

## PARLIAMENTARY BRIEFING

### Nationality, Immigration and Asylum Bill

The Home Office published its White Paper on immigration policy on Thursday 7 February 2002 entitled “*Secure Borders, Safe Haven: Integration with Diversity in Modern Britain*”. The 2002 White Paper is the second major review of immigration policy under the Labour government and claims to be a comprehensive review of all aspects of immigration, citizenship and asylum policy, extending from economic migration, asylum procedures, tackling fraud, border controls through to nationality. Only three weeks after the date for consultation on the White Paper closed, the government introduced the Nationality, Immigration and Asylum Bill 2002. The 2002 Bill sets out the legislative framework for many but not all of the changes proposed in the White Paper.

In the months preceding the introduction of the White Paper, the Home Secretary introduced the concept of “managed migration.” He recognises “the positive contribution of migration to our social wellbeing and economic prosperity.” He calls for the need to encourage those resident abroad to come to the UK “on a sensible and managed basis.” JCWI therefore expected a radical departure from past immigration policies, which have so far been based on a wholly negative view of immigration. JCWI therefore hoped for a more positive view of immigration to be taken by the government. However, on balance, the proposals contained in the 2002 White Paper and Bill will only bring into effect more draconian measures in terms of tougher immigration and border controls, only limited avenues of economic migration for highly skilled people, and citizenship proposals which are based upon a negative viewpoint of immigrant communities throughout the UK who are perceived as isolationist and unable to communicate effectively in the English language.

The main proposals in the 2002 Bill are discussed below:

#### Citizenship and nationality

##### What the proposals are

In its White Paper, the government argues that competence in the English language is essential to the effective exercise of rights as a citizen and asserts that the issues that are at the core of its concerns (competence in English, knowledge of the UK’s democratic processes) will be addressed by attaching greater symbolic significance to naturalisation procedures.

The 2002 Bill spells out the following set of measures designed to ‘ensure social integration and cohesion in the UK’:

- a requirement that those who apply for naturalisation have “sufficient knowledge about life in the United Kingdom” and the provision of regulations ensuring that specified courses are attended;
- a regulatory framework to ensure that applicants for naturalisation have ‘a sufficient knowledge of the English, Welsh or Scottish Gaelic language’ (this requirement already exists but is not currently widely enforced). Attendance on courses may be required to ensure that a particular standard is reached. The requirement is to be extended to those applying for naturalisation as the spouses of British citizens (who are currently exempted from this requirement)
- an updated oath of allegiance now called a “citizenship oath and pledge.” The suggested pledge is as follows:

*‘I will give my loyalty to the United Kingdom and respect its rights and freedoms. I will uphold its democratic values. I will observe its laws faithfully and fulfill my duties and obligations as a British citizen.’*

- a requirement that the citizenship oath and pledge is taken at a ‘citizenship ceremony’ at local authority facilities such as registrars’ offices and community halls;
- extended powers of “deprivation” so that the Secretary of State can take away British citizenship status from a person who ‘has done anything seriously prejudicial to the wider interests of the UK.’ In the White Paper, the government explains that it plans to use its powers of deprivation against those who have concealed material facts such as their past involvement in terrorism or war crimes;
- an appeal against the power of deprivation, unless the Secretary of State certifies that the decision was taken on the basis of information which cannot be made public on grounds ‘relating to matters of a political kind’;

The 2002 Bill also proposes the removal of:

- the exemption which permitted discrimination by a public authority in the exercise of nationality functions;
- the current distinction between legitimate and illegitimate children (explained in more details in pps...);
- the current provision in the British Nationality Act 1981 which states that there is no duty upon the government to give reasons for refusing citizenship and the provision that there is no right of appeal (although no positive duty to give reasons and no introduction of an appeal procedure have been proposed);

There are many positive aspects of the current system of naturalisation. Current procedures, with their lack of formality and generally pragmatic approach, are likely to be more attractive to immigrants with a strong orientation towards integration precisely because they are so much less formidable and threatening than the ritualistic and symbolically charged procedures favoured in continental Europe and Northern America.

The British Nationality Act 1981 already requires that applicants for naturalisation (except for those married to British citizens) possess a sufficient knowledge of the English, Welsh or Scottish Gaelic languages. The requirement however is not strictly enforced. The proposal in the 2002 Bill that a specified level of achievement is obtained will only serve to further exclude a group of people who due to a range of reasons such as their educational background and childcare demands, may not be able to attend the required courses and pass the required test.

The effect of of emphasising English as the 'norm' also has the effect of de-valuing the community languages which are spoken in the UK, rather than encouraging *all* people to expand their language abilities.

The proposed requirement that applicants for naturalisation attend a specified course to gain 'sufficient knowledge about life in the UK' and take a newly ... loyalty pledge is based upon the flawed and inherently racist assumption that the discharge of responsibility as a good citizen is conditional upon adherence to core 'British' values. Good citizenship, we suggest, is based upon common objective values such as understanding, integrity and respect. Again, the practical requirement to attend a course and possibly pass a test will only mean that those unable to do so will be denied what should be the fundamental right to acquire the citizenship of the country that someone is settled in. Through exclusion, the government will only be adding to the list of discriminatory measures that already deprive the most marginalised section of British society.

The above measures elevate the status of citizenship from a right to a privilege. Obtaining citizenship should not be made similar to admission to a private club where the applicant has to convince the existing members that their 'face fits the mould'. A policy based on true diversity would recognise that the 'club' is constantly evolving and that there is nothing to fear from the admission of those who bring their own traditions and cultures.

## **Asylum**

### **What the proposals are**

The White Paper treats as a key objective the introduction of a 'managed system of induction, accommodation, reporting and removal centres to secure a seamless asylum process'. The Home Secretary put it more bluntly when he told the media that he wants an 'end to end system...to track and deal with asylum seekers at every stage.' Some of the key proposals in the White Paper have already been implemented and the other proposals await the implementation of new legislation drafted into the new Bill. The key proposals in the Bill include the introduction of:

- a network of induction, accommodation and reporting centres;
- cash payments to support asylum seekers and to replace the much-maligned voucher scheme. The payments will be administered by NASS and payable through Post Offices. Although the White Paper talks about the voucher system being phased out during the latter part of 2002, vouchers have actually stopped being issued since 8 April 2002;
- no choice as to type of support. NASS will be able to choose what type of support to offer someone.

- support will not be provided in the form of a 'cash only' option. It is proposed to remove the option of obtaining support for essential living needs alone; such support will only be provided together with NASS-allocated accommodation;
- a streamlined appeals system preventing the scope of certain appeals being brought before an adjudicator; limiting the scope of bringing actions for judicial review before the High Court; and elevating the status of the Immigration Appeals Tribunal to a superior court of record;

The current asylum policy, rather than being based upon the premise that the UK has a fundamental obligation to extend protection to those fleeing from persecution under the Geneva Convention, is based upon deterring and removing people from this country. In the 2002 White Paper, the government recognises that the credibility of the current asylum system is under question, but fails to recognise the real reasons for this. The lack of independence of decision-makers in the asylum consideration process is fundamental to the widespread concerns about the integrity of the system, Home Office caseworkers being required to make decision on the basis of often dubious information resources on countries of origin. The credibility of the system has been further compounded by the ineffective delivery of support services by the National Asylum Support Service, the discredited voucher support system which has now been withdrawn, the inability of applicants to access expert legal representation and to present their claims in a detailed, considered fashion within the tight deadlines imposed.

The 2002 White Paper presumes that the credibility of the system will be improved by measures to maintain high levels of monitoring and surveillance of asylum seekers whose applications are under consideration. The mechanisms to achieve this are the establishment of a system of induction, accommodation, reporting and removal centres, ending the hope of automatic bail hearing for detained asylum seekers, limiting the possibility of appeal against negative decisions and enhanced powers of arrest, search and entry for immigration officers.

The proposals are consistent with the frequently expressed presumption that the majority of asylum seekers are not genuine are abusing procedures. The statistics, on the other hand, demonstrate that in 1999, 48% of asylum applicants were granted refugee status or exceptional leave. In 2000, upto 30% of applicants were granted asylum, exceptional leave to remain or had their appeals allowed. The figure for 2001 show that 26% were granted exceptional leave or refugee status. Once allowed appeals are taken into account, the figure is expected to show around 50% of applicants are eventually granted protective status.

The government had no choice but to end the voucher system. Throughout its relatively brief existence, the voucher scheme became notorious for its degrading impact on asylum seekers and fostering division in the communities in which they resided. However, the proposed accommodation centres and doubling of the detention estate will only service to extend social division by ensuring that asylum seekers are effectively segregated from mainstream society. Although not detention centres, the non-compliance measures that are planned impose a degree of compulsion, giving an asylum seeker little choice with regard to accommodation. Given the proposed size of each new centre (housing upto 750 asylum seekers), they will be located in rural areas. The accommodation centres will become inevitable targets for racist attacks with barbed wire and security guards becoming a feature of these centres.

The centres will cater for families with children as well as single people. In-house education facilities for children as well as health services will be provided. The principle that children of asylum seekers will be removed from mainstream schooling points to the creation of a two-tier education system. The potential for sub-standard education provision increases, bearing in mind that neither the Department for Education and Skills nor OFSTED may be responsible for education provision. Furthermore, given the increased detention of families of asylum seekers, fundamental questions remain over what safeguards will be put in place with respect to the welfare of children which should remain paramount.

The vast majority of asylum seekers will continue to be supported by NASS through the dispersal system. Although a cash-based system is being put in place to replace vouchers, asylum seekers will be expected to live on 70% of basic Income Support levels. Unlike people on Income Support, asylum seekers, even those with young children, are prevented from accessing benefits such as milk tokens and vitamins. The British Medical Association and Child Poverty Action Group have been campaigning that levels of support provided for asylum seekers are inadequate and damaging to good health.

The proposed removal of the “cash only” option will prevent asylum seekers from receiving any form of support if they choose to live with their friends or family rather than being dispersed into NASS accommodation. It is likely that many asylum seekers will forgo NASS accommodation so that they can remain with friends and family, thus creating even more pressure on already deprived communities.

### **Detention and removal**

Detention is now a firmly embedded part of the government’s immigration and asylum policy. The numbers held in detention by and large remained static at 900 until have increased three-fold from about 900 in 1997 to just under 2 800 by the end of 2001. The 2002 Bill proposes the following:

- the re-designation of existing detention centres as “removal centres”;
- the repeal of (most of) Part III (the bail provisions) of the 1999 Act. Part III was designed to ensure that detainees are given automatic bail hearings after a set number of days. The justification put forward is that these hearings would be: *“inconsistent with the need to ensure that we can streamline the removals process in particular.. The significant and continuing expansion of the detention estate since the proposals were first put in place would make the system unworkable in practice”*;
- in June 2001, the Home Secretary set out a target of removing 2,500 failed asylum seekers. The Bill contains a number of measures to help the Home Office achieve this objective, through increased powers of detention including the power to remove children born in the UK when their parents are illegal entrants and increased powers of entry to detainee custody officers;
- power to enter business premises to search for and arrest immigration offenders and to inspect and seize personnel records following the arrest of an immigration offender on those premises;

- power to remove family members of port applicants and illegal entrants. One of the reasons for this proposed change is to ensure that non-British citizen children born in the UK, who would otherwise be irremovable, can be removed with their parents in all circumstances.

The re-designation of detention centres as 'removal centres' has been described as misleading. At the end of March 1999, 60% of asylum detainees were awaiting an initial decision.

The automatic bail hearings proposed by Part III of the 1999 Act would at least have ensured a minimum level of independent scrutiny of all detentions. Their repeal ends the possibility of this basic procedural safeguard coming into effect.

## Appeals

The Immigration and Asylum Act 1999 introduced the "One-Stop Appeal" requiring an Adjudicator to consider one immigration appeal which would include all other appealable matters including allegations of human rights breaches. However, the White Paper talks about delays within the appeals system and proposes a "restructure..." to simplify the one-stop appeal provisions with the intention that human rights claims are "dealt with in a timely fashion and do not frustrate the removals process". The 2002 Bill proposes a number of measures set out here:

- non-suspensive appeals. In cases which are 'manifestly unfounded' or where the applicant can be removed to a 'safe third country', the applicant will be removed and have to appeal from outside the UK;
- defining the specific immigration decisions which attract a human rights and discrimination appeal;
- a new right of appeal against a recommendation for deportation made by a court;
- a new right of appeal against a decision to "revoke" indefinite leave (the power to revoke is in itself is a new proposal);
- enabling the certification of applications where, in the Secretary of State's opinion the appellant is appealing to delay removal or where the points raised in appeal could have been dealt with in an earlier appeal;
- appeal procedure rules to provide a statutory closure date to prevent multiple adjournments of appeals pending before an Adjudicator;

Although not in the Bill, the White Paper also proposes:

- limiting the jurisdiction of the Immigration Appeal Tribunal to determining points of law and not enabling the determination of factual issues;
- limiting the scope of judicial review by making the tribunal into a "superior court of record" and preventing the judicial review of decisions by the Tribunal to refuse to grant leave to appeal by introducing a separate statutory review procedure.

The government has been concerned with the possible abuse of the judicial review process by applicants and their advisors simply to delay removal. However, the

judicial review mechanism is an important legal safeguard which becomes especially important to maintain when the opportunity of appealing a decision lower down the process is restricted, for example when there is no right of appeal for an adjudicator to the tribunal. The process becomes even more important bearing in mind that the government plans to accelerate the rate of removal. By making The tribunal in to a superior court of record it will be ensuring that the tribunal's decisions are not open to judicial review. The Bill however makes no mention of this proposed measure. If the government plans to impose this measure, it should widen the remit of the tribunal's jurisdiction to determine factual and legal issues as opposed to limiting it.

The government is intent on ensuring that appeals are determined quickly thus it plans to increase the number of adjudicators and numbers of cases heard each month. From an efficiency point of view, the focus should be switched from the rapid determination of asylum appeals to a system which determines such appeals fairly. Incorrect decisions at the adjudicator stage will only result in further delays before the tribunal or high court. The prospect of an adjudicator reaching an incorrect decision will be compounded by the imposition of a statutory closure date which will force an appeal to be determined before the appellant has had the opportunity to adduce evidence. The Medical Foundation for the Victims of Torture makes the point that torture survivors should not be procedurally disadvantaged by the inability to adduce medical evidence in time.

The government is also of the view that many appeals are subject to multiple adjournments, the purpose of which is to delay the outcome. This does not take into account the strict directions that the adjudicators are inherently under not to adjourn appeals unless it is in the interests of justice to do so.

## **Enforcement**

### **What the proposals are**

The 2002 Bill proposes the creation of a number of new offences and expanding the powers of immigration officers and the Secretary of State as follows:

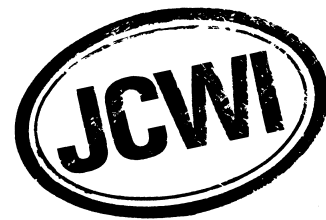
- new powers to enter business premises to search for and arrest immigration offenders and to inspect and seize personnel records following the arrest of an immigration offender on those premises;
- increased powers to arrest employers without a warrant for employing those who are not entitled to work and a change in the defence available to employers;
- the creation of the following new offences:
  - assisting unlawful immigration
  - trafficking of people into or out of the UK for the purpose of prostitution
  - forgery relating to Application Registration Cards (ARC)
  - offences related to the employment of persons who are "subject to immigration control" (see pps..)
  - failure to comply with a notice requesting information in respect of suspected immigration offences
  - possession of an immigration stamp without a reasonable excuse

Problems relating to fraud, illegal entry and illegal working have emerged from a failure of the current and previous governments to develop policies and strategies for the proper management of all forms of migration. The question of whether a better system to tackle fraud and other forms of illegality can be put in place depends

wholly on whether open and comprehensive policies for the better management of migration are being operated. Although JCWI supports the imposition of tougher sanctions for human traffickers, the Bill also proposes a wider range of sanctions against those who are the victims of trafficking. Tougher sanctions against employers will not stop what the government believes is an active trade between traffickers and unscrupulous employers who exploit those working illegally for them. The effect will be further discrimination by legitimate employers against potential employees who they will perceive as not having the requisite immigration status.

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A separate briefing in response to the 2002 White Paper commenting on the above matters and additionally on proposals relating to border controls, marriage and relationships, and economic migration is available separately from our website, [www.jcwi.org.uk](http://www.jcwi.org.uk)



Please forward any comments on the above and other papers in relation to the new White Paper and Bill to Tauhid Pasha, Legal, Policy and Information Director at JCWI by email on [tauhid@jcwi.org.uk](mailto:tauhid@jcwi.org.uk) (direct line 0207 553 7464) or by post to JCWI, 115 Old St, London EC1V 9RT.