



16 October 2008

Response to the UK Border Agency's Consultation on 'Strengthening the Common Travel Area'

About the organisations responding jointly to this Consultation

As a human rights charity, independent of government, the Refugee Council works to ensure that refugees are given the protection they need, that they are treated with respect and understanding, and that they have the same rights, opportunities and responsibilities as other members of our society.

Scottish Refugee Council provides independent help and advice to those who have fled human rights abuses or other persecution in their homeland and now seek refuge in Scotland. We campaign to ensure that the UK Government meets its international, legal and humanitarian obligations and to raise awareness of refugee issues. Our vision is for a Scotland in which asylum seekers' and refugees' rights are respected and they are welcomed, treated with dignity and empowered to play a full and equal role in their new communities.

The Welsh Refugee Council's vision is to "empower refugees and asylum seekers to rebuild their lives in Wales". We campaign for a better deal for refugees, so that everyone who comes to Wales seeking asylum can live in safety, security and freedom.

Introduction

The Refugee Council, Scottish Refugee Council and the Welsh Refugee Council welcome the opportunity to comment on the proposed changes to the Common Travel Area (CTA) as outlined in the UK Border Agency's (UKBA) Consultation Paper on 'Strengthening the Common Travel Area', 24 July 2008.¹

¹ See UKBA's website:
<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/strengtheningthecommontravelarea/>

Our concerns are listed below and relate to how the proposed changes will affect the human rights of individuals in need of international protection- including asylum seekers, refugees and those granted other forms of protection, as well as refused asylum seekers.

For ease of format, we have chosen not to answer the list of questions posed in the UKBA's Consultation document; instead we would like to focus on how the proposals will affect our client group specifically.



Proposed Changes to the Common Travel Area

The Common Travel Area comprises the UK (England, Northern Ireland, Scotland and Wales) and the Republic of Ireland. This area has remained for many years a free movement zone in which once a person has been granted leave to enter one part of the CTA, they will not normally require leave to enter another part of the CTA. The current proposals include:

- immigration checks on passengers and their documents on sea and air routes arriving and departing for border control purposes
- use of e-borders on air and sea routes and the introduction of carrier's liability between the UK and the Republic of Ireland

The Consultation also requests a response to suggestions of:

- introducing a joint CTA common (short stay) visa
- enabling the transferral of conditions of stay from the Republic of Ireland to the UK

Whilst there are no plans to introduce immigration controls on the land border between the Republic of Ireland and Northern Ireland, or between nations in Great Britain the UK will consider:

- increasing checks on vehicles to target non-CTA nationals who have travelled to the Northern Ireland side of the land border.

Our Concerns:

We note that refugees and asylum seekers are not mentioned in the Consultation document. Refugees do not enjoy the protection of their own governments and some are vulnerable due to the persecution they have previously suffered. Since refugees and asylum seekers travel across borders, we feel it is vital that their concerns be included in any consideration of border control. This is particularly so in view of the UK's legal obligations towards them as a signatory to the 1951 Convention Relating to the Status of Refugees (the 1951 Convention).

We would like to highlight the following areas:

Access to asylum and respect for the principle of non-refoulement

The protection needs of individuals crossing international borders must be considered in any plans to increase border controls. Since the UK and the Republic of Ireland are signatories to the 1951 Convention as well as other international human rights instruments such as the European Convention on Human Rights, the Convention on the Rights of the Child and the Convention Against Torture, they are obliged to ensure that individuals are not returned to a place where they may face persecution or torture (known as the principle of non-refoulement).

In practice, this means that individuals must be afforded the opportunity, at any stage, including at the border and 'in country' to express their need for international protection and be given access to the asylum system as well as independent legal advisers. This includes stowaways as well as individuals intercepted in immigration 'raids' and searches, such as those proposed in Northern Ireland.

Whilst we understand that there is an asylum system in both the UK and the Republic of Ireland, we recommend that all officials that may encounter refugees, including border guards, police, private air and sea carriers, private security personnel, airport and port authorities are fully aware of these obligations as well as the procedure to follow. We further recommend that legal advisers and NGOs are given access to areas where intercepted individuals may be detained, including transit areas, in order to inform them of their rights.

In order to ensure transparency, we believe that non-sensitive data, including the profiles of intercepted individuals- nationality, age, gender, vulnerabilities as well as whether any expressed a protection need, should be recorded and made public. In addition, we would request that the monitoring of the increased border controls in the CTA area be included in the remit of the Office of the Chief Inspector of the UKBA. With regards to complaints about immigration officers now under the auspices of the Independent Police Complaints Commission, we would point out that there is no 'parallel arrangement' in place for Scotland and Northern Ireland.

We would also remind the UKBA of its obligations under Article 31 of the 1951 Convention which recognises that states should not penalise refugees on account of illegal entry or presence where they travel from a territory where they fear persecution. In relation to the CTA, it is important for both the UK and the Republic of Ireland to ensure that intercepted refugees are not unduly penalised for illegal entry.

We are disappointed to see increased provision for penalising illegal entry in the current draft (partial) Immigration and Citizenship Bill 2008 which will include those seeking or assisting those seeking international protection. Where this affects children, we would draw attention to the concluding recommendations of the UN Committee on the Rights of the Child (3 October 2008) which stated that the UK government should:

"consider amending section 2 of the 2004 Asylum and Immigration (Treatment of Claimants etc.) Act to allow for an absolute defence for unaccompanied children who enter the UK without valid immigration documents."²

Carriers' Liability

We believe that the imposition of financial penalties on private carriers for carrying inadequately documented passengers inappropriately confers state functions onto private agents. Such agents are not sufficiently trained or resourced to exercise such

² See [Committee on the Rights of the Child, Forty-ninth session: Consideration of Reports submitted by States Parties Under Article 44 of the Convention: http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf](http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf)

functions and have no regard for the protection needs of persons fleeing persecution. In respect of the CTA, we wish to point out that when interception measures are conducted by private actors on behalf of governments, the state remains responsible for ensuring access to protection and respect for the principle of non-refoulement.

Documentation

In regards to documentation that is acceptable for travel in the CTA, the Consultation does not include any reference to the documentation that governments issue to refugees they recognise, namely the Convention Travel Document. Convention Travel Documents must be included in the list of acceptable documentation since refugees are not able to travel on national passports. Likewise the Certificate of Identity for those with Humanitarian Protection or Discretionary Leave as well as the 1954 Stateless Persons Document must be listed as valid travel documents.

Travel between the UK and the Republic of Ireland

In view of the proposals for a common CTA visa, we would strongly recommend not imposing visa requirements for travel in the CTA on refugees and others whose protection needs have been recognised by either of the two respective governments. This would enable refugees and those with humanitarian protection, discretionary leave and Indefinite Leave to Remain without refugee status to enjoy freedom of movement.

Transferral of conditions of stay

We would urge the governments of the UK and the Republic of Ireland to consider the introduction of mutual recognition of refugee status and the attached conditions such as leave to remain and the right to work. This could also include individuals who are afforded international protection other than refugees such as those with humanitarian protection, temporary protection and discretionary leave.

We would draw attention to parallel ongoing debates at EU level regarding proposals to include beneficiaries of international protection (refugees and those granted other forms of international protection) into the Long Term Residents Directive.³ This would mean that individuals who have resided in a Member State for 5 years and who have a Long Term Resident Permit may enjoy benefits, such as access to employment and training, in another member State.

Responsibility Sharing- Dublin II

We note that the sole mention of asylum seekers in the Consultation appears in the Partial Impact Assessment of Common Travel Area (CTA) reform where one of the 'key non-monetised benefits' of strengthened UK immigration controls includes the 'reduction in imported asylum cases'. Putting aside our concerns at the de-humanising language of this phrase, we would refer to our long-standing concerns as to the operation of the Dublin II Regulation.⁴ Overall, we do not consider this

³ Proposal for a Council Regulation amending Directive 2003/109/EC to extend its scope to beneficiaries of international protection (for further information see www.ecre.org)

⁴ Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by

mechanism as an effective method of responsibility sharing. States, in particular the UK, have so far not adopted a humanitarian approach to assuming responsibility for asylum claims and the Regulation has resulted in families being split for example.

We are particularly concerned about the impact of Dublin II on unaccompanied minors. We believe that Immigration Authorities should give due notice to the particular needs of unaccompanied children and not simply return them without the involvement of childcare agencies. Children should thus not be passed between immigration officials, but between child care agencies with procedures in place to safeguard their welfare and to ensure that any protection needs are addressed.

Identification and treatment of vulnerable persons

We note that the Reception Directive requires states to identify vulnerable persons at the earliest possible stage.⁵ Given increased border control activity, we would recommend training be provided to border officials and private carriers in the identification of vulnerable groups, and in particular unaccompanied refugee children, women as well as trafficked individuals. The inclusion of experts in this area such as NGOs, medical and legal professionals is encouraged.

Resettled refugees

The Refugee Council notes and is supportive of the governments of the UK and Ireland recent joint selection mission that was conducted with a view to resettling a group of refugees in Northern Ireland and the Republic of Ireland. We believe that it is likely that this group brought in by the two respective governments may wish to visit each other's families/communities on either side of the border. In this regard, we recommend that the issue of border control as well as documentation is properly explained to the incoming group of refugees in order that none unwittingly fall foul of any new legislation.

Border Control between the Republic of Ireland and Northern Ireland

We would draw attention to the lack of controls on the land border with reference to individuals with pending claims for international protection and their being deemed abandoned upon 'leaving' the country in which they were lodged. For example, where an asylum seeker living in the north of the Republic of Ireland goes shopping in Northern Ireland risks their protection claim being deemed withdrawn. In these circumstances, we would advocate that claims for international protection be duly considered where there was no intention to abandon a claim.

Increased checks and searches

We are concerned that increased checks and searches to intercept non-CTA nationals travelling irregularly may increase the risk that Black and Minority ethnic communities, which may include refugees, will be unduly targeted. We trust that the proposals will not lead to any form of racial profiling in interception activities and that intercepted individuals are given access to the asylum system.

a third-country national, Official Journal of the European Union, 25 February 2003, L50/1 ('Dublin II').

⁵ The Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (the 'Reception Directive').

Human Rights

We note that no detailed information on the assessment of compatibility with human rights obligations is contained in the Consultation document. We view carrying out human rights assessments on changes to policy and legislation as good practice and would urge the UKBA to carry out an assessment in the form of a 'protection audit' in relation to proposed changes to border controls in the CTA and more broadly.