

Government announcement and proposals since its White Paper on asylum: a summary

Introduction

In February 2002, the UK government published its White Paper *Secure Borders, Safe Haven: Integration with Diversity*. Since then, there have been a series of meetings and announcements from the Government regarding further proposed changes to the asylum system in the UK and at the European level. These have taken many different forms and include

- The EU Summit in Seville
- A leaked Downing Street memo from a ministerial meeting held in May
- Statements and meetings concerning Sangatte
- Amendments to the Nationality, Immigration and Asylum Bill
- Answers to parliamentary questions

The asylum arena is a constantly changing landscape, which means that as a whole, the proposals provide a good indication of where the Government is heading, even though some of them are at different stages. The stronger anti-immigration sentiments across Europe, such as, for example, in the Netherlands, France and Denmark, as well as the UK government's reaction to it, have provided much of the political background to these proposals. The UK government appears to believe that one way of combating the rise of the far right is to take the ground away from them by looking at targetting illegal immigration and reducing the number of asylum seekers arriving in the UK.

The Refugee Council, however, believes this analysis to be fundamentally flawed. We think that pursuing an agenda based primarily on reducing the number of asylum applicants, in fact, reinforces the whole anti-immigration agenda. We believe that the Government should be providing the necessary political leadership to rebuild public confidence in the asylum system rather than blaming asylum seekers for its failures.

The purpose of this briefing is to summarise the most significant of the recent Government announcements and to briefly analyse their implications.

Measures on appeals and judicial review

Measures on appeals and judicial review have been introduced as amendments to the Nationality, Immigration and Asylum Bill. The aim of these measures is to make the appeal process faster and more robust to cut costs and delay. These proposals differ radically from what was originally in the White Paper.

1. Certifying some cases as clearly unfounded

Some asylum applicants' cases will be certified as 'clearly unfounded', which means they will be returned to their country of origin before they can appeal. This is known as a *non-suspensive* appeal, as removal is not delayed while an appeal is heard.

Consequently, people will be removed to their country of origin simply on the basis of a single administrative decision to refuse their asylum application. Even though they will have the right of appeal, they can only exercise this right from the country to which they have been removed. This would have applied, for example, to Zimbabweans prior to the Government suspending their removals earlier this year because it was too dangerous for them to remove them back to Zimbabwe.

The Refugee Council believes it is clearly desirable that cases should be expedited and that resources should be provided to achieve this. What is worrying, however, is the effective removal of meaningful judicial scrutiny over decisions that are increasingly superficial in relation to the individual circumstances. Such decisions are also without any guarantee that the individual concerned will have had competent legal advice.

It is unlikely that many people, if any, will be able successfully to launch an appeal from their country of origin – the very country in which they fear persecution. A *non-suspensive* appeal is to all intents and purposes no appeal at all.

2. Safe third country appeals

Alternatively, some cases will be certified on the grounds that the individuals involved can be sent to a safe third country in order to pursue any appeal. This could apply to any case that has been refused.

Removal to a safe third country to pursue an appeal is also problematic. It is unclear why any country would agree to host a growing number of failed asylum seekers on their territory whilst they appeal to the UK. It is likely that people would be passed back down the line to their country of origin with the corresponding risk of *refoulement*. The Government may also be thinking of reaching agreements with 'safe' countries to take people while they pursue their appeal.

3. Immigration Appeal Tribunal (IAT)

Cases not certified in this way will continue to be heard by an adjudicator in this country and, if refused, will have to seek leave to have their case heard by the IAT.

This means that such cases will still be able to have their appeals heard in this country and, if unsuccessful, apply to the IAT to have this decision reviewed. However, leave has to be sought to appeal to the IAT and this is commonly refused. At present, such a refusal could be challenged by means of judicial review, but the proposal to have a statutory review, carried out by a judge on the basis of the paper file only, of such decisions eliminates this possibility.

We believe this will result in injustice. In a survey of comparable written submissions for judicial review, many clients represented by the Refugee Legal Centre (RLC) were successful in cases where the written application had been unsuccessful, but an oral decision was taken to renew the application. Of a sample of 20 RLC cases, where written applications for judicial

review were unsuccessful, 10 cases resulted in successful renewed oral applications for leave. One case was settled by consent with the Home Office. Thus 11 of 20 individuals – 55% - were wrongly refused leave to move for judicial review on a written application.

We believe that the net result of these measures would be to significantly reduce the judicial scrutiny of decisions without also addressing the longstanding criticisms relating to the quality of decision-making and, in particular, access to legal advice and representation. The Government's overriding concern appears to be the desire to be seen as tough by the public and to deter asylum seekers from arriving in the UK. We fear this desire to send such messages now outweighs the commitment to justice.

Sangatte

There have been a series of announcements and meetings about the refugee camp at Sangatte. The most recent meeting between David Blunkett and his French counterpart, Nicolas Sarkozy, took place on 12 July 2002.

In the past, ministers have rightly described the camp at Sangatte as the symptom of the lack of harmonisation of EU asylum policy and called for quicker progress towards a single EU asylum system. In recent weeks, however, the focus of the UK government has been on discussions with the French government with a view to securing an agreement that would represent a short-term solution - the closure of the refugee centre being the key feature.

The joint communiqué of the meeting between David Blunkett and Nicolas Sarkozy on 25 June announced agreement on a range of security measures, including the introduction of new heartbeat detectors in Calais, hi-tech equipment to detect forged documents, and joint teams of intelligence officers. Apparently, in response to French concerns about 'pull factors', the UK government has agreed to clamp down on illegal working, is introducing tough new measures in the Nationality, Immigration and Asylum Bill (presumably to act as a deterrent) and is issuing a consultation paper on entitlement cards. This disregards new Home Office research showing that asylum seekers have little knowledge of UK immigration and asylum policy or how it compares to other EU countries.

The French and UK governments have agreed to close the Sangatte camp as soon as possible. From the meeting in July between David Blunkett and Nicolas Sarkozy, it appears this could happen as early as the end of 2002. The exact timetable is likely to be agreed in September.

There are also other ideas, such as UK and French co-operation in carrying out removals and processing work permits and applications for refugee status. It is thought that this might involve joint UK/French determination in France of asylum claims from people in the centre. Some of those found to be refugees would then be allowed into the UK.

Ruud Lubbers, the High Commissioner for Refugees, has offered UNHCR's assistance to the two governments, possibly by setting up some kind of 'screening' procedure and mechanism to share responsibility for those who are successful, and helping to organise voluntary return for those who are not. Screening might involve full determination of refugee status, or simply assigning responsibility to a particular country for deciding the asylum application.

The Refugee Council and other refugee organisations are assessing these ideas. The merits depend very much on whether asylum seekers from the centre would have the same legal

rights as they would have, had they applied in the UK. It is likely that the simplest solution is not to set up a new procedure to determine whether the people at the Sangatte centre are refugees, as both France and the UK already have elaborate asylum determination systems. What is needed is a mechanism for sharing responsibility for the people living at the makeshift camp: a system that is not only fair to both governments, but also fair to the asylum seekers and respectful of their human rights.

The Refugee Council's view is that Sangatte is a symptom of the huge discrepancies in the treatment of asylum seekers and refugees in EU countries. It is also a symptom of the absence of a system for sharing the responsibility that is fair to EU states and fair to asylum seekers. The long-term solution lies at the European level.

Nevertheless, it should not be beyond the capacity of the UK and France, the world's fourth and fifth richest countries, to find a stopgap solution that respects the asylum seekers' human rights. Closing the centre is not a solution in itself, and alternative accommodation must be found whilst longer-term solutions are being negotiated.

Seville Summit – June 2002

The recent EU summit in Seville agreed the following proposals:

1. Tighter border controls

Before the end of 2002, EU member states should have joint operations on its external borders and create a network of immigration liaison officers.

2. Illegal immigration

Current negotiations with third countries are to be speeded up. These negotiations centre on readmission agreements, which require countries to take back nationals who are refused the right to stay in the EU.

3. Co-operation with third countries

The EU should ensure the co-operation of third countries in the fight against illegal migration and is prepared to offer financial and technical support to do this. The EU will carry out systematic assessment of relations with non-co-operative third countries. Those states, which the EU deems to be co-operating inadequately, could find it difficult to forge closer links with the EU.

If all EU member states agree on whether a third country has shown an unjustified lack of co-operation, the EU may adopt political measures under the common foreign and security policy. The proposals claim the EU will be able to do this without jeopardising development and co-operation.

The UK had suggested linking development aid to co-operation with returns, an idea opposed by France and other countries. Clare Short, the Development Secretary, has opposed similar ideas of linking UK aid to refugees' countries of origin or transit. The new International Development Act 2002 makes it unlawful to use aid for improper political or commercial ends.

4. Asylum

New deadlines have been set for agreeing on the remaining elements of the package of European legislation on asylum. By December 2002, EU interior ministers must adopt proposals from the European Commission revising the Dublin Convention. The Dublin Convention broadly stipulates that the state where an asylum seeker first sets foot on EU soil is responsible for handling any asylum application. By June 2003, they must agree a definition of people in need of protection, including who is a refugee. By the end of 2003, they must set minimum standards for asylum procedures.

Overall, the Seville summit highlights the European Council's preoccupation with attempts to prevent asylum seekers' access to EU territory and their removal if they are unsuccessful.

The Refugee Council is disappointed that virtually no action was proposed to tackle root causes in countries of origin, guarantee access to protection for those in need, or ensure that the process of harmonisation of EU asylum policy results in agreement on the highest standards.

5. Measures to reduce 'unfounded' claims

There are a range of measures designed to review existing asylum applications and reduce the number of asylum claims made, which are already under way or outlined in the White Paper. One not contained in the White Paper but appearing in the Nationality, Immigration and Asylum Bill relates to postal applications.

The Government has long wanted to stop asylum seekers being able to apply for asylum by post, but has lacked the screening and induction resources to do so. As the new induction procedures are being rolled out, postal applications will come to an end. The Nationality, Immigration and Asylum Bill gives the Government powers to stop postal asylum applications. The intent is to implement this when the Bill receives Royal Assent.

This has been the source of considerable difficulty in the past and judging on current progress, there is the clear danger that the Government will not have sufficient screening and induction facilities in place, which would remove the practical need for the ability to apply for asylum by post.

Changes to Section 19 (d) of the Race Relations Act: authorised discrimination by immigration officers

The Refugee Council welcomes the change to Section 19 (d) of the Race Relations Act brought about by a legal challenge from the Tamil Information Centre. This change prohibits immigration officers to discriminate in the examination of passengers from certain specified ethnic or national groups (Tamils, Kurds, Pontic Greeks, Roma, Somalis, Albanians and Afghans). This will mean that people from these groups will no longer be subject to a more rigorous examination than any other national or ethnic group.

Employment

The Government has announced that the employment concession for asylum seekers has been withdrawn with immediate effect from 23 July 2002. The concession meant that asylum seekers could apply for permission to work after six months of the date of their asylum application provided they had not had an initial decision within that period. Asylum seekers who are currently allowed to work will not be effected by this announcement. If an asylum seeker has already lodged an application for permission to work by 23 July 2002, the application will still be considered. Asylum seekers who have already waited six months or longer for a decision on their asylum application, but have not applied for permission to work, will no longer be able to do so.

The Government maintains that the employment concession is no longer relevant as the majority of initial asylum decisions are made within six months. It also claims that it acts as a 'pull-factor'.

The Refugee Council is bitterly disappointed by this retrograde step for a variety of reasons:

- the current average time for an initial asylum decision is 13 months and a further 26 weeks for an appeal;
- there is no evidence that suggests that the employment concession encourages new asylum applications;
- there is clear public support for the idea that wherever possible, asylum seekers should work to pay their way;
- removing the employment concession will have a major impact on the ability to integrate for those who will be granted a positive decision on their asylum application and who have had to wait more than six months for an initial decision;
- removing the employment concession will particularly affect those with specialist occupations, such as health professionals, as they are denied the opportunity to keep their skills up-to-date;
- removing the employment concession is making the employment rules more complex and is likely to affect those with refugee status or exceptional leave to remain/enter or, indeed, other migrants who are allowed to work due to employers misinterpreting the new rules.

Cash-only support

The Nationality, Immigration and Asylum Bill will give the Government the power to remove the option for asylum seekers to apply for subsistence-only support from the National Asylum Support Service, usually referred to as the 'cash-only' option. In response to parliamentary questions and in conversations involving ministers and civil servants, it has been stated that this option would not be removed until the accommodation centres have been piloted. However, it is apparent from a Downing Street memo that the Government is still considering removing the option of cash-only support starting the autumn in 2002. The Refugee Council will continue to press for the cash-only option to be retained.

Accommodation centres

The Government has announced the first three locations of the proposed accommodation centres: Bicester in Oxfordshire, Pershaw/Throckmorton in Worcestershire, and RAF Newton in Nottinghamshire. Planning permissions for these sites are being prepared. It is likely that local authorities will raise concerns about the location of these sites and seek to refuse planning permission. Two other sites are currently being considered.

The Refugee Council has put forward an alternative model of much smaller community-based accommodation centres, which the Home Office is currently considering (the model can be downloaded from our website at: www.refugeecouncil.org.uk).

'Benefit shopping'

The Government has added a new schedule to the Nationality, Immigration and Asylum Bill, which aims to prevent what the Government calls 'benefit shopping'. This is aimed at stopping those people with refugee status obtained in another European Economic Area (EEA) country coming to the UK and claiming support from local authorities.

However, there is little evidence to suggest that people with refugee status in another EEA country travel to the UK to seek better benefits. Those that do come generally do so due to family or community ties. There are already many restrictions on entitlement to benefits on people in this position and, in real terms, this will affect relatively few people. The prominence being given to this amendment well illustrates the Government's preoccupation with the idea that the overriding reason for any refugee coming to the UK is because of benefits despite all research to the contrary.

Education

Despite widespread opposition, the Government has confirmed its intention to exclude refugee children placed in accommodation centres from mainstream education. The only concession offered to date is that there will be an assessment after six months, and if the children are still in the accommodation centre after a further three months they will be offered a place in a local school.

Nationality and citizenship

The Government has confirmed that there will be a waiver for older and disabled people in relation to the language and UK knowledge tests required when applying for British citizenship. It has also stated that the first citizenship ceremonies will take place in September 2003.

Entitlement cards

As indicated in the section on Sangatte, the Home Office has recently published a consultation paper on entitlement cards and identity fraud. Asylum seekers are currently being issued with an Application Registration Card (ARC), which seems very similar to the

proposed identity card for UK residents. At this stage it is unclear what the relationship between the existing ARC and any new entitlement card would be, as it appears that asylum seekers would not be issued with identity cards. We are concerned that asylum seekers are not further discriminated against when trying to access the services to which they are entitled, and we will be seeking clarification during the consultation period, which lasts until 10 January 2003. Copies of the paper can be obtained from the Home Office website at: www.homeoffice.gov.uk/dob/ecu.htm.

Unaccompanied asylum-seeking children

It is likely that the pressure to disperse unaccompanied asylum-seeking minors away from London and the South East will continue. There are already moves to formalise the current ad-hoc arrangements. What is particularly concerning is that it is clear from the leaked memo in May that dispersal is being seen as a further deterrent as it will 'reduce incentives for abuse'.

Conclusion

It is clear that the Government is anxious to portray itself as taking an even tougher line on asylum. All of the proposals outlined above aim at either preventing asylum seekers from arriving in the UK or at making it easier or quicker for the Government to return those who are unsuccessful.

The Refugee Council believes that a fair and transparent asylum process lies at the heart of any credible asylum system. Asylum decisions must be legally robust and subject to proper scrutiny.

The announcements reinforce the asylum aspects of the White Paper that concentrated on the control and the removal of rejected asylum seekers. The real purpose of the asylum system, which is to provide protection to refugees, is yet further obscured.