016 intentionally reduced safeguards against the detention of victims of torture in the very process – the adoption of a new policy, the 'Adults at Risk' policy – said to be intended to improve safeguards for people against harm caused by the exercise of detention powers. This too has recently been found by the High Court to have been unlawful.[25]

15. Since 2007, when the *Simplifying Immigration Law* consultation was published, immigration law and the immigration rules have become far more complex. The opposite of an apparent aspiration to greater clarity and predictability, and use of plain English, has been achieved. Those most affected by these rules, and the extended powers given to the Home Office to enforce them, have also lost access to legal aid and rights of appeal. These developments, separately and in combination, mean the risk of error or worse by the Home Office has increased, as has the risk of simple mistake or oversight on the part of those subjected to immigration powers. They also mean the risk that any such error causes substantial or lasting harm to someone subjected, rightly or wrongly, to Home Office immigration powers is increased.

16. All of this undermines starting principles that immigration law should meet the UK's international human rights obligations while facilitating the entry and stay of people entitled to be in the UK. It also perpetuates an environment in which many people are harmed – in ways which are clearly arbitrary, excessive and unfair. It makes people more vulnerable to exploitation and less able to comply with what the system demands of them. In turn it creates greater demands (and the opportunity of inconsistency, inefficiency and error). Ultimately, it undermines any prospect of confidence in the immigration system.

17. Accordingly, there needs to be a fundamental review of the immigration system to make it clear, transparent, predictable and appropriately responsive to the rights, needs and lives of the people subjected to it. The extension of this system through what was originally styled by the Prime Minister as a 'hostile environment'[26] needs to

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[22] http://www.bailii.org/ew/cases/EWHC/Admin/2008/3166.html
[23] http://www.bailii.org/ew/cases/EWHC/Admin/2017/2690.html
[24] See paragraph 4 of Schedule 2 to the Bill.
[25] http://www.bailii.org/ew/cases/EWHC/Admin/2017/2461.html
[26] See http://www.telegraph.co.uk/news/uknews/immigration/9291483/Theresa-May-interview-Were-going-to-give-illegal-migrants-a-really-hostile-reception.html

be checked and reversed. Safeguards for people wrongfully subjected to the system, and actions and decisions taken under it, should be returned – including access to legal aid and the provision of appeal rights.

8 November 2017