

## BRIEFING PAPER

### The draft (partial) Immigration and Citizenship Bill

#### Briefing Summary

- ***Draft (partial) Immigration and Citizenship Bill*** released in July 2008 for consultation.
- Our ***four key areas*** of concern in the draft Bill are:
  - Extended UKBA powers of examination;
  - Extended powers of detention;
  - Tougher and longer journey for migrants to become British citizens;
  - Penalising and monitoring migrants in the UK
- ***How you can act to protect the civil liberties of migrants***

#### What is the draft Bill?

The draft (partial) Immigration and Citizenship Bill is also referred to as the 'Simplification Bill' and was released for public consultation in July 2008. In January 2009, the full and final Bill is expected to begin its journey through Parliament. The Government intends that the resulting act of law, and the new Immigration Rules accompanying it, will replace all existing immigration laws since the 1971 Immigration Act.

#### What are the main features of the draft Bill?

The Bill aims to bring in 'sweeping changes' to immigration law and border controls in the UK, with the aim of making the immigration system less bureaucratic, and easier and quicker for the UK Border Agency (UKBA) to enforce.

The draft Bill introduces new measures for the Home Office to ***strengthen the UK borders***, giving increased powers to immigration officials and penalties to those who allow undocumented migrants to enter the UK. The Home Office would have new ***detention and tagging powers***, as well the power to demand large 'bail bonds' from certain migrants. The Home Office claims that these new Government powers aim to target 'illegal migrants' but they would also have a major impact on the civil liberties of all migrants and of British citizens. The 'path to citizenship' would be extended, making it tougher for migrants to settle in the UK.

The draft Bill proposes that current immigration categories and concepts be radically 'simplified', removing the distinctions between various immigration categories at the cost of human rights. 'Leave to enter', 'leave to remain' and 'entry clearance' would be combined into a new category of 'permission' to be in the UK. Current concepts of 'revocation', 'curtailment', 'variation' and 'cancellation' of leave would come under a single 'cancellation of permission' category, reducing flexibility of the immigration system to deal with complex situations. 'Removal' and 'deportation' of migrants would be combined into 'expulsion' and a re-entry ban barring those 'expelled' for up to 10 years would be introduced. 'Temporary admission', 'temporary release' and current bail processes would be replaced by 'immigration bail' requiring bail bonds and allowing these migrants to be electronically tagged.

The Home Office also intends for the full Bill to include new *'powers to lock down identity'* through the use of *biometrics, information-sharing* between public and private bodies, and UKBA, and *limiting migrants' access to public services and benefits*. These aspects of the Bill have not yet been made available for consultation, but are likely to be controversial elements of the new era of immigration control in the UK with serious implications for civil liberties.

### **Why are we concerned about the draft Bill?**

We think it is wrong that the Bill will give the State increased powers at the expense of civil liberties. Despite the Government's acknowledgement that migrants make a vital contribution to the British economy and are an integral part of British society, this Bill would significantly erode the lawful ability of migrants to live and work in the UK without interference. It would also inevitably involve British citizens in additional monitoring and examinations, having an impact on everyone living in the UK.

We have identified *four main areas* where we are particularly concerned about the draft Bill:

#### **1. Extended powers for UKBA to 'examine' both migrants and British citizens**

Immigration officials currently have the power to check a person's immigration status if they have a reasonable suspicion that the person is an immigration offender. In addition, the police may ask to see a person's ID documents if they have a reasonable suspicion that they have committed a criminal offence.

New measures in the draft Bill would allow UKBA to examine any person in the UK in order to make sure they have legal permission to be in the UK, *without the need for any suspicion that they may be here illegally*. A person could be detained indefinitely for this examination during which time they could be required to have one or more medical examinations. The Secretary of State would be able to suspend a migrant's permission to be in the UK whilst they were under examination, possibly impacting on that person's and dependents' access to employment and public benefits and services in the UK. The Secretary of State would also be able to cancel a person's immigration permission at any time, without giving any reason for doing so and without the right to an appeal.



*We believe these measures would provide UKBA with far-reaching and invasive powers over both migrants and British citizens, in breach of basic civil liberties.*

#### **2. Extended powers for UKBA and captains to detain migrants**

Ten immigration detention centres are currently in operation in the UK, accommodating around 2500 migrants prior to their removal from the country. The Centres are now regulated under the *'Detention Services Operating Standards'* (2002), although are already frequently accused of failing to provide adequate conditions for detainees.

Under measures in the draft Bill, the powers of detention would be extended, requiring the captain of a ship, aircraft or train to temporarily detain certain migrants on board a passenger craft. It is possible that this power could impact on the ability of asylum seekers to seek safety in the UK, in contravention of the Refugee Convention. Under the Bill, UKBA would also be able to detain migrants *"in such places as the Secretary of State may direct"*, with no requirement that the minimum standards for detention are applied.



*We believe these measures would extend the Government's powers to detain migrants in the UK in potentially unregulated conditions, at the risk of serious human rights abuses.*

### 3. Tougher and longer journey for migrants to become British citizens

Currently, a migrant must be resident in the UK for a minimum of five years before applying for citizenship, or for three years if they are a family member of a person with settlement or citizenship in the UK.

Under measures proposed in the draft Bill, migrants would be required to enter into a period of “probationary citizenship”. The length of this stage is still unclear but it is likely to be between one and five years in addition to the five year (or three in the case of family members) residence currently required before a citizenship application can be made. If the migrant became involved in voluntary activity, their period as a probationary citizen would be shortened. For bad behaviour (criminal convictions), this period would be lengthened. During probationary citizenship, despite the fact that they will be required to pay taxes, migrants would not be able to access non-contributory benefits, social assistance, local authority housing or homelessness assistance. By denying migrants access to state support for up to ten years in the UK, we risk leaving migrants struggling or even destitute if things go wrong for them.

The aim of these measures is that migrants should earn their British citizenship by effectively introducing new hurdles towards settlement. Citizenship brings with it a sense of belonging which helps to build diverse, inclusive communities in the UK. Migrants who want to stay here long-term should be supported in becoming British citizens rather than being forced to earn this status through an extended process.



*We believe these measures would make it tougher and longer for migrants to attain British citizenship, limiting the integration of migrants in the UK.*

### 4. Penalising and monitoring migrants in the UK

As the draft Bill is still incomplete, we haven't yet seen the full proposed legislation around the possible migrants tax, as well as the information-sharing Immigration Crime Partnerships. However, Government policy papers have clearly stated that the full Bill will propose making migrants pay “a little extra to the cost of local services” – effectively, a migrants tax. Migrants visa fees are already extremely high; for example, the cost of an application to work in the UK for highly-skilled migrants is £600. Migrants are already net contributors to public funds – a fact argued by the Government on numerous occasions – and there is no justification for individual migrants being required to shoulder an additional tax burden. Instead, the Government should do better at responding to local needs around migration by distributing suitable funding where it's most necessary across the UK regions.

We are also extremely concerned about the impact of planned Immigration Crime Partnerships – between UKBA and local authorities, service providers, businesses and employers across the UK – in order for the Government to monitor and control migrants living in the UK. We expect that the final Bill will move towards these planned Partnerships by bringing into law powers “which enable other bodies including Government departments, the police, local authorities, employers and financial institutions to provide information to UKBA...”. We believe that the monitoring of migrants by businesses and public services could be invasive and discriminatory, stopping migrants from having a fair chance of settling into local communities. There are again huge implications for the privacy of British citizens, in addition to migrants, if further monitoring systems are set up.



*We believe that both a special ‘migrants’ tax’ and the establishment of ‘Immigration Crime Partnerships’ would make it more difficult for migrants to live and work equally in the UK*

### **How you can act to protect the civil liberties of migrants**

We know, from our discussions with network members, lawyers and campaign groups, that many aspects of the draft Bill are causing serious concern. The House of Lords Joint Committee on Human Rights is currently inviting groups and individuals to comment on the draft Bill, by sending a statement of up to 2500 words to the Committee before the 31<sup>st</sup> October 2008.

This is a real opportunity to show that the draft Bill cannot go ahead without being challenged by people who know what a big impact it could have on both individual migrants and local communities. It is also a good time to invite some support from local groups, businesses and MPs who may have some influence over the Bill later on.

We are asking concerned groups and individuals to:

- ✓ Write a letter to your local MP stating your objections about the draft Bill.
- ✓ Even better, get a group together to visit your MP and ask what they think about the draft Bill.
- ✓ Make a formal submission to the Joint Committee on Human Rights with your comments ó visit [www.migrantsrights.org.uk](http://www.migrantsrights.org.uk) for information on how to submit a response.
- ✓ Write to us with your thoughts or experiences before the end of October, and we will try to include them in our formal submission to the Joint Committee on Human Rights.

If you would like to do any of the above, or if you need more information about the draft Bill, then do contact Ruth Grove-White, the Migrants Rights Network (MRN) Policy Officer, by e-mail: [r.grove-white@migrantsrights.org.uk](mailto:r.grove-white@migrantsrights.org.uk), or telephone ó 020 7288 1267.

You can also find some further information on the Bill on the website of the Immigration Law Practitioners Association (ILPA) ó [www.ilpa.org.uk](http://www.ilpa.org.uk).