

ENFORCEMENT POLICY: THE HEART OF MANAGED MIGRATION?

- AN MRN Briefing Paper –

The Home Office's review of the Immigration and Nationality Directorate (IND), *Fair, effective, transparent and trusted: Rebuilding confidence in our immigration system*, published in July 2006, mapped out four objectives around which immigration policy would be constructed over the period ahead. These are:

1. Strengthening the UK's borders; using tougher checks abroad so that only those with permission can travel to the UK; and monitoring who leaves so that action can be taken against those who break the rules.
2. Fast tracking asylum decisions, removing those whose claims fail and integrating those granted refugee status.
3. Enforcing compliance with immigration laws by 'removing the most harmful people first and denying the privileges of Britain to those here illegally.'
4. Boosting Britain's economy by bringing in those with the right skills from around the world and ensuring this country is easy to visit legally.

These objectives have subsequently been developed into a series of proposals covering the 'export' of UK borders abroad, the introduction of identity cards and biometric identification, and the establishment of forums aimed at measuring economic needs for migrants and the social impact of migration.

This Briefing Paper considers the policies being developed by the Home Office in relation to the third objective regarding enforcement of immigration laws. Plans to meet this objective have been elaborated in the recent strategy paper *Enforcing the Rules* and a consultation document *Prevention of Illegal Working*. The first is a series of proposals for ensuring compliance with immigration laws through the creation of partnerships with public services, police and other public and private agencies to create what are effectively internal border controls. The second is a consultation document concerned with the implementation of powers contained in the Immigration, Asylum and Nationality Act 2006 intended to prevent illegal working by non EEA nationals.

The broader context of the new policies

A core belief of government policy at present is that the overall integrity of migration policies is seriously damaged by migrants who live and work in the UK outside the immigration rules. Government contends that if public confidence in the immigration system falls below a certain threshold a backlash against all aspects of migration is provoked, and such a backlash would be to the detriment of the UK's interests in maintaining sustainable economic growth. Recent statements from some government departments suggest that it believes public confidence to be dangerously near that threshold; and that robust measures are therefore needed to bring the system back on track.

The enforcement measures now proposed by the Home Office certainly fall within the category of robust action. They contain a mixture of organisational measures aimed at improving the detection of people in an irregular immigration situations and proposals which are framed with the *political management* of the public policy debate very much in mind. An example of the latter is the commitment to 'providing constant feedback to the public' on enforcement.

A striking feature of the enforcement proposals is the extent to which they require, and even insist upon, a role for other public authorities, the private sector and the public at large in maintaining surveillance over immigrants. *Enforcing the Rules* sketches out plans for the creation of 'immigration crime partnerships' across the country, with the Borders and Immigration Agency co-ordinating local authorities, police, primary care trusts, the private sector and the public in order 'to increase the impact of our enforcement effort.' The consultation document *Prevention of Illegal Working* provides some insights into the mechanisms considered necessary to ensure the involvement of employers in the task of maintaining the surveillance of immigrants which primarily involves the levelling of 'civil penalties' against employers found to be employing irregular migrants and not maintaining a record of their identity and immigration status.

This Briefing Paper reviews the main proposals set out in these proposals and considers their implications for public authorities and other organisations whose work brings them into contact with migrants. It draws particular attention to the tensions and conflicts that are likely to arise, and suggests the need for close monitoring of the impact of these policies on the integrity of public services and non-governmental organisations,

Definitions and the assessment of 'harm'

The term 'illegal migration' is defined very broadly in the enforcement strategy paper. The term is used not only to cover illegal entry but also breaches of the immigration rules committed by persons lawfully admitted. The paper argues that there are degrees of harm arising as a consequence of immigration irregularities, ranging from "threats to national security, such as involvement in terrorism", through to "undermining public confidence in the immigration system." Though all breaches of the rules render the individual migrant 'illegal' and therefore potentially subject to draconian sanctions, in practice rule-breaking is graded and the "impact and immediacy of consequences will depend on the seriousness of the breach of the rules and the potential harm." [para 33]

The numbers of irregularly residing migrants in the UK is generally estimated to be in the region of a half million people. A very small proportion of these are believed to have entered by clandestine means involving unlawful crossing of a national frontier. The largest number is made up of people who have at some point been lawfully resident and often still are lawfully resident. Objective research into the position of undocumented migrants is in an early stage of development and currently very little is known about the paths along which people move from legal to irregular status. Anecdotal evidence suggests that pressures exist within the experiences of migration which buffet against plans and intentions to remain lawfully and which convert a proportion of migrants into rule breakers and overstayers. Many of these pressures are financial, involving the discovery that recovery of the cost of the original investment in migration (visa fees, student fees, travel costs, legal advice and other facilitation, etc) is not as easily recoverable from the meagre wages available to migrants as had been thought. In other instances migrants will come under pressure from family abroad to remain to take full advantage of earnings opportunities which can be remitted abroad. In these cases migrants may be tempted to work more hours than permitted or overstay their leave in order lay claim to the benefits of migration.

The failure to distinguish between different categories of rule-breakers and indiscriminately cutting off access to services to all illegal migrants is likely to emerge as a major failing of the new proposals. A professional, full-time enforcement agency might be able to cultivate indifference to the predicament of people who are likely to be in vulnerable situations. However, it is unlikely that people operating to the professional standards and ethical codes of practice of other service

providers will be able to set these considerations aside resulting in a clash between enforcement imperatives and other professional duties.

The insistence to approaching irregular migration generically and deliberately creating an 'uncomfortable environment' for a broad spectrum of irregular migrants, rather than treating these as diverse instances of rule-breaking involving many different types of pressure to remain and work in breach of the regulations leaves too broad a range of targets. This is particularly worrying as it is coupled with a campaign of 'providing constant feedback to the public'. With the need to meet high profile targets for removal and enforcement, there is a risk that large amounts of energy might be directed against easy targets. For example, against student overstayers who have ceased their studies. This combination of a broad category of targets and much publicised targets may have a distorting effect on resource allocation that will prove detrimental to the measures needed to track down and act against much smaller groups of rule-breakers, such as people involved in criminal activities, whose detection is likely to be more difficult and will require greater resources.

The strategy paper responds to this dilemma by elaborating a sliding scale around the concept of 'harm'. 'Harm' is held to be 'all the potential negative consequences of illegal immigration.' (Para. 12) Yet within this concept, the scale of harms runs from 'threats to national security, such as involvement in terrorism' at the one extreme, to the harm of 'undermining public confidence in the immigration system' and 'creating a "systematic pull" for more illegal migrants' at the other. The advantage which such a scale brings to the discussion lies in its role as a mechanism for identifying the priorities which require most immediate enforcement action as the focus should be on 'removing the most harmful people first'.

However, talk of the level of 'harm' caused by such a wide variety of people in irregular migration position is likely to have the effect of prejudicing even further public discussion about the place of immigrants in British society, while adding little to the establishment of policy priorities. One would expect those individuals at the serious end of the harm spectrum such people as terrorists, violent criminals, people traffickers or others involved in serious fraud or money-laundering to be pursued irrespective of their immigration status in the UK. Branding them as 'illegal immigrants' adds nothing to the case against them, but risks setting up targets prone to distortion and increasing public anxiety about immigration.

If no great advantage is secured in operational terms by making discussion of harm a main part of the public discourse, a great deal of damage can be done to other aspects of society's acceptance of immigrants. The lower end of the harm spectrum illustrated in the strategy paper lists "fraudulent access to benefits", "reduced community cohesion", "health tourism" and "undermining confidence in the immigration system" as examples of immigration harm. In fact each of these examples refers to phenomena which are not specific to irregular migration, since they might also be associated with immigration generally, or even with non-immigrants claiming entitlements or services not due to them or otherwise acting in an anti-social manner. What happens when the dynamic of immigration 'harm' or 'abuse' is associated with broad social problem areas is migration itself becomes a way of talking about crime and dysfunction in which the position of irregular migrants, legal immigrants, and of non-immigrants of black and minority ethnic backgrounds are melded together and cease to be distinguished in the popular mind.

Civil society organisations supporting the rights of migrants have had to call the attention of government to the dangers of using negative and disparaging language to various of categories of immigrants, with objections to the constant use of terms like 'abusive asylum claims' being a recent example. The reduction of complex issues of law and policy to simplistic binaries of 'merited' and 'abusive' applications caused a great deal of damage to public perceptions of immigration. This new agenda of immigration harm is in danger of reproducing such damage in the years ahead

Enabling compliance and combating 'abuse'

Simplified rules

The second chapter of the strategy paper contains an implicit acknowledgment of the fact that the roots into irregular migration and non-compliance do not always involve criminal intent. Reference is made to people who break the rules through 'carelessness', by failing to take appropriate action when their visas are due to expire. In other instances non-compliance arises when migrants simply have not understood the modalities which govern their immigration. This leads to rule-breaking such as working more hours than permitted, changing employer or category of employment, or failing to attend the required number of tutorials and lectures at their educational institution.

The enforcement strategy proposes that, to counter non-compliance arising for these reasons, the legal requirements imposed on those coming to the UK should be 'as easy to understand as possible.' To this end a consultation *Simplifying immigration law: An initial consultation* was launched in June 2007. The complexity of immigration law and rules and the way the immigration system is configured is indicated in the following:

But the primary legislation does not tell the whole story [concerning the complexity of the system]. There are also the Immigration Rules made under the 1971 Act; a range of secondary legislation - with over thirty statutory instruments currently in force; and internal guidance and instructions. And all of these measures must be applied consistently with the Human Rights Act, equality legislation, European Union law and other relevant international instruments. (Simplifying immigration law: An initial consultation, para. 2.8)

There is undoubtedly great scope for the simplification of what is currently an excessively complex and opaque system. However, it should not be thought that simplification will reduce tensions between migrants pursuing their interests and the concerns of officials to enforce the rules. The Home Office's development and implementation of the Points-Based System has been criticised for making the presumption that simplified visa procedures are capable of becoming so transparent that the current right of appeal against refusal of entry clearance can be dispensed with. The report of the Home Affairs Committee of the House of Commons on immigration control, published in July 2006, stated that "there will always be questions of judgment over what weight to give pieces of evidence, as well as situations which are not precisely covered by the rules." [Select Committee Report, p.4]. The mistake here is to presume that transparency is the only thing required of rules and regulations, when there is also a pressing need that they should also be fair and in accord with the fundamentals of social justice and human rights. If these elements are not in place it can be expected that high levels of tension and contestation over the legitimacy of the regulations will continue to exist, with immigrants resorting to various challenges - ranging from legal appeals to the various forms of non-compliance - to obtain what they perceive ought to be their rights.

Immigration crime partnerships

The enforcement strategy paper proposes new 'immigration crime partnerships' forged on regional and local basis between the Borders and Immigration Agency and key authorities and public service providers to 'increase the impact of our enforcement effort'. The bodies envisioned as playing a part in these partnerships are local authorities, police services and primary care trusts, as well as local branches of national government departments such as the Department for Work and Pensions and HM Revenue and Customs. Mechanisms will also be found to bring the private sector and the public into the work of these partnerships.

Other public bodies have advocated the formation of local partnerships to deal with the challenges of immigration and of social cohesion in general. However, the perspectives motivating these suggestions are very different from the focus on crime and harm reduction which motivates the Home Office version of local partnerships. In January 2007 the Audit Commission published *Crossing borders: Responding to the local challenges of migrant workers*. In this it advocated the formation of local partnerships in order that local authorities could play a lead role in coordinating local responses on issues such as employment, housing, communications, entitlements, education, law enforcement and local nuisance. The Commission saw these

partnerships as well-placed to provide 'locally tailored responses to locally specific issues.' The Commission avoided any semblance of the language of 'harm' in framing these proposals, talking instead of 'challenges' and 'opportunities'. Similar recommendations have emerged from the work of the Commission on Integration and Cohesion. Its report, *Our Shared Future*, also urges a strategic role for local authorities in mapping communities, building 'intelligence networks', identifying tensions and opportunities, monitoring performance on cohesion, and mainstreaming integration and cohesion into Sustainable Community Strategies and Local Strategic Plan managed and service delivery.

Many aspects of the immigration management agenda are bound to conflict with the spirit and the substance of the strategic approaches advocated by these other bodies. The language of harm brings with it anxieties about immigration in general which have not to date been confined to the presence of undocumented migrants only, but extend to all groups of newcomers. The Home Offices' proposals provide no insight into how such negative outcomes could be avoided in the context of their enforcement strategies and, unless this can be done, local, regional and devolved bodies should be wary of participation in local immigration partnerships which set up tensions with important work being conducted on the basis of other perspectives such as promoting community cohesion.

The enforcement strategy paper focuses particular attention on the role for primary care trusts in maintaining surveillance over immigrant communities and gate keeping access to health care. New rules governing access to GP and other community services are expected to place a greater burden on front-line service providers to identify the immigration status of prospective patients. The Borders and Immigration Agency will roll out a 'programme of communication and good practice to those who apply the rules, including practice staff, GPs and trusts.' This is intended to be completed by September 2008. The strategy paper states that pilots will be run in three NHS trusts to test the proposals and establish the lines of communication with the BIA. One objective of this cooperation will be 'to collect revenue from those individuals who are not entitled to access these healthcare services.' Among this target group we can expect to find (though the strategy paper does not explicitly state this) asylum seekers refused refugee status but unable to leave the UK, and who are likely to be living in poverty.

"Shutting down privileges"

The harm agenda's distinction between serious and less harmful rule-breakers leads to a consideration of what penalties are available to be inflicted on those who have merely remained, and perhaps worked, in breach of their entry conditions, but are not otherwise involved in crime (i.e. the great majority of irregular migrants in the UK). As mentioned above, it is intended that the services of the NHS will be withdrawn from this group in all but cases where treatment is immediately necessary to save life or to prevent a condition from becoming life-threatening. The strategy paper also mentions the potential to use local authorities' public health housing inspection and the council tax systems to detect irregular residents. The consultation on the prevention of 'illegal working' sets out the government's intention to introduce a regime of extra-judicial civil penalties, levied directly by Borders and Immigration Agency staff, against employers employing people without permission to work. The requirement under existing rules that employers should determine the issue of employment entitlement at the point of commencing work will be reinforced by an obligation to make further periodic checks on migrants in the workforce to confirm that the right to work has not been curtailed by the immigration authorities.

Service providers in the private sector will also be drawn into the business of shutting down 'privileges'. Information lines will be available to bodies such as banks allowing access to information about the immigration status of people using their services, with the clear expectation that the business will refuse services to anyone denounced by the Borders and Immigration Agency as not having permission to reside. The stated effect intended from these measures is that vulnerable immigrants should 'experience an increasingly uncomfortable environment so they elect to leave.'

Constant feedback to the public

The general public will be enrolled into enforcement activity with increased opportunities being offered to denounce people suspected of being irregularly resident. A link between the Crimestoppers and the Borders and Immigration Agency has existed since January 2007, to allow individuals who are suspected of breaking immigration rules to be reported via a widely-distributed, confidential 0800 number. This dialogue will be fed by a 'national, regional and local media [campaign] to help ensure people know the rules and shut down abuse.' The campaign will be targeted to cover 'specific forms of abuse' with the measures directed against 'illegal working' cited as an example. 'Successful' enforcement operations will be publicised, providing details of the number of people removed and 'naming and shaming' employers.

Issues and concerns

The MRN believes that the government's enforcement proposals should be subjected to the closest possible scrutiny by representatives of all the public bodies who the Home Office expects to enrol into this enterprise. Strategies aimed at 'withdrawing privileges' – meaning in fact curtailing access to services of fundamental importance and intended to promote the welfare of the whole community – are inherently dangerous and risk consequences which the government does not seem to be prepared to consider. The report of the Newham Primary Care Trust, *The identification and charging of Overseas Visitors at NHS services in Newham* (Hargreaves, et al, June 2006) points to the dangers of using immigration checks as a condition for the use of GP services. It warns that such measures run the risk alienating wide swathes of the immigrant and the black and minority ethnic community from making use of primary healthcare measures. The effects on public health of excluding sections of the community from health services is likely to be detrimental and should be fully investigated before measures are introduced.

The use of employers to police immigrant communities, a tactic widely used in other countries, has been associated with a substantial increase in discrimination against all immigrants with knock on effects on the discrimination of people from black and ethnic minority groups. Whilst sensitising some companies against the employment of any person considered to generate too much risk, sanctions like civil penalties have generally done very little to deter the most unscrupulous of employers who will be willing to balance the still remote chance of detection and prosecution against the immediate advantage of being able to exploit groups of workers made even more vulnerable by the measure.

The insistence on a high public profile approach to enforcement contained in this document is also misguided. The issue which needs to be tackled in place of dogmatic assertions about 'harm' arising from immigration is the absence of a wider public understanding of the role which migration has come to play in sustaining the competitiveness of the UK economy in recent years and in aiding a prolonged period of growth. With anti-immigrant sentiment entrenched across wide sections of the popular media and within the political parties the association of 'harm' with migration is likely to prove a very dangerous strategy. The very real threat is that high profile campaigns will fuel anti-immigrant sentiment rather than reduce it.

A final point is that considerable doubt must be cast on the claim that the new enforcement measures will make significant impact on the numbers of migrants in the country in either a regular or irregular capacity. The record of the policy of enforced destitution against asylum-seekers refused refugee status as a measure impelling their return abroad has not been impressive. The government appears to misconstrue the nature of the commitment of many migrants to live and work in the UK. Little is understood by official policy-makers about what these migrants are attempting to achieve through their migration, the circumstances they have left behind, the responsibilities they shoulder to support people abroad, and the costs which have been incurred to cross borders. Frequently these need to be repaid before return abroad can be considered. With the conditions for obtaining decent working conditions and remuneration most problematic at the low-skill end of the labour market, the confinement of short-term, casual migrants to these sectors is likely to create conditions in which breaching immigration rules will become for many migrants the only viable strategy for securing a return on their migration investment regardless of the increasing hardships the enforcement strategy proposes.

What can be done?

The MRN expects that there will be a great deal more resistance to the implementation of the enforcement measures from the public bodies which the government expects to enrol in this project. The strategies proposed will impact in many negative ways on efficient, decent and humane service provision. They carry the risk of ratcheting up discrimination and racism, thereby undermining the core objectives which organisations involved in the provision of services are committed to. Combined with general throwing back of the prospect of social cohesion this involves, there is every reason why the providers of public services should feel apprehensive about the measures.

The MRN calls for a great deal more discussion and consideration being given to the implications and likely consequences of the enforcement strategy and its expectations of involvement on the part of public services and local authorities. We hope that groups concerned with the rights of migrants and refugees will find ways to open up dialogue with their local authorities, primary care trusts, police services, and other bodies to ensure that no one goes into the next stage of development of the enforcement strategy without having a proper understanding of what might happen as a consequence of poorly thought-out proposals.

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This Briefing Paper has been prepared by the Migrants' Rights Network (MRN). The MRN brings together civil society organisations across the UK working to support the rights of all migrants. It works within a framework of discussion, the sharing of experiences, the promotion of research, and lobbying and campaign activities. We welcome inquiries about our work and invite you to visit our

website at www.migrantsrights.org.uk, to receive our email newsletter, and generally support the work of the network.

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