



# **CATHOLIC BISHOPS' CONFERENCE OF ENGLAND AND WALES**

## **Office for Refugee Policy**

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*21<sup>st</sup> July 2005*

### **BRIEFING PAPER ON** **THE IMMIGRATION, ASYLUM AND NATIONALITY BILL 2005**

#### **INTRODUCTION AND BACKGROUND**

This Bill is primarily inspired by two published government proposals: the Home Office Strategic Plan 2004-2008 "*Confident Communities in a Secure Britain*" (published July 2004) and the five year strategy for asylum and immigration, "*Controlling our Borders: Making Migration Work for Britain*" (published in February 2005).

The government has made it clear in the five year strategy that it is committed to the 1951 UN Refugee Convention. By definition, and as the Prime Minister has stipulated, this means, "*We don't slam the door on those genuine refugees fleeing death and persecution*".<sup>1</sup>

The five year strategy also acknowledges the growing importance of migration in a globalised world, and that the UK should manage this migration so as to benefit from it. ORP does not often agree with the crude calculus of economic benefits, often deployed in support of managed migration programmes, but appreciates the government's attempt to balance this with the recognition of the human rights of migrants and refugees.

The Bill articulates primary legislation for key aspects of the five year strategy and in some respects "facilitates the enforcement and transparency of the system". Since 1999, four pieces of legislation have been introduced to Parliament dealing with immigration, asylum and nationality issues, each curtailing further the protection space for people seeking asylum (and immigration status) in the UK. This new Bill continues the trend. For example, the revocation of Indefinite Leave to Remain (ILR) for those granted refugee status appears in the five year strategy, though not in the Bill. The government has the power from previous legislation to remove ILR status; in the Bill the right of appeal against the removal of ILR status is allowed. Nevertheless some aspects of the Bill are welcome and many others unproblematic.

In 2003, the CBCEW issued a statement on 10 principles necessary to establish a fair, efficient and humane asylum system. *Inter alia*, the statement said that "the focus of the asylum system should be on ensuring rapid, good quality decisions, with early provision of legal advice, interpretation services, an accessible appeals procedure and where necessary, judicial review". ORP reiterates that the best way to have a fair, efficient and humane asylum system is to get more decisions right first time, to avoid delays and appeals, thereby engendering public confidence in the asylum system let alone ensuring savings. The Commons Home Affairs Select Committee, the International Development

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<sup>1</sup> The Prime Minister's foreword in the 5-year strategy for asylum and immigration.



## **CATHOLIC BISHOPS' CONFERENCE OF ENGLAND AND WALES**

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Committee and the National Audit Office have argued in a similar vein. Unfortunately, the measures in the new Bill do not sufficiently address this issue.

#### **THE BILL - MAIN CONCERNS**

The Bill has four sections on appeals, employment, information and claimants and applicants. This Briefing concentrates on issues related to asylum seekers and refugees within these sections.

#### **Appeals (Clauses 1-5)**

The Clauses under this section remove appeals from various aspects of the application and appeals process in asylum and immigration cases. ORP's primary concern is with Clause 1. This Clause which allows appeals against a decision to revoke ILR, is meant to implement the Government's five year strategy proposal to give successful asylum seekers a 'temporary status' to remain for five years, revocable at any time when conditions in the countries of origin become safe.

ORP shares with the UNHCR and the Refugee Council two concerns regarding cessation Clause 1 viz:

- a) What would constitute 'change' in a country of origin that would warrant sending refugees back? UNHCR says the "*change which has taken place in the country must be fundamental, not a mere transitory change in the facts surrounding the individual refugee's fear*". The government has not provided a definition of what constitutes change in the country of origin. The recent confusion over the removal of refused Zimbabwean asylum seekers reveals the contradictions in the government's position.
- b) The government says that it is committed to assisting refugees integrate into British society.<sup>2</sup> How would this measure assist refugees settle down and integrate when they live in fear of having their refugee status withdrawn at any time? (*See discussion under employment Clauses below*). ORP agrees with the Refugee Council "*that it is only reasonable and fair to allow refugees, i.e. those granted refugee status, immediate assistance to rebuild their lives and put down roots in the UK and not leave them in a limbo*". This measure may not contravene the letter of the 1951 UN Refugee Convention, but it certainly contradicts its spirit.

#### **Employment (Clauses 11-22)**

The Clauses in this part of the Bill reinforce existing government powers to penalise employers for employing people 'subject to immigration control'. For example, there are new on-the-spot fines of £2,000 for every 'illegal' worker (including people employing foreign nannies without visas); it is a criminal offence for knowingly employing an 'illegal' worker, employers are obliged to demand and check if visa documents are genuine, as well as check "at prescribed intervals" whether employees are allowed to remain in the UK.

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<sup>2</sup> See Integration Matters – Cross government (Home Office and the Department for Work and Pensions) policy to ensure that refugees are able to make full and positive contribution to society.



## **CATHOLIC BISHOPS' CONFERENCE OF ENGLAND AND WALES**

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ORP acknowledges the government has a responsibility to tackle the issue of illegal workers to ensure the integrity of the immigration system and help to protect the vulnerable from exploitation.<sup>3</sup> Concerns however remain that this new regime of employer obligations to check and continuously monitor the immigration status of employees may damage the employment opportunities of refugees with limited leave to remain and of asylum seekers who are entitled to work after a wait of 12 months for an asylum decision.

#### **Information (Clauses 23-36)**

Several Clauses in this part of the Bill extend surveillance and control powers to immigration, police and customs officers, as well as the security services (MI5, MI6, GCHQ) by way of accessing passenger information more easily; sharing data between different agencies; sharing information with overseas law enforcement counterparts and checking passenger identity using biometric details (fingerprints, iris recognition) contained in visas and other travel documents.

ORP recognises the Governments responsibility to controlling and regulating the admission of foreign nationals into the UK, for security as well as social peace, but maintain that this responsibility must be balanced with UK's obligations under international humanitarian laws, especially with regard to the protection needs of people fleeing persecution, repression, violence and human trafficking. UNHCR has always warned that the protection refugees deserve under the 1951 Refugee Convention may be "rendered meaningless" if refugees are deterred from reaching and claiming asylum in countries who have signed-up to the Convention.

#### **Claimants and applicants – (progressive Clauses 37-39)**

ORP welcomes the following:

- New powers for local authorities to allow social housing for people subject to immigration control and for those who have reached the end of the asylum process. This means Local Authorities can now provide Section 95, 98 and Section 4 support. This will go a long way to help the increasing numbers of refused asylum seekers facing destitution as they are unable to return home and those have been judged as in-country applicants.
- Proposals to amend the Asylum and Immigration (Treatment of Claimants) Act 2004 to allow integration loans to be made to those with refugee status. However one would have hoped that this support for recognised refugees would be by way of grants, rather than loans.
- Amendment to the Prison's Act 1952 to extend the powers of inspection and investigation of HM Chief Inspector to cover short term immigration holding facilities and escort arrangements.

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**17<sup>th</sup> July 2005**

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<sup>3</sup> The Gangmasters Licensing Act 2004 for e.g. has helped minimise the exploitative practices of many illegal gangmasters, though we have a long way to go.



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**URGENT NEWS RELEASED TODAY - 20.07.05**

The government announced that from 30<sup>th</sup> August asylum seekers given refugee status will no longer qualify for indefinite leave to remain but leave to remain for five years, after which their status will be reviewed with the view of removing them if conditions in the home country become safe. Neil Gerard MP has put down an Early Day Motion calling on the government to rethink this policy.