



The Refugee Council's response to Government proposals on legislation on identity cards

July 2004

1. Introduction

The Refugee Council is the largest organisation in the United Kingdom working with asylum seekers and refugees. We not only give help and support to asylum seekers and refugees, we also work with them to ensure their needs and concerns are addressed by decision-makers. We therefore welcome the opportunity to respond to the proposed legislation.

2. Summary response

- 2.1 The Refugee Council shares the concerns expressed by other respondents we have seen, such as ILPA, that it is far from clear that the proposed scheme will actually achieve its stated objectives. In addition how the scheme would work in practice remains unclear or subject to subsequent regulation.
- 2.2 Before summarising our concerns it is perhaps worth saying that the introduction of a similar card for asylum seekers – in the form of Application Registration Cards (ARC) has proved to be largely beneficial for our clients. Prior to their introduction people struggled to establish their identity through a variety of often confusing paperwork. The use of a single smart card for all has undoubtedly ameliorated many of these problems.
- 2.3 For this reason we welcome the fact that foreign nationals with leave to remain of longer than 3 months will be included in the scheme which we see as an inclusive measure. We presume that as a result the longstanding problems facing people with humanitarian protection or discretionary leave such as access to driving licences and bank accounts will cease to be an issue. We trust therefore that officials will have early discussions with the DVLA and the banks to ensure that this is so. We do nevertheless have concerns (outlined in paragraph 3.4) in relation to this about early compulsion of this group to have cards and the threat of heavy penalties where they fail to register or maintain their details.
- 2.4 Beyond this our concerns relate generally to two areas. Firstly it is important that asylum seekers also do have clear means of establishing who they are and to what they are entitled by way of support and services. We would like assurances that the ARC cards will continue in use and will be acceptable to a wide range of authorities. We fear their exclusion from a progressively wider ID scheme will increase asylum seekers social exclusion. Secondly that where people have resorted to the use of false documentation in order to effect entry into the country to seek asylum that they should not be penalised or prosecuted for doing so.

3. Responses to specific consultation points

- 3.1 We will confine our response to the consultation points that refer directly to these concerns.
- 3.2 National Identity Register - paragraph 2.11: This paragraph states that the Register “will hold information about people who have not applied for an identity card (e.g. illegal entrants”). This seems to be an extremely broad application of the database which may be fraught with problems. Who exactly will be putting this information on, how will it be maintained and kept updated and what is its purpose? Will people be aware of, or have access to information that is thus held about them? Illegal entrants who apply for asylum are already screened, fingerprinted and recorded on a computer so what is the purpose of also adding them to this database? If it is to cross check applicants to the register what would then happen if an earlier entry as an illegal entrant was revealed? Our experiences of the problems of computers accessing data even from related databases, such as between NASS and Asylum Casework, have illustrated that reliance on such mechanisms can be extremely problematic.
- 3.3 Identity fraud: There has been much concern amongst NGOs that asylum seekers using false documentation to enter the UK are increasingly being prosecuted despite the protection offered by Article 31 of the Refugee Convention which says that penalties should not be imposed on those effecting entry in order to escape persecution. The offences in the proposed Bill seem to be so widely drawn that anybody in possession of any false immigration document will be guilty of a criminal offence despite their possible protection under article 31. This is different from, for example, Clause 2 of the 2004 Asylum and Immigration (Treatment of Claimants, etc) Bill whereby destruction of such documents is an offence but mere possession is not. It is a defence to Clause 2 prosecutions that the false documentation was in order to facilitate an asylum claim. We would thus be concerned that similar safeguards be in place to ensure that people’s rights under Article 31 are protected in any new legislation.
- 3.4 Compulsion - paragraph 2.58: as mentioned above we welcome the fact that people with leave to remain will be included in the Identity Card Scheme but we are concerned about the intention to make people with humanitarian Protection and discretionary Leave an early category for compulsory registration for an ID card. Our concerns relate to the fact that there will be extremely heavy civil penalties for failure not only to register but also to keep the entry updated in relation to a complex range of information. This may be placing an onerous burden on people whose lives may be subject already to much confusion and change.

- 3.5 Requirements to use identity cards - paragraph 2.71: Experience of use of ARC cards informs some of the concerns that we have about the Identity Card scheme. These come under two headings: i) that asylum seekers will not be part of the main Identity Card scheme – they will continue to have ARCs only. As the Identity Card scheme gains more general use there is the danger that asylum seekers may be progressively excluded from access to services as the main card becomes progressively the “accepted” method of verification. ii) this leads to the second concern – that government officials may incorrectly deny people access to services due to misinterpreting the nature of their status and documentation.
- 3.6 We have had some evidence of both of these factors at work in the fields of health care and education. The Refugee Council noted *“in a survey of 81 NHS Trusts carried out in 1997 in Manchester and London that 67% of the respondents (NHS staff) wrongly believed that refugees and asylum seekers were not entitled to free health care. The survey also revealed that the respondents used the terms ‘immigrants’, ‘illegal’, and ‘refugee’ interchangeably¹”*. We have had similar recent examples of people being denied hospital care when they are clearly entitled to it and refused admission to GP’s lists in the same way. This has happened, and continues to happen, despite the legal position being clear and despite guidance from the Department of Health explaining it. The reality is that when confronted with uncertainty front line staff can misinterpret the position, make assumptions, play safe by refusing people or even invent their own rules.
- 3.7 In the field of education a report “Working with refugee children” by Jill Rutter in 2003² highlighted the obstacles to accessing education caused by high mobility, complex rules and lack of awareness. These factors are compounded by schools own lack of awareness. In 2003 an Ofsted report “The education of asylum-seeker pupils” observed *“Very few schools knew about the DfES document on the education of asylum-seeker and refugee children.”³* We ourselves have heard of instances of children being refused schooling on the grounds that they “should not have recourse to public funds”. Others have had problems enrolling with libraries or buying travel cards.
- 3.8 Instances of this type are commonplace – particularly, and increasingly, in relation to health services. We fear that in a similar way a combination of “function creep” for Identity Cards (whereby their use and acceptance is a gradual process), combined with the exclusion of asylum seekers from this main process will create an environment which becomes increasingly prone to such misconceptions and hence leads to progressive social exclusion.

¹ “A Survey of NHS Trusts in Manchester and London” Refugee Council 1997.

² “Working with Refugee Children” : Jill Rutter 2003 published by Joseph Rowntree Foundation P27-8.

³ “The education of asylum-seeker pupils”: Ofsted October 2003 P 13.

- 3.9 We are not suggesting that asylum seekers be issued with Identity Cards but rather that it is extremely important that the government should be aware of this concern and take steps to ensure that proactive measures are in place to ensure that the introduction of Identity Cards does not further contribute to asylum seekers' social exclusion. This would mean making clear to service providers through regulation and guidance why there is a distinction between the types of Identity Card that people may have and ensuring that they do not deprive and exclude people from service provision inappropriately. This needs to be pursued more actively than has previously been the case.

4. Conclusion

To summarise, we do see some positive benefits in this scheme in providing clarification of some people's status and entitlements but have a number of concerns. These relate to the overall purpose of the scheme and whether it will achieve its stated aims; the potential discrimination and difficulty of requiring early compulsion for foreign nationals and the potential for increasing social exclusion of those outside the scheme, in particular asylum seekers.