

Borders, Citizenship and Immigration Bill

1. These notes are to accompany a discussion among members of the Manchester Refugee Forum about this Bill. The discussion will take place at the Manchester Refugee Forum on Thursday, 2nd April.
2. The purpose of that discussion is to widen understanding of the Bill and the new laws it seeks to introduce, and to identify action that may be taken by members of the forum – particularly so as to lobby MPs in advance of the Bill being considered by the House of Commons.

What's in the Bill?

3. The Bill is in four Parts. In short, the contents of the Bill are as follows:
 - Part 1 is about 'Border Functions'. It would give several new powers to immigration officers at the UK border – e.g. at sea- and airports.
 - Part 2 is about 'Citizenship'. It would make changes to the way in which migrants in the UK may become settled here and seek to naturalise as a British citizen. It would make other changes to how certain people can acquire British citizenship.
 - Part 3 is about 'Immigration'. This Part contains four measures that are not related to each other, other than that they all relate to immigration control. These are about the Common Travel Area, studying in the UK, fingerprinting powers and detention powers.
 - Part 4 is called 'Miscellaneous and General'. It contains two unrelated measures. These are about judicial review and children.

Part 1 – Border Functions

4. The measures in this Part of the Bill are long and complex. They are not described here in detail. Instead, there is some general description. Particular issues that arise and may be of interest are discussed in a little more detail.
5. Generally, the measures in Part 1 concern powers related to customs and revenue, which are to be passed to immigration officers at the UK's border (e.g. at sea- and airports). The new powers are significant, in that they will give immigration officers new and extended powers to detain and search people; and to pass information and data to other Government departments.
6. A key issue that arises in connection with Part 1 is the need for proper guidance and supervision of immigration officials and private contractors who do immigration work (e.g. escorts). The Government has promised that it is reviewing how the Codes of Practice, which have applied to police for many years (often referred to as PACE Codes), can be extended to apply to immigration officials. The trouble with that promise is that it was first made in 1999, and repeated in 2004 and 2007. It has not been fulfilled. It should be. Immigration officers exercise several policing and police-like powers. They ought to be subject to the same or similar standards and Codes of Conduct – or they should not be exercising these powers.
7. The Government says that it does not need to extend Codes of Conduct to govern immigration detention or removals. However, in 2007 the Government promised to make, what is now the UK Border Agency, a more transparent and accountable organisation. They said it needed more powers. But also said, if it was to have more powers it needed to be subject to much stronger oversight to ensure it was exercising these powers responsibly. Immigration detention and removals are among the most contentious work that

the UK Border Agency does, and the *Outsourcing Abuse* report¹, which contains several allegations that are currently under investigation, highlights the urgent need for clear and publicly-available guidance or codes of conduct and for strong and independent oversight of this work.

8. A second key issue that arises in Part 1 is the need for independent investigation of serious complaints. There are several matters that need addressing. The situations in Scotland and Northern Ireland are different to the situation in England and Wales. Different bodies have responsibility or jurisdiction for oversight of some complaints. The Government needs to ensure that the same level of independent scrutiny can be applied throughout the UK. It needs to ensure that private contractors can also be subject to independent investigation. It has taken some steps towards this in the Bill. The Government has also said that it will consider what can be done to ensure independent oversight and investigation of immigration officials and private contractors operating outside the UK – e.g. Airline Liaison Officers, those who work at juxtaposed controls (places in Europe where the UK Border Agency exercises UK immigration controls before people can get to the UK) and during escorted removals.
9. These key concerns are important for refugees and asylum-seekers because many of these people will at one time or another be subjected to powers exercised by immigration officials or private contractors. This may be before they arrive in the UK, or immediately on their arrival. It may be during their time in the UK – e.g. during the course of their asylum claim or appeal, or after this if that claim is refused. It may be during the course of being removed from the UK. Proper guidance and oversight of immigration officials

¹ <http://www.medicaljustice.org.uk/images/stories/reports/outsourcing%20abuse.pdf>

and private contractors is highly important to ensure proper treatment of those who are subjected to these powers.

Part 2 – Citizenship

10. Most of this Part is concerned with how a migrant in the UK can become settled here or become a British citizen (naturalise). There are some further changes being made to other aspects of British nationality law. These are not discussed here.

11. Currently, an asylum-seeker may become settled or a British citizen in the following way. If his or her asylum claim is accepted, refugee leave (or in some cases) humanitarian protection is granted. This lasts for 5 years. At the end of those 5 years, an application may be made for indefinite leave to remain (settlement). After one year on indefinite leave to remain, an application for British citizenship may be made.

12. Under the measures in the Bill this route to settlement or British citizenship is to be changed. An asylum-seeker whose claim is accepted would still be granted refugee leave or humanitarian protection for 5 years. At the end of these 5 years, he or she would be expected to apply for 'probationary citizenship'. This is not British citizenship. It is nothing more than a fancy name for what the individual already has – i.e. more refugee leave or humanitarian protection. The individual would have to be on this extended status for between one and 3 years before he or she could apply for British citizenship. To be able to apply after one year, he or she would have to satisfy a requirement of 'active citizenship'. This has not been fully developed, but the Government's intention is that migrants should do voluntary or community work in order to be allowed to become British citizens in the normal timeframe. Otherwise, the individual may have to wait 3 years on the extended status before he or she can apply for British citizenship.

13. For those who do not want to or cannot become British citizens (e.g. those whose own nationality forbids dual nationality), they must be on the extended status for between 3 and 5 years before they can apply for 'permanent residence' (which will be the new name for indefinite leave to remain).
14. The Government has promised some transitional provisions – i.e. provisions that will or may provide some protection to migrants who are already on the current route to settlement or citizenship at the time the new measures are introduced. However, it is not clear how these will work. It seems likely that only those who have already got or applied for indefinite leave to remain will be protected. It seems likely that the Government's intention is that if you have not got to this stage of the route, the new measures will be applied to you.
15. At the same time, the Government is considering how to deal with the cases of those, who are granted 5 years refugee leave or humanitarian protection, when they get to the end of the 5 years. Currently, there is normally no 'active review' of the case unless the person has a criminal record. This means that someone is not normally required to demonstrate that he or she is still at risk of serious harm in his or her home country in order to apply for indefinite leave to remain. The Government is considering whether at the end of the 5 years, there should be an 'active review' in every case. This is not part of the Bill; and no decision has been taken about this. However, it is being considered, and it could affect many refugees if it is implemented. On the other hand, the administrative burden of doing this may be very great. It is certainly possible that the Government decide not to introduce an 'active review' for every case.
16. Other key issues that arise in relation to Part 2 include:

- Whether refugees and those granted humanitarian protection should be allowed to count the time they spent waiting for the decision on their case towards the time that must be spent before applying for citizenship.
- The continued prosecution of asylum-seekers for document and other offences related to entry to the UK risks delaying or excluding people from citizenship. There should be much better protection against prosecuting people for document and entry offences where they have had no choice but to use false documents or enter illegally in order to make their asylum claim.
- Whether the 'activity condition' is fair or workable. Whether refugees or others (e.g. those with child or other carer responsibilities, those with disabilities) should be exempt from these measures.

Part 3 – Immigration

17. The measures in this Part of the Bill are only highlighted briefly here.
18. The Bill includes power to effectively end the Common Travel Area. Currently, journeys between the UK, Ireland and 'the Islands' (e.g. the Isle of Man, the Channel Islands) are not subject to immigration control. The Bill would introduce immigration controls on air and sea journeys between these countries/islands. It would make way for immigration controls on land journeys between Ireland and Northern Ireland.
19. The Bill includes power to place studying restrictions on migrants with limited leave to enter or remain. These restrictions could limit the places or courses on which migrants would be allowed to study.

20. The Bill extends fingerprinting powers, so that those subject to 'automatic deportation' could be fingerprinted in the same way as others who are to be removed from the UK.
21. The Bill extends to Scotland powers for immigration officers to detain anyone at a port of entry to the UK for up to 3 hours if the officer thinks the person may be of interest to the police.

Part 4 – Miscellaneous and General

22. Part 4 contains two measures relating to judicial review and children.
23. Judicial review is the power of the High Court in England and Wales² to review decisions and actions (or failures to act) of any public body (including the Home Office and UK Border Agency). The High Court exercises this power only where someone has no other judicial remedy – e.g. where there is no right to appeal against a decision. This power can be of particular importance for asylum-seekers facing immediate removal, because at this time there is often no right of appeal. This power can also be of particular importance for asylum-seekers in detention, because the power of an immigration judge to grant bail is limited and does not allow an immigration judge to consider the legality of someone's detention. Judicial review and access to a High Court judge is a powerful and important right that has provided protection for many asylum-seekers and refugees.
24. The Government intends to allow judicial review cases to be moved from the High Court to the tribunal system. If this happens, some of these judicial review cases may come to be considered by senior immigration judges and not High Court judges. There is

² in Scotland, the relevant court is the Court of Session; in Northern Ireland, the High Court of Northern Ireland

widespread concern that this would significantly reduce the protection that judicial review has provided to asylum-seekers and refugees. This is in part because immigration judges do not have the same expertise in matters of general public law as High Court judges. It is in part because the wider experience of High Court judges may allow them a greater degree of independence of mind in considering these cases than judges whose judicial work is specialised and who may therefore become case-hardened.

25. There is a further related concern that the Government may introduce measures to restrict the right to appeal to the Court of Appeal against decisions made in the tribunal system. This tribunal system is new, and the Asylum and Immigration Tribunal (AIT) is not yet part of the system. However, it is intended that the AIT will shortly be joining this new system.
26. This Part of the Bill also includes a statutory duty upon the UK Border Agency and its private contractors to have regard to the need to safeguard and promote the welfare of children. This should impose the same or similar duty upon the UK Border Agency that has been shared by agencies such as the police and local authorities since the Children Act 2004. It remains to be seen what changes in practice this new duty will lead to. The key concern is that the duty is limited to children 'who are in the United Kingdom'. This means that children who encounter immigration officials and private contractors on their way to the UK or while being escorted from the UK will not have the protection of this duty.

What is happening with the Bill now?

27. The Bill is nearing the end of its consideration by the House of Lords. It must still be considered by the House of Commons. There will be several debates in the House of Commons – probably starting in May, and expected to be concluded in June. This will provide MPs an opportunity to make changes to the Bill or to seek

assurances from the Government about how the powers and provisions in the Bill will be exercised.

28. This means there is now an opportunity to 'lobby' (pressure) MPs about particular concerns. This can be done by, for example, writing to an MP or going to see the MP at his or her constituency surgery.
29. Further thought on how to lobby MPs will form part of the discussion at tomorrow's event. It will be useful to hear what issues individuals or groups may be particularly interested in.
30. Further, and more detailed information, about this Bill is available from the ILPA website (www.ilpa.org.uk). In particular, briefings on the Bill are found in the 'Briefings' section. The 'Info service' section contains some short information sheets on the Bill.

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