



■ Current Immigration  
Debates in Europe:  
A Publication of the  
European Migration  
Dialogue

Jan Niessen, Yongmi Schibel and  
Cressida Thompson (eds.)

United Kingdom

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for

IAS

(Immigration Advisory Service)

**With the support of the European Commission  
Directorate-General Justice, Freedom and Security  
September 2005**

The Migration Policy Group (MPG) is an independent organisation committed to policy development on migration and mobility, and diversity and anti-discrimination by facilitating the exchange between stakeholders from all sectors of society, with the aim of contributing to innovative and effective responses to the challenges posed by migration and diversity.

This report is part of a series of 16 country reports prepared for the European Migration Dialogue (EMD). The EMD is a partnership of key civil society organisations dedicated to linking the national and European debates on immigration and integration. It is supported by the European Commission, Directorate-General Justice, Freedom and Security, under the INTI funding programme.

The individual reports on Austria, Belgium, the Czech Republic, Denmark, Finland, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Poland, Portugal, Spain, Switzerland, and the UK are available from MPG's website, together with a preface and introduction. See Jan Niessen, Yongmi Schibel and Cressida Thompson (eds.), *Current Immigration Debates in Europe: A Publication of the European Migration Dialogue*, MPG/Brussels, September 2005, ISBN 2-930399-18-X.

Brussels/London, September 2005

## **1. The Case for Immigration in the UK**

In the last couple of years the government's policy-making on immigration has been contextualised against security needs in the continuing 'war on terror', the accession of ten 'new' Member States to the EU in May 2004 and the build-up to a UK parliamentary election in May 2005. In response, the government has produced a number of documents laying out its thinking on immigration, most notably the *Asylum and Immigration (Treatment of Claimants, etc.) Act 2004* and *Controlling our borders: Making migration work for Britain - Five year strategy for asylum and immigration* released in February 2005.

The rationale behind the government's immigration policies over the past two years can be assessed against the indicators it uses to measure success. Most recently these indicators were extrapolated as three goals within the *Five year strategy* (Home Office, February 2005, p.5) and they give a useful insight into the priorities underpinning New Labour's immigration policies: (i) ensuring Britain benefits from migration which adds to its prosperity, (ii) enforcing strict controls to root out abuse of the immigration system and (iii) upholding an immigration system which answers public concerns.

### **Ensuring Britain benefits from migration which adds to its prosperity**

The government's attitude to the type of immigration it sees as beneficial is evident from the title of the *Five year strategy - Controlling our borders: Making migration work for Britain*. In other words, whilst those on the wrong side of the immigration rules, i.e. those the government is not seeking to attract, can expect tough action against illegal entry and activity in the UK, those migrants the government sees as adding benefit and prosperity to the UK and who arrive through approved migration channels, can find enhanced migration opportunities.

Following on from its approach to 'managed migration' developed in the 2002 White Paper *Secure Borders, Safe Havens: Integration with Diversity in Modern Britain*, the government has continued to perceive '[t]he movement of people and labour into the UK [...as] vital to our economy and our prosperity' noting that 'managed migration is not just good for this country. It is essential for our continued prosperity' (Home Office, *Five year strategy*, February 2005, p.5). However, a central tenet of the government's managed migration agenda is that prospective migrants should offer an attractive 'skills set' and also enter the UK through an approved and appropriate immigration channel, so that migration is managed rather than unregulated. Towards this end, in immigration categories the government sees as being particularly prone to abuse, such as asylum, visitors or short-term students, opportunities for switching to a more attractive immigration status (giving freer employment opportunities or longer leave to remain) are slim. So-called 'genuine' refugees are welcomed to the UK in fulfilment of the country's international obligations, but the governments attitude to the contribution refugees can make to society only turns positive once their asylum claim has been accepted and not from the point of arrival on UK shores (as explored in section 1.2). The only immigrants in the UK on the basis of temporary admission or with no legal status with the ability to 'upgrade' their immigration status

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<sup>1</sup> This report is based on information up to 12 May 2005

to another category are those from Turkey thanks to an EU Association Agreement,<sup>2</sup> or nationals of the ten new Member States of the EU who regularised their status upon accession in May 2004.

One commentator has described the government's welcoming attitude towards those bringing desirable skills to the UK in a regulated fashion as 'a virtuous Dr Jekyll to the vicious Mr Hyde of asylum policy' (Flynn in Morris, 2004, p.2). Government reasoning behind simultaneously curtailing the rights of asylum seekers and non-prioritised migrant labour whilst expanding options for key groups of migrant workers, is predicated on a theory of 'modernising' within immigration policy. Such a theory responds to the reality that the UK labour market includes 600,000 unfulfilled vacancies despite unemployment reaching its lowest levels in many years, and despite demographic changes that are cutting into the size of the UK's working population (particularly in Scotland). It is in response to this that the government has been involved in facilitating the movement of key labour groups into the UK to compete internationally within a global labour market. Thus categories such as the Highly Skilled Migrants Programme, Innovators Scheme and Science and Engineering Graduate Scheme were designed to attract sought-after skilled labour in an environment where the UK is competing with other countries to attract a prized skills pool.

### **Enforcing strict controls to root out abuse of the immigration system**

Rooting out abuse of the UK's immigration system has been a key concern for the government, to raise public confidence in the immigration system and to ensure those entering the UK are the type of migrants that bring economic benefit to the country through a manageable, regulated immigration system. A clear distinction has been drawn between policies towards those who seek entry inside or outside the government's immigration system. As David Blunkett said when Home Secretary '[we] encourage people to come to Britain to work legally whilst being "as tough as old boots" on those who abuse the system' (The Guardian, *Asylum amnesty for 50,000 heralds tough new measures*, 25/10/2003). In this campaign, the government has used falling asylum statistics to demonstrate how policies to prevent abuse of the immigration system are being successful, a consequence of which has been the conflation of asylum seekers with 'bogus', 'illegal' claims or otherwise undesirable characters.

Efforts have concentrated on clamping down on abuse of the asylum system to deter its perceived use as a back door route for economic migration into the UK, or as the Home Secretary has remarked, 'to ensure that we distinguish between genuine refugees and those who are looking to come here to work or claim benefits' (Home Office, *Five year strategy*, February 2005, p.8). The suffocation of 58 Chinese people smuggled into the UK in a refrigerated lorry in June 2000 (with the presumed intention of claiming asylum and joining the irregular workforce) crystallised the government's belief in ensuring asylum seekers are excluded from access to the labour market to reduce the attractiveness of the asylum route as a means of unregulated economic migration into the UK (Flynn, 2003, p. 7). In July 2002 a concession was withdrawn which since 1986 had enabled asylum seekers to work if they had not had an initial decision on their application within six months (Home office Press Notice: *Faster decisions*, July 2002). However in February 2005, in order to comply with Article 11 of Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers, UK policy was amended to allow

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<sup>2</sup> Following the case of R (on the app. of Veli Tum and Mehmet Dari) v. SSHD [2004] EWCA Civ 788 although this is currently being contested by the SSHD at the House of Lords.

those whose initial decision had not been decided within one year to work legally. This does not, however, entitle them to remain in the UK following a negative asylum decision.

Attempts to prevent abuse of the asylum system have expanded to tackle those perceived to be deliberately obstructing the returns process when their asylum application and resultant appeals have been dismissed. The *Asylum and Immigration (Treatment of Claimants, etc.) Act 2004* (Section 2) brought in a number of measures including the criminalisation of claimants without travel documents – an act seen as making it ‘more difficult for us [the UK] to persuade their home countries to accept them back’ (Home Office: *Controlling our borders*, February 2005, p.19) - and the end of support for ‘failed’ asylum seeker families not seen to be co-operating over return to their home countries (*Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, Section 9*)<sup>3</sup> so that ‘[t]he message to people refused asylum is clear: they must go home and the UK taxpayer will not support them if they do not’ (Home Office: *Controlling our borders*, February 2005, p.19). Conversely ‘failed’ asylum seekers co-operating with the returns process are only entitled to accommodation from the state in return for their participation in unpaid community work<sup>4</sup> - a provision which has led immigrants’ rights NGOs to draw similarities with the Victorian workhouse (IAS, *The Government’s Workhouse*, 14 January 2005).

Amidst the government’s efforts to dissuade ‘failed’ asylum seekers from remaining in the UK it is notable that in October 2003 the Home Office announced a concession described as a ‘[o]ne-off exercise to allow families who have been in the UK for three years or more to stay’. Asylum seekers who made their claim before 2 October 2000 and who had at least one dependant under 18 years old in the UK as of that date, or as of 24 October 2003, would be granted indefinite leave to remain so long as a number of exclusionary clauses were not breached. The government explained this volte-face in its attitude towards ‘failed’ asylum seekers as being necessary to ‘clear the decks’ for tough new measures to be brought into place as well as saving tax payers’ money on legal aid and support costs (*The Guardian, Asylum amnesty for 50,000 heralds tough new measures*, 25/10/2003).

Most recently the government’s radar on abuse has settled on immigration routes into the UK. In March 2005 the Working Holidaymaker Scheme, which allows 17-30 year old Commonwealth citizens to reside in the UK for two years and work for 12 months of this time, was suspended in four countries where applications had increased to a level where the High Commissions involved (Malaysia, Sri Lanka, Botswana and Namibia) suspected abuse of the system (*The Times, Visa scam fears put visits by holiday workers on hold*, 9/4/2005). Almost concurrently, visa applications for first time visitors aged 18-30 years old from Nigeria were also suspended until 2006 due to high numbers and the high percentage of refusals (*BBC News, UK visa delay for young Nigerians*, 11/4/2005). Nationals from countries where the government has concerns about possible immigration abuse have been required to obtain visas prior to travelling to the UK (for example Jamaica (January 2003) and Zimbabwe (November 2002)), and in an attempt to decrease ‘unfounded’ asylum applications, the number of countries whose nationals require a visa to transit the UK has been increased.

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<sup>3</sup> This had already been the case for adults.

<sup>4</sup> Section 10 of the *Asylum and Immigration (Treatment of Claimants, etc.) Act 2004* applies to those receiving support under Section 4 of the *Immigration and Asylum Act 1999*

## **Upholding an immigration system which meets public concerns**

There can be no doubt about the important role of public perception in shaping UK immigration policy. Over the past two years it has led to the resignation of an immigration minister for allegations she misled parliament over visa abuses in Bulgaria and Romania (BBC News, *Hughes resigns over visa scam row*, 1/4/2004) and a Home Secretary over allegations of speeding up the application of his ex-lover's nanny (BBC News, *Blunkett quits as home secretary*, 15/12/2004) and became a central theme of the May 2005 election campaign. The current Home Secretary, Charles Clarke, has made it clear that his 'top priority is public confidence in the immigration system' (Home Office: *Controlling our borders*, February 2005, p.7), a sentiment re-iterated by the Prime Minister who has stated 'the challenge for the Government is to maintain public confidence in the system by agreeing to immigration where it is in the country's interests and preventing it where it is not' (Home Office: *Controlling our borders*, February 2005, p.5).

A YouGov survey in December 2004 found that 75 per cent of Britons think there are too many immigrants coming into the country and a further survey in February 2005 found 78 per cent thought the government's policies on immigration and asylum were 'not tough enough' (YouGov/Mail on Sunday Survey Results, 8/2/2005). Public sentiment, encapsulated in polls such as these, has clearly impressed itself upon government in an election year. With public concern about the perceived numbers of immigrants entering the UK so high, and public confidence in the immigration system so low, the issue became one of the key battlegrounds in the May 2005 elections, harking back to the fierce controversies over immigration in the 1960s and 1970s.

Public concern over the levels of immigration into the UK has elicited a muted repost from government. Its mixed mantra of differentiating between 'good' economic migrants, seen as beneficial for the country, and 'bad', 'bogus' or 'illegal' economic migrants abusing the system, has been too nuanced to counteract the often virulently anti-immigration messages proffered by sections of the popular press. For example, the YouGov poll from December 2004 found that public disquiet about the country being 'over run' by immigrants was based largely on anxieties over the numbers of asylum seekers and illegal immigrants (The Telegraph, *There are too many immigrants, say 75 pc of Britons*, 10/12/2004). In fact in 2004, the number of asylum seekers entering the UK fell by 33 per cent (BBC News, *Asylum falling around the world*, 1/3/2005). Instead of calming the debate with fact and reason, many immigrants' rights NGOs believe the government is complicit in rendering the debate on asylum a 'race to the bottom', with the two main political parties seeking to prove they are tougher than the next on keeping 'outsiders' from entering the UK. Joint Council for the Welfare of Immigrants (JCWI)'s Don Flynn has contextualised the rationale behind public concern not, as the government has suggested, as an inevitable result of immigration and its consequences, but as a reaction to the nature of public discourse on immigration as driven by politicians and the media (Flynn, November 2003, pp.16-18).

### **The missing debate: rights**

The highly politicised battle for public confidence in the UK's immigration policies has increasingly suffered from a lack of rights-based context, particularly when it comes to asylum. The success or failure of the country's asylum policies is measured, not in celebration of the number of people granted sanctuary on UK shores from persecution, but in the downward numbers of those approaching the UK's borders, with scant regard to global events that might cause numbers of asylum seekers arriving in the UK to fluctuate. Amidst government statements on the sovereign right

of the UK to secure its borders, the right of the UK public to have faith in a robust immigration system and the right of the UK to attract overseas workers to fill indigenous skills shortages, statements on the rights of migrants and asylum seekers have been less forthcoming. This discrepancy has been noted and commented upon by immigrants' rights NGOs and some sections of the media. For example an April 2005 media article described 'a government whose policies are driven more by a craving for publicity than by a desire to do the right thing' (Prospect, *Britain's Frontline*, April 2005).

## **2. Priority Groups of Immigrants**

The government's attitude to immigrants clearly falls into two camps dependant on whether they

- (i) are seen to add benefit to the UK and apply to enter the country through an approved immigration route, or they are 'genuine' refugees,
- (ii) are arriving in an unregulated manner, including those seeking asylum.

The stringency of entry requirements, possibilities for switching leave and future settlement opportunities available to immigrants are based on their position within the government's table of immigrant priorities. Don Flynn of JCWI has categorised the government's approach to immigration as 'pushing for a system of managed migration which is based almost exclusively on utilitarian principles – in particular that the movement of people across the globe should be guided at every point by the economic objectives of growth and modernisation. From this standpoint, the old world of universal rights in the migration field, exemplified by the right to asylum for those with a well-founded fear of persecution, is obsolete' (Flynn, 2003, p.2.)

So how has the battle between utilitarian principles and universal rights translated into policies to attract or deter migrants groups and which groups of migrants are prioritised in the government's immigration philosophy? The following section looks at family reunion, students and migrant labour.

### **For the purpose of family reunion**

The definition of family reunion rights conferred by the UK's immigration rules is considerably narrower than that allowed to third country nationals married to EU citizens under European law, most notably in its definition of 'dependency' and the extent of its definition of family. Several changes have occurred in this area of law in the past couple of years. The minimum legal age for leave to remain as a spouse or unmarried partner of someone present and settled in the UK has been raised from 16 to 18 years old. This change speaks to the government's concern with the issue of forced marriages. The long standing concession to grant settlement to elderly dependent relatives over 65 years old was revoked in September 2004 (Enforcement Policy Unit, Immigration Service Interim Operational Instructions 083804, 22/9/2004).<sup>5</sup>

In February 2005 the perceived prevalence of fraudulent marriages in the UK for the purpose of exploiting immigration controls led to a radical change for those subject to immigration control wishing to marry in the UK. Only those who enter the UK as a fiancé(e) or marriage visitor, or those already in the UK in receipt of the written permission of the Secretary of State (through a Certificate of Approval), can marry after they give notice of their intention to marry at a designated register office (IND

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<sup>5</sup> Age is now one of a number of relevant factors for consideration.



press release, *Designated Register Offices To Tackle Sham Marriages*, 14/12/2004). These changes apply regardless of whether the person subject to immigration control intends to remain in the UK after his/her marriage and regardless of whether their prospective spouse is present and settled in the UK.

The *Five Year Strategy* lays the groundwork for the erosion of immigration routes into the UK on the basis of family reunion. It promises the 'end to chain migration' with 'no immediate or automatic right for relatives to bring in more relatives' (Home Office: *Controlling our borders*, February 2005, p.9). Instead those who have themselves settled on the basis of family reunion will only be able to sponsor further family members when they have settled in the UK for five years or have attained UK citizenship (Home Office: *Controlling our borders*, February 2005, p.22). The government recognises the importance of family life and pledges to retain the appeal rights of those visiting the UK to see family. However the nature of these appeal rights is likely to be curtailed: based on papers rather than an oral hearing, limited only to cases where the proposed visit is to see a close family member and possibly even subject to a fee. The government's justification for these measures is that they will prevent abuse of the system by 'discourage[ing] speculative appeals' (Home Office: *Controlling our borders*, February 2005, p.19) although in 2004 many family visit cases were won on appeal.

### **For the purpose of study**

The government's message on the desirability of foreign students coming to the UK is sometimes hard to decipher. Government ministers often celebrate the contribution of overseas students to the UK's universities, not least the financial contribution they make in paying considerably higher fees than 'home' students to cash-strapped institutions. Collectively, says the government's *Five Year Strategy*, the 319,000 non-EEA students who came to the UK during 2003 were worth £5 billion to the economy, '[t]hey are a factor in the economic sustainability of many of our educational institutions, and enable bright young people from abroad to develop lifelong ties with the UK which are of long-term benefit to the country' (Home Office: *Controlling our borders*, February 2005, p.15). Towards this end the immigration rules were amended in 2001 to allow post-graduate students who had studied at degree level in a UK university to vary their leave within the UK to that of a work permit holder, thereby encouraging educated workers to retain their ties with the UK and continue to contribute to the economy.

However the government has been keen to tighten up on perceived abuses of the student visa category. A register of educational institutions within the UK approved by the Department for Education and Skills (DfES) has been drawn up. From January 2005 any student applications to study at a UK institution not on the register have normally been refused (IND press release, *Department of Education and Skills Register of Education Providers*, 21 December 2004). Students were also hit by an increase in fees, levied in February 2005, for applications to amend immigration status within the UK. Students were given a discounted rate, in recognition of the UK's need to remain competitive in attracting overseas students, but are still expected to pay £250 for a postal service (compared to the £335 standard fee) and the standard £500 fee for a premium service (Home Office, *Immigration Rules and administration changes: New Charges*, 7 February 2005).

Under the *Five Year Strategy* those wishing to study in the UK, as well as those wishing to enter for the purpose of employment, will be subject to a single points-

system.<sup>6</sup> Controversially, the government intends to legislate to end all appeal rights for students denied entry clearance (Home Office: *Controlling our borders*, February 2005, p.19) despite many refusals being overturned on appeal in 2004.

### **For the purpose of employment**

A confusing range of options exists for those wishing to migrate to the UK for the purpose of employment. According to Don Flynn and Linda Morris in their foreword to *The control of rights: the rights of workers and asylum seekers under managed migration*, (May 2004), the routes are limited by a range of 'random and unpredictable [...] factors' including nationality, the application of quotas and skills and qualifications.

It is important to note the changing emphasis on an applicant's nationality in this debate. Differentiating between migrants on the basis of nationality has been a cornerstone of the UK's post-war immigration policy. Initially encouraged to work in the UK to rebuild war-torn Britain, Commonwealth immigration (more specifically non-white migration from 'new' Commonwealth countries) was then curtailed by a series of legislative acts. Now the only nod within the UK's immigration rules to its historic immigration ties to Commonwealth countries exists through the Working Holidaymaker Scheme and the UK ancestry visa (Immigration Rules (HC 395) paras. 95-100 and 187-193).

Instead, the Commonwealth has been supplanted by Europe as the favoured source of economic labour. The overhaul of the Working Holidaymakers Scheme (WHMS) in the summer of 2003, to address accusations of systemic discrimination against non-white 'new' Commonwealth applicants and to enhance the ability of the scheme to supply a flexible labour force, resulted in all restrictions on work being lifted and allowed in-country modifications to a work permit (once the resident labour test had been met). However, in February 2005, the scheme was amended again, this time to restrict its use as a route of economic migration and reinstate its primary purpose as a working holiday. This is because the government perceives the UK's low skilled labour shortages can now be met from within the EU following enlargement in May 2004.

EEA nationals have unrestricted work and residency rights in the UK. The accession of ten economically less strong EU Member States in May 2004 led to speculative stories in sections of the UK press that hordes of Polish workers were waiting to descend upon the UK to claim benefits or flood the labour market. In response the government hurriedly instituted restrictions on eight of the poorer accession states (Malta and Cyprus were excluded) requiring workers to register within their first month of work for the first year and restricting full entitlement to benefits for 12 months (The Accession (Immigration and Worker Registration) Regulations 2004). A, perhaps, unexpected side effect of shutting the door on low skilled labour routes for non-EEA nationals is a narrowing of the ethnic diversity of newcomers to the UK, as most European migrants are white.

### **Low Skilled Labour - Quotas**

The UK's use of quotas to manage migration routes has been principally used for low skilled labour schemes.

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<sup>6</sup> For further details see the section within the Five Year Strategy for those entering for the purpose of employment.

A scheme for seasonal agricultural workers, now known as SAWS, has existed in one form or another since just after World War Two. It allows non-EEA nationals to come to the UK for short periods (five weeks -12 months) to undertake seasonal agricultural work for farmers and growers. The quota for June 2004 to May 2005 was 16,250 – a reduction of 35 per cent on the previous year. Historically most SAWS applicants have been from agricultural colleges in the eastern European states that acceded to the EU in May 2004. The reduced quota for 2004-5 reflects the UK government's belief that low skilled labour shortages can be filled from within an enlarged EU, a belief which constitutes the rationale for cutting back on all legal low skilled labour routes post-EU enlargement.

In 2003 a new managed migration scheme for low skilled workers, modelled on the SAWS programme, was introduced known as the Sectors-Based Scheme (SBS) (Immigration Rules (HC 395) paras. 135I-135K). The scheme runs on a quota of permits for specific sectors of industry - currently the hospitality and food processing trades – where an employer (having unsuccessfully advertised in the UK and Europe) applies for permits for employees. The scheme has been labelled 'a mess from beginning to end' (IAS media release, 8/12/2004), 'disastrous', 'ill-considered' (IAS media release, 12/1/2005) and fundamentally unresponsive to the needs of employers.

The scheme's restriction on applications from any one country to 20 per cent of the total quota has never reflected the demand for places particularly amongst the UK Bangladeshi restaurant trade. In Bangladesh the artificially imposed cap for 2004 was reached within three weeks (IAS media release,12/1/2005). Moreover those whose SBS applications were successful were then overwhelming (89 per cent in Bangladesh in 2004) refused entry clearance, many failing the test of intention to leave the UK at the end of the work permit, meaning employers had paid £153 for a permit that was useless (IAS media release, 8/12/2004). The total SBS quota was cut to 15,000 in May 2004 despite the demand for places and the large number of 'phantom' places taken up by those who are never actually allowed entry into the UK. The scheme's restriction of leave to a maximum of 12 months (former applicants can re-apply once they have left the UK for two months) has been criticised by employers whose trained-up staff must leave the UK within a year. A review of the scheme was due to be published in December 2004 (Work Permits UK, SBS – update on review of scheme, 31/1/2005) but at the time of writing had not yet materialised.

### **High Skilled Labour – Points System**

The government's managed migration doctrine has recognised and responded to the need for the UK to compete to attract skilled migrant labour in key sectors seen as important to the UK's prosperity.

The majority of those coming to the UK for the purpose of legal employment do so by acquiring a work permit. Minimum qualification and skills criteria govern applications for work permits and the system is further split into two tiers, one more simplified than the other. Tier one includes those working in shortage occupations (currently railway and transport engineers, doctors and surgeons, nurses, teachers, actuaries and veterinary surgeons) and recognises the importance of these groups to the UK by not requiring posts to be advertised across the EEA to satisfy the resident labour test. Routes have been opened up to allow post-graduate students, student medical professionals, those in the UK on the SBS and WHMS to change their immigration statuses within the UK to become work permit holders (Immigration Rules (HC 395) para.131A-131D).

The Highly Skilled Migrants Programme (HSMP) initiated in 2002 operates on a points system scoring applicants on the basis of their qualifications, work experience, salary, achievements and the achievements of their partner. Points are also scored for priority applications, currently limited to qualified GPs. Unlike the work permit route, HSMP applications are made by the employee not the employer so that applicants are given leave to enter the UK to seek work without having to demonstrate a pre-existing employment offer. In both cases the worker can apply for settlement after four years and the worker's spouse has unrestricted employment rights (the spouse of a work permit holder therefore has more liberal employment rights than the permit holder).

A points system is also used to assess applicants to the Innovators Scheme set up to attract 'entrepreneurs whose business proposals will lead to exceptional economic benefits to the United Kingdom' (Home Office website, Information about innovators, undated).

The government has recognised the complexity of the current work-based visa system and has stated its intention to radically change it following the May 2005 elections. In a third term in office the Labour government pledged a shake-up in the way the system for those seeking entry to the UK is managed. All existing work schemes, as well as students, are to be brought together in a unified points system with a view to better ensuring immigrants are not recruited for jobs that can be filled by the resident work force, and facilitating the migration of attractive skilled workers to the UK. Points will be allocated for qualifications, work experience, income 'and other relevant factors' and arranged into four tiers, each with differing employment and settlement rights. Advice will be sought from an independent skills advisory body on labour market needs so that the system is 'flexible and employer-led [...and] not a rigid, arbitrary quota' (Home Office, *Controlling our borders*, February 2005, pp. 7-16)

- Tier One is aimed at attracting highly skilled professionals such as doctors, engineers, finance experts, IT specialists, investors and entrepreneurs and will allow them to come to the UK to look for work or self employment opportunities without a job offer.
- Tier two will allow skilled workers, such as nurses, teachers and administrators, to enter the UK if they have a job offer in a shortage area and the post cannot be filled within the UK or EU.
- Tier three will replace the quota based SBS and SAWS in the light of additional labour now available from EU enlargement states. Additional needs will be met by short term, small scale, tightly managed, quota schemes with guarantees attached that workers would return home.
- Tier four will cover students and schemes where there is no direct competition with the domestic labour force and will include WHMS but with tightened criteria.

In tiers two and four, immigrants will need a sponsor who shares the responsibility for ensuring the applicant complies with the conditions of their leave. Tiers three and four will only be available to nationals of those countries with a satisfactory returns arrangement with the UK. Applicants from countries, or in categories, deemed to be at high risk of abuse will need to provide a bond, returnable on their departure.

Employer and immigration checks will be merged into a single pre-entry check, which might address some of the problems experienced by the SBS.

The details of the changes to immigration policy proposed in the *Five Year Strategy* are as yet unknown. If, however, New Labour is to push through the changes it has outlined, 2005-6 is likely to see further changes in the primary legislation governing asylum and immigration in the UK.

## 1.2 The integration debate

‘Integration means not simply mutual respect and tolerance between different groups but continual interaction, engagement and civic participation, whether in social, cultural, educational, professional, political or legal spheres.’ (Home Office, *The New and the Old: The report of the “Life in the United Kingdom” Advisory Group*, September 2003, p.12)

The government’s attitude towards integration is entirely consistent with its thinking on immigration. Its underlying assessment of different immigrant groups into two categories - ‘to be encouraged’ and ‘to be deterred’ – is maintained in its perspective on which migrant groups should acquire settlement rights and therefore who should be integrated into British society.

This is because the three indicators shaping New Labour’s immigration thinking – encouraging migration that enhances Britain’s prosperity, preventing abuse of immigration routes and ensuring public confidence in the immigration system – are writ large through government policy on which migration routes lead to settlement rights and the benefits of migrant integration.<sup>7</sup> In particular, emphasis is placed on the economic benefits to the UK of the integrated permanent settlement of key groups.<sup>8</sup> This is important as government policy on integration relates solely to those migrant groups that fit its requirements for settlement. Groups outside this framework, entering the UK through other legal or illegal immigration channels, are ignored in the integration debate.<sup>9</sup> In this way, the priorities used by the government to define which prospective migrant groups are to have facilitated entry into the UK do not evaporate when immigrants enter the country. Instead they shape opportunities for acquiring settlement rights and the emphasis of government policy on the integration of immigrants into British society as ‘new citizens’.

The continuation of the government’s immigration priorities into the realm of integration is most clearly demonstrated when the settlement rights of different migrant routes are explored. As will be seen, the connection between settlement rights and integration policy is most obvious in the refusal of the government to engage in a debate on the integration of those migrants who have no guaranteed settlement opportunities. Most obviously, and most controversially, this includes asylum seekers.

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<sup>7</sup> The status of being present and settled in the UK is granted through the award of indefinite leave to remain (ILR).

<sup>8</sup> Home Office, *Controlling our borders: Making migration work for Britain - Five year strategy for asylum and immigration*, February 2005, p.2: ‘permanent migrants must be as economically active as possible; put as little burden on the state as possible; and be as socially integrated as possible’.

<sup>9</sup> This is demonstrated in the report of the “Life in the United Kingdom” Advisory Group which stated clearly ‘our remit [...] is to consider those with a legal avenue to settlement and hence citizenship.’ Home Office, *The New and the Old: The report of the “Life in the United Kingdom” Advisory Group*, September 2003, p.6

## **From immigration to settlement**

### **Undocumented migrants**

In UK law, undocumented migrants fall outside the framework of rights available to citizens and those foreign nationals in the UK under an approved migration route. Access to public services, legal family reunion, the legal labour market and settlement rights are all absent for those whose presence in the UK is clandestine. The Home Office 'is overtly opposed to the notion of immigration amnesties' (Morris 2004, p.20) and the opportunity for undocumented migrants to acquire settlement rights is limited to a rule granting indefinite leave to remain (ILR) after 14 years continuous unlawful presence (those continuously present with lawful status achieve ILR after ten years).

As the EU Directive concerning the status of third-country nationals who are long-term residents has its legal base in Title IV of the EC Treaty, the UK has exercised its right to 'opt out' of the directive. In 2001 the Home Office indicated this was a result of incompatibilities in the directive and UK law on the rights of third country nationals and limitations on governments as well as discrepancies in the definition of the term 'third country national' (UK Parliamentary Select Committee on European Scrutiny, First Report, 30/7/2001).

### **Asylum seekers**

The government is unconditional in asserting that the integration of asylum seekers is a non-issue until refugee status, Humanitarian Protection or Discretionary Leave has been conferred. It has defended this stance by referring to the fact that 'some two-thirds of them [asylum seekers] will not in the end be given the right to remain' (Home Office, Integration Matters, March 2005, p.3) and by highlighting the accelerated asylum decision-making process, particularly since the introduction of the Asylum and Immigration Tribunal (AIT) in April 2005. The government's position, that 'integration can only begin *in its fullest sense* when an asylum seeker becomes a refugee,' (Home Office, Integration Matters, March 2005, p.3) is in conflict with the view of many immigrants' rights NGOs which believe 'integration begins on day one', in other words, that the integration needs of asylum seekers as well as refugees are important' (Home Office, Integration Matters, March 2005, p.3). Instead the government, whilst denying asylum seekers access to the legal labour market, points to the work of the Purposeful Activities for Asylum Seekers Fund – a scheme initially for the summer but now expanded throughout the year where asylum seekers engage in volunteer community work. It also refers to the recently introduced requirement for those whose asylum claim has failed to undertake unpaid community service in exchange for accommodation<sup>10</sup> as being 'designed to promote social cohesion' and to offer 'an opportunity for failed asylum seekers to occupy themselves purposefully in a manner which is beneficial to the public' (Home Office press release, 10/12/2004). The government's view that these programmes for 'failed' asylum seekers will contribute to a cohesive society is not shared by all, particularly as the penalty for refusing to participate is homelessness.

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<sup>10</sup> Section 10 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 applies to those receiving support under Section 4 of the Immigration and Asylum Act 1999.

## Refugees

Government attention on the integration of refugees is much more focused than the migrant groups examined so far because refugee status confers an opportunity for settlement. Currently asylum seekers whose claims for refugee status are accepted are automatically granted ILR, they can work legally, can be joined by immediate family and having been in the UK for five years (the last year with ILR) can apply for citizenship. In 2003 settlement was granted to 20,975 people and their dependants on the basis of refugee status or Exceptional Leave to Remain (Home Office Statistical Bulletin, Control of Immigration: Statistics United Kingdom 2003, 24/8/2004, table 3.1). However the government has stated its intention to end the automatic granting of settlement to recognised refugees. Instead it will grant limited leave to remain for five years during which refugees will be allowed to work and to be joined by immediate family members. If after five years the situation in a refugee's country of origin has improved, his/her leave to remain in the UK will be ended (Home Office: *Controlling our borders*, February 2005, p.22).

It is entirely unclear how the government proposes to measure improvements in countries of origin, how resources to undertake this assessment will be met or what appeal rights refugees will have if they do not agree with the government's assessment. What is clear is that this will undoubtedly 'undermine the Government's own integration strategy as it gives refugees a less settled status' (Refugee Council, Briefing: The Government's five-year asylum and immigration strategy, February 2005). Somewhat strangely a month after the announced intention to end refugees' automatic right to settlement, the Home Office published a major document on refugee integration simultaneously with a strategy for refugee employment from the Department of Work and Pensions. Both documents define refugees widely as those with recognised refugee status, Discretionary Leave, Humanitarian Protection or (the now defunct) Exceptional Leave to Remain (the last three categories offering temporary protection) (Home Office, *Integration Matters: A National Strategy for Refugee Integration*, March 2005 and Department for Work and Pensions, *Working to Rebuild Lives: A Refugee Employment Strategy*, March 2005). The key aspect of the Home Office document is a pilot service known as the Sunrise Programme (Strategic Upgrade of National Refugee Integration Services) through which those granted refugee status and who choose to participate in the programme will be allocated a dedicated caseworker for the 28-day period from when they receive their refugee status. Longer term integration objectives (including entry into employment and language acquisition) will be addressed in a Personal Integration Plan and refugees will be signposted towards a new interest free Refugee Integration Loan (Home Office, *Integration Matters*, March 2005, pp.62-65).

## Low skilled documented migrants

As outlined above, since the enlargement of the EU in May 2004 approved entry routes for non-EEA low skilled labour are being aggressively cut back. Existing programmes (such as SAWS and SBS) were designed as avenues for short-term migration only and the government's plans under the *Five Year Strategy* further emphasise the transitory nature of migration opportunities for low skilled migrants (Home Office, *Controlling our borders*, February 2005, p.16). Routes to settlement for economic migrants will be limited to those entering the UK under tiers one and two of the planned points system therefore precluding all low skilled migrants (Home Office, *Controlling our borders*, February 2005, p.22). For this reason, the

government's integration policies take little account of low skilled documented migrants.

### **Family reunion**

The government's attitude towards the settlement and integration of those in the UK on the basis of family reunion is mindful of the importance of family life and its obligations under Article 8 of the Human Rights Act. In 2003, 65,805 people (spouses, children, parents and grandparents) were granted settlement in the UK on the basis of family reunion (Home Office Statistical Bulletin, Control of Immigration: Statistics United Kingdom 2003, 24/8/2004, table 3.1). Under the *Five Year Strategy* those settled in the UK can continue to be joined by their spouses, children (under 18 years old) and parents/grandparents (over 65 years old with no support in their home country) (Home Office, *Controlling our borders*, February 2005, pp.21-22). At present those married<sup>11</sup> to someone present and settled in the UK are entitled to settlement after a two year 'probationary period' (during which they can work but have no recourse to public funds) and can apply for citizenship two years earlier than other immigrants (after three years instead of five). Other dependants are granted ILR immediately. However under the *Five Year Strategy* those in the UK on the basis of family reunion will have to wait five years before they can themselves act as the sponsor for family members to join them, ending what the government refers to as 'chain migration' (Home Office, *Controlling our borders*, February 2005, p.22).

As the EU Directive on the right to family reunification has its legal base in Title IV of the EC Treaty, the UK has exercised its right to 'opt out' of the directive. In July 2000 the Home Office indicated this was due to 'concerns that to [...opt in] would remove the UK's ability to formulate and adjust policies in relation to family reunification as a matter of domestic law [...but that] the UK did not intend to be seriously out of line with Member States' on this issue (UK Parliamentary Select Committee on European Scrutiny, Thirty Seventh Report, 26/7/2002, s.8).

### **High skilled documented migrants**

Unlike those migrating to the UK with a low skill set, approved immigration routes for highly skilled migrants can lead to settlement. For example work permits, the Highly Skilled Migrants Programme and the Innovators Scheme can all be converted into ILR after four years. In 2003 there were 29,600 employment-related grants of settlement, 19,795 of which were awarded to work permit holders and their dependants (Home Office Statistical Bulletin, Control of Immigration: Statistics United Kingdom 2003, 24/7/2004, table 3.1). The government intends to extend the time skilled workers have to be in the UK before they can apply for settlement to five years but has strongly defended the right of skilled labour to stay in the UK on the basis that these are 'people who are making a positive contribution' and 'research shows that their economic contribution grows the longer they stay as they acquire increased UK specific skills and experience, and because some skills shortages will be long term' (Home Office, *Controlling our borders*, February 2005, pp.21-22).

The alignment of the benefits to the UK offered by highly skilled migrants with the government's priorities for the type of immigrants it is seeking to attract to the country therefore results in this migrant group acquiring preferable settlement opportunities

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<sup>11</sup> Or those in a permanent heterosexual or same-sex relationship akin to marriage



and, alongside refugees and family reunion, being the focus of the government's integration strategy.

### **From settlement to citizenship**

It is clear that immigrants to the UK have different opportunities to remain, settle and integrate in the country depending on their immigration status and the situation of their status on the government's ladder of immigration priorities. Those situated near the top of the ladder, such as highly skilled migrants, find clear settlement opportunities open to them. Those on the bottom rungs, such as undocumented migrants and asylum seekers, face extremely limited opportunities to settle and are therefore not reflected in the government's integration strategy. One academic has questioned the impact of an 'expanding army of actively recruited migrant labour [...alongside] an underground population of [...] rejected asylum seekers and undocumented migrants existing with minimal rights in the interstices of the informal economy [...on] the prospects of achieving "social cohesion"' (Morris, 2004, p.25) Instead the government chooses to believe threats to societal tolerance are a result of those who come to the UK illegally, abusing the immigration system and allowing extremists to promote their views on race (Home Office, *Controlling our borders*, February 2005, p.5).

For those the government does welcome to make a permanent home in the UK over the past two years there has been a strong drive to ratchet up the significance of acquiring citizenship. Since the 2002 White Paper *Secure Borders, Safe Havens: Integration with Diversity in Modern Britain*, the government has decided that for migration to be truly managed 'the reach of [government] policy had to extend well beyond the business of admitting or refusing would-be migrants, to embrace the totality of the civic life of immigrant populations in the UK' and that this intervention by government would remain 'through into the years of settlement and eventual citizenship' (Flynn, 2003, pp.9-10). A 2003 study found that take-up rates for citizenship varied a great deal depending on a person's country of origin and increased with the length of time they had been in the UK (Home Office, *The New and the Old*, September 2003, p.7). The government has subsequently indicated its intention to 'strongly encourage those with permanent status to make a commitment to the UK by accepting the full rights and responsibilities of citizenship' (Home Office, *Controlling our borders*, February 2005, p.22). Successful applications for citizenship now lead to a civic ceremony where the prospective citizen must make a citizenship oath and pledge. Since their establishment in March 2004, over 1,000 people a week have attended a citizenship ceremony (Home Office press release, *Driving forward Integration agenda: Des Browne announces new advisory board*, 19/11/2004).

In tandem with the increased government priority given to citizenship, the hurdles over which those with settled status must jump in order to become citizens have been raised. According to the *Five Year Strategy*: '[w]e now require much more from those who wish to become citizens – they must pass a residence test; be intending to make the UK their home; be of good character; and pass an English language requirement and (from late 2005) a test of knowledge of life in the UK' (Home Office, *Controlling our borders*, February 2005, p.22). The official rationale for these requirements is not just an intention to encourage social cohesion, but the belief that 'these factors are most closely linked to migrants succeeding in the UK and becoming economically active' (Home Office, *Controlling our borders*, February 2005, p.22). The importance of increasing the potential economic contribution of permanently settled immigrants to the UK is reinforced in the government's intention to bring the requirements for settlement closer to those for citizenship, through the introduction of English language and knowledge of the UK tests. Again the official

rationale for these requirements is that these 'further changes [...will] increase the economic benefit to the UK of permanent settlement' (Home Office, *Controlling our borders*, February 2005, p.22).

It should be noted that in comparison to the strong drive towards integrating those with approved settlement rights into British society expounded by documents emanating from the Home Office, the Department of Work and Pensions' *UK National Action Plan on Social Inclusion 2003-2005*, makes scant reference to the needs of immigrants. It notes the importance of tackling discrimination against asylum seekers and refugees (Department of Work and Pensions, *UK National Action Plan on Social Inclusion 2003-2005*, July 2003, para.26) and devotes one paragraph each to asylum seekers and refugees in its chapter on policy measures (paras.96-97). Whilst the document does focus on the needs of ethnic minorities within the UK it does not delineate between British-born ethnic minorities and immigrants. Almost bizarrely, its discussion of the problems facing those who speak languages other than English focuses entirely on difficulties for native Welsh speakers (*National Action Plan on Social Inclusion 2003-2005*, July 2003, para.44).

### **1.3 The Brain Drain Debate**

The abovementioned analysis demonstrates that the UK government's approach to (and support for) migration is rooted in a belief that there is a definable sub-section of potential immigrant workers who would bring benefit the British economy. In this broadly economic mindset, it is unsurprising to find that the government is also confident of the (economic) benefits of migration to outflow countries and sees migration as an essential component of support for developing countries. It is undoubtedly the case that government policy has responded to worries over the impact of 'brain drain', both through concern expressed in official statements and concrete actions such as a code of practice to regulate the migration of healthcare workers. However, it is also the case that the Home Office does not seek to place significant emphasis on the impact of brain drain with, for example, no mention having been made in the recent five year strategy – a document released with considerable political fanfare. By contrast, the parliamentary Committee responsible for overseeing the Department for International Development (DFID) has brought the relationship between migration and development into sharp focus, recently reporting on government activity in this area, and DFID itself is set to continue its longstanding interest in migration and development with a policy statement in 2005.

#### **Home Office policy**

In the 2002 White Paper, *Secure Borders, Safe Haven*, the Home Secretary outlined the government's understanding of the impact of globalisation on international migration. In considering the 'breadth of causes and consequences' (Home Office White Paper *Secure Borders, Safe Haven – Integration and Diversity in Modern Britain* 2002 at para. 1.16) associated with migration, the Home Secretary resolved:

We must also ensure that our immigration policies are consistent with our fundamental commitment to eliminate world poverty. Migration flows can be highly beneficial to developing countries: remittances from migrant workers make a major contribution to many economies; extensive trade links are forged; and skills and knowledge shared. The government will seek to ensure that developing countries are able to integrate into, and benefit from, the global economy. This will involve increased movement in persons

and global trade in services (Home Office White Paper 2002 para. 1.19).

This positive assessment of the role of the global market in ending poverty remains a central theme of the government's approach to outflow countries, with remittances seen as a tangible and natural outcome of the movement of labour. However, the potential pitfalls to developing countries of the 'international competition for people with scarce skills' (Home Office White Paper 2002 para 1.20) are also acknowledged:

We will fulfil the commitment in the White Paper *'Eliminating World Poverty: Making Globalisation Work for the Poor'* that the UK will ensure migration policies do not worsen skills shortages in developing countries.<sup>12</sup>

Whilst a commitment to 'develop innovative approaches' including codes of practice<sup>13</sup> for use in sectors vulnerable to brain drain is offered, *Secure Borders, Safe Haven* makes no further reference to the impact of migration in developing countries.<sup>14</sup>

The Home Office revealed more detail of its understanding of the impact of migration in its April 2004 submission to the International Development Committee. Centrally, the Home Office reiterate their view that the negative impact of skills loss is balanced by 'remittances, return migration bringing new skills, foreign direct investment (FDI) by diaspora communities, strengthened by international networks, and so forth.'<sup>15</sup> To facilitate these productive aspects of migration, 'brain circulation' is offered as an alternative to brain drain, in which the return of skilled migrants to developing countries is encouraged through the Training and Work Experience Scheme<sup>16</sup> and other short term migration programmes.<sup>17</sup> Such 'skills circulation' is seen as a feature of migration as 'the vast majority of migrants do not settle permanently in the UK' (*Memorandum Submitted by the Home Office 2004* para 9). Moreover, the holding of dual nationality (allowed by the UK) is also proposed as part of the mechanism of circulation, presumably (although not explicitly) by facilitating a rolling cycle of work and return (*Memorandum Submitted by the Home Office 2004* para 10). Whilst the potential negative effects of migration are acknowledged, remittances are seen as the key argument in favour of migration, with 'over \$100 billion' remitted worldwide to developing country households. In sum, the Home Office believes that migration:

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<sup>12</sup> Home Office White Paper 2002 para 1.20 In common with much policy in this area, the White Paper referred to emanated from DFID: Department for International Development White Paper 2000 *Eliminating World Poverty: Making Globalisation Work for the Poor*.

<sup>13</sup> Home Office White Paper 2002 para 1.20, see below for a discussion of the approach to migrant healthcare workers.

<sup>14</sup> A research requirement into the impact of migration in source countries is identified in an Annex: Home Office White Paper 2002 Annex G para 5

<sup>15</sup> Select Committee on International Development Written Evidence *Memorandum Submitted by the Home Office 2004* para 6.

<sup>16</sup> The Training and Work Experience Scheme offers two forms of entry to the UK: for work based training leading to a qualification, or for work experience. Under the former category the maximum length of permit is five years (although further permits may be granted for longer periods of training), a work experience permit may be issued for 24 months with no extension. A permit holder is not eligible for a further permit until 24 months have been spent abroad, using the skills gained. *Memorandum Submitted by the Home Office 2004* para 30. This scheme will be retained under 'Tier 4' (temporary entry with no route to settlement) of the new points based migration scheme announced in the government's five year strategy. Home Office *Controlling our Borders: Making Migration Work for Britain – Five Year Strategy for Asylum and Immigration 2005* Annex 3.

<sup>17</sup> As noted above, those on such short term migration schemes are excluded from the government's thinking on integration.

- May ease unemployment in developing countries;
- May have positive effects on higher education in poorer countries;
- Exports skills and dynamism with returns;
- Forges valuable economic, social and political links; and
- Offers direct economic benefit through remittances.

In the five paragraphs given over to the subject, little is offered by way of detail on the causal relationship between migration and the perceived development benefits, or indeed on the calculus of benefits and unspecified 'negative impacts' of emigration from developing countries (*Memorandum Submitted by the Home Office 2004* paras 7-11). As will be seen throughout the following, it is DFID rather than the Home Office that gives serious attention to these issues.

### **Healthcare workers**

The recruitment of healthcare workers is one area of the brain drain debate in which concern has been translated into concrete action. Following an increase in concern over the effects of international recruitment, the government published recruitment guidance in 1999 (Department of Health *Guidance on International Recruitment 1999*) that, after some delay, evolved into the Department of Health's 2001 Code of Practice for NHS. From amongst the main pillars of the Code described by Home Office, those that appear designed to address brain drain are:

- Developing countries are only to be targeted if there exists a bilateral government agreement on recruitment;
- Recruitment should not take place from those countries that have been listed by DFID on the basis of their economic status and number of health personnel;
- Overseas staff will be protected by UK employment law; and
- Extensive opportunities are available in the NHS for training and enhancement of incoming professionals, who will receive the same access to education and professional development as all other employees (*Memorandum Submitted by the Home Office 2004* para 14).

The remaining guiding principles focus on reassuring the public of the efficacy of international recruitment: a minimum standard of English should be ensured; the knowledge and effectiveness of staff should be comparable with those trained in the UK; and international recruitment is a 'legitimate contribution to the development of the NHS workforce' (*Memorandum Submitted by the Home Office 2004* para 14).

DFID has, along with the Department of Health, been closely involved with the development of the Code (Select Committee on International Development Written Evidence *Memorandum Submitted by the Department for International Development* November 2003 para16.) and report that bilateral agreements have been reached with India, the Philippines and (somewhat curiously) Spain, whilst Memorandums of Understanding on ethical recruitment have been reached with South Africa and Indonesia (*Memorandum Submitted by the Department for International Development* November 2003 para17). The agreement with South Africa includes provision for the two way exchange of information, advice and expertise for the 'mutual benefit [of] both countries' (*Memorandum Submitted by the Department for International Development* November 2003 para18).

The Code of Practice operates through the government 'strongly advising' NHS bodies to only recruit through agencies that have demonstrated to the Department of Health that they operate in accordance with the Code. The Code is therefore not mandatory and does not prevent the recruitment of individual health professionals from any country who volunteer themselves for employment (rather than having been actively sought out by a recruitment agency). Indeed, 'the policy assumes the main driver of migration is the hiring and advertising by recruitment agencies' and thus over the last five years there has continued to be an increase in migration from countries listed for exclusion from recruitment (Save the Children *Briefing: Whose Charity? Africa's Aid to the NHS*, 2005). One study of the political process that produced the Code concludes that the government found itself caught between short-term NHS staffing targets and a commitment to ethical principles, resulting in an ineffective, weak and restricted policy (Deeming, 2004, p. 788).

In responding to criticism, the Code of Practice has been periodically tightened, with the current Code having been introduced following a 2004 review.<sup>18</sup> Amongst other measures, the revised code closes a loophole on the recruitment of temporary staff; widens the scope to private as well as NHS healthcare workers; aims to prevent third party recruitment via agencies in developing countries; and sets a series of best practice benchmarks (House of Commons International Development Committee *Migration and Development*, 4/12/2004 para 9). However, DFID also acknowledge the variety of factors that underpin migration flows in healthcare, including source country 'push' factors such as low pay, poor working conditions, personal security and the impact of HIV/AIDs. Moreover, the main driver is accepted to be the demand for healthcare workers in developed countries in which pay, career prospects and working conditions are much more favourable (*Memorandum Submitted by the Department for International Development* November 2003 para 18). Thus even the revised Code of Practice fails to tackle these root cause issues and it falls to DFID to accept, on behalf of the government, that a 'broad range of both short- and longer-term solutions is needed to tackle this multidimensional set of issues' (*Government Response to the Committee's Sixth Report of Session 2003-04* (Dec 2004) para 7).

### **The role of DFID**

As the debate over healthcare workers illustrates, much of the government's thinking on the brain drain debate is concentrated in DFID rather than in the Home Office, even though the latter retains ultimate responsibility for immigration policy. Recently this has been illustrated by the International Development Committee's report into migration and development and, in particular, by DFID's submission to the Committee and response to its findings on behalf of the government.

DFID's position on migration can be traced to a 2001 study, commissioned by DFID and carried out by the International Labour Organisation (ILO). DFID report the 'key finding' of this research to be that the benefits of migration can outweigh the costs if government policy focuses on the correct issues: encouraging return migration, tapping diaspora networks and promoting the productive use of remittances (*Memorandum Submitted by the Department for International Development* November 2003 paras 13-14). These target areas are reflected in DFID's dialogue with the International Development Committee and have penetrated immigration policy through DFID's representation on a cross-Whitehall Managed Migration Group (*Government Response to the Committee's Sixth Report of Session 2003-04*

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<sup>18</sup> Department of Health *Code of Practice for International Recruitment of Healthcare Professionals* 2004; measures put in place in 2004 do not become active until December 2005.

December 2004 para 25). The Home Office's emphasis on skills and brain 'circulation' can be seen to follow directly from this emphasis on return migration. However, the International Development Committee insist the challenge remains to establish evidence of how and when temporary migration schemes deliver development benefits (*Government Response to the Committee's Sixth Report of Session 2003-04* December 2004 para 24). Effective circulation requires sustainable return as well as a creative use of immigration policy to allow migrants to 'live their lives in two countries'<sup>19</sup> and thus engages both DFID's activities overseas and the Home Office's role in facilitating migration and administering residency (House of Commons International Development Committee *Migration and Development* July 2004 paras 73-77, 82-88). The lack of Home Office engagement with integration for those with temporary status is particularly incongruous in this light.

Understanding the impact of remittances is essential to understanding the development impact of migration. To this end DFID, jointly with the World Bank, convened a Remittances Conference in 2003. The result of this initiative has been the creation of an Inter-Agency Remittances Task Force, which seeks to encourage governments and international financial institutions to improve the quality of remittances data (*Government Response to the Committee's Sixth Report of Session 2003-04* December 2004 para 37). This is an essential step in substantiating the government's assertions on the benefits of migration. Moreover, DFID is assisting the Task Force with the development of household surveys in order to better understand the behaviour that underpins the flow of money back into communities in developing countries, (*Government Response to the Committee's Sixth Report of Session 2003-04* December 2004 para 38.) is commissioning a survey of remittance products and is engaging with diaspora communities in the UK (*Government Response to the Committee's Sixth Report of Session 2003-04* December 2004 para 41,44.). In this sense, DFID is using its expertise to move forward the government's understanding of the financial and social value of remittances. However, in all areas of study the International Development Committee notes that much work is still required to improve communication with diaspora groups, (*Government Response to the Committee's Sixth Report of Session 2003-04* December 2004 para 52,53.) where a substantial existing knowledge base lies. Finally, it remains for the Home Office to place the necessary emphasis on the outcome DFID's studies if the development gain of migration is to be realised.

### **Other government departments**

Whilst playing a significant role, DFID is by no means the only government department whose work interacts with migration and development. Others include:

- Department for Education and Skills, responsible for the provision of education services and encouraging overseas students to UK universities;
- Department of Work and Pensions, responsible for labour market policies; and
- Foreign and Commonwealth Office, who provide and maintain links with other countries.

The UK government 'is seeking to take a cross-departmental approach to migration issues', a part of which is a regular meeting of ministers from the Home Office, DFID

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<sup>19</sup> Q 349 [Hilary Benn Secretary of State for International Development] oral evidence to House of Commons International Development Committee *Migration and Development: How to Make Migration Policy Work for Poverty Reduction* July 2004 para 88.

and Foreign and Commonwealth Office. The centrality of these three ministries to the government's assessment of migration issues is reflected in their joint attendance of the EU's High Level Working Group on Asylum and Migration; the role of the remaining government departments appears more limited, characterised by 'regular consultation between and *ad hoc* meetings of officials' (*Government Response to the Committee's Sixth Report of Session 2003-04* December 2004 para 61). However, making the relationship between migration and development a productive one requires a genuine engagement with the issues by all actors, as DFID itself acknowledges:

the debate on migration and development is at a similar stage to where the debate on trade and development was about ten years ago; people are beginning to say that there is a development dimension to migration, but there is a lack of joined up thinking at national and international levels, and some resistance to connecting the issues.<sup>20</sup>

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<sup>20</sup> Q 36 [Masood Ahmed, DFID] oral evidence to House of Commons International Development Committee *Migration and Development: How to Make Migration Policy Work for Poverty Reduction* July 2004 para 164.

## 2.1 Making use of knowledge

Britain's New Labour government was elected first in 1997 and then again in 2001 on a platform that repeatedly emphasised the importance of research and evidence to government policy. Speaking in 2000, David Blunkett, then Secretary of State for Education and Employment (but soon to become Home Secretary), stated the government's view unequivocally:

It should be self-evident that decisions on government policy ought to be informed by sound evidence. Social science research ought to be contributing a major part of that evidence base. It should be playing a key role in helping us to decide our overall strategies. (David Blunkett '*Influence or Irrelevance: Can Social Science Improve Government?*' Speech, 2 February 2001).

The purpose of this research is to inform New Labour's vision of pragmatic policy making, to 'tell us what works and why and what types of policy initiatives are likely to be most effective' (David Blunkett Speech, 2 February 2001). Thus, by focussing on a commitment to 'what works', the government attempts to distinguish itself from a British political landscape that in the past has been dominated by ideology. However, within this apparently straightforward framework lie a number of challenges, contradictions and questions. In immigration, who decides 'what works' – is it public opinion, whatever that may mean; business leaders and the economy; or perhaps even the migrants themselves? What works for one group will frequently not appeal to another. In immigration and asylum, where policy is a particularly sensitive political issue, does the political will exist to follow or even reflect on evidence? As one study suggests, 'the real test comes when sacred policy cows are contradicted by evidence' (Gray 2001). Further, more mundane problems abound. Can the enormous technical and financial demands of mobilising social-scientific effort be met? And can the government and civil service then respond with the organisational changes required to manage and creatively employ knowledge and evidence? (Gray, 2001).

Despite these challenges, the government has maintained its commitment to increasing the role of evidence in all departments, with an impressive demonstration being in immigration and asylum policy – an area which has been distinguished in the past by an absence of government research. In 2001 the Home Office published *Migration: An Economic and Social Analysis* which did much to set the framework for further research. Comprising an overview of migration theory, trends and policy, the purpose of the document was to 'be the start of a process of further research and debate' (Glover *et al* 2001, p vii.) and as such set out a range of areas in which the existing knowledge base was inadequate for further policy development. By the time the 2002 White Paper *Secure Borders, Safe Haven* emerged, the role of research had been defined:

This is an ongoing programme of statistics, evaluation and research and thereby an ongoing process of refining and improving our policy. We will continue to develop our knowledge base and policy evaluation, feeding it directly into policy management, in order to ensure that we have an effective, forward-looking nationality, asylum and immigration system (Home Office White Paper *Secure Borders* 2002, 136).



The volume of research and data on migration that has been compiled by the Home Office demonstrates that the first part of this statement, at least, has been followed through, whilst a recent review commits to 'continue to build a what works approach by being more evidence based' in the Home Office (Home Office Departmental Report 'Building a What Works Approach' April 2004).

### **Home Office Research**

The Research, Development and Statistics Directorate (RDS) is the body within the Home Office charged with principle responsibility for building the 'what works approach'. In the 2004 Home Office Departmental Report, RDS is identified as integral to:

building our knowledge base and strengthening our strategic policy making so it is fully informed by the latest evidence and experience including international developments (Home Office Departmental Report 'Building a What Works Approach' 2004.)

Research is carried out either by RDS staff or by specifically commissioned external research teams and have in recent times covered a broad range of topics and methods, including mapping exercises, longitudinal studies and policy impact assessments ([www.homeoffice.gov.uk/rds/immigration\\_research\\_pubs.html](http://www.homeoffice.gov.uk/rds/immigration_research_pubs.html)). ICAR, an independent body that undertakes, collates and disseminates information about asylum in the UK, report that whilst government research has been accused of an excessive focus on quantitative, positivist methods, a wider variety of techniques have been employed at the Home Office, including interviewing and focus group approaches. However, ICAR conclude that:

although it is fair to say that government commissioned research is becoming more experimental and diverse over time, it must also be noted that some methods such as ethnography and life history are generally absent from government research on migration ([www.icar.org.uk/res/rch/refresgove.html](http://www.icar.org.uk/res/rch/refresgove.html)).

Within RDS, the Immigration Research and Statistics Service (IRSS) has responsibility for migration research, which it breaks down into three themes: statistics, asylum research and immigration research.

#### *Statistics*

RDS publish statistics relating to immigration, asylum and nationality that cover:

- Entry clearance applications at British High Commissions and Embassies abroad;
- Passenger arrivals, admissions and refusals at air, sea and Channel Tunnel ports in the UK;
- Asylum applications and decisions and appeals, and numbers of asylum seekers supported, detained and removed;
- Applications for extension of stay, including settlement;
- Enforcement action against illegal entrants and persons subject to deportation;
- Persons detained under immigration powers;

- Immigration appeals;
- Applications and decisions in respect of British citizenship.<sup>21</sup>

Regular publications include Control of Immigration Statistics, published annually, and the Quarterly Asylum Statistics. The frequency of these two updates reflects the relative political sensitivity of the different areas of the Home Office's mandate and, along with being accessible to the media, also inform policy through mechanisms such as Parliamentary Committee oversight. The 2004 Home Affairs Committee report into the asylum process, for example, makes extensive use of the Home Office Quarterly Asylum Statistics in establishing the level of and trends in UK asylum applications in order to critique government policy (House of Commons Select Home Affairs Committee *Asylum Applications* Second Report 2003-2004).

The Home Office also publishes an annual 'Command Paper', which provides a detailed analysis of all the aspects of immigration, asylum and citizenship listed above. However, as of March 2005, the Command Paper has been placed under a comprehensive review, with the aim of improving the ability of the Home Office to 'tell a complete narrative of migration'.<sup>22</sup> Specifically, whilst data are available across diverse publications, the review identifies the following questions that cannot easily be answered within the current reporting mechanisms:

- What are the characteristics of migrants who come to the UK?
- How do they get here?
- Why do they come to the UK?
- How long do they stay?
- Why do they leave?

Being able to answer these questions is considered 'a high priority, both in terms of managing and developing immigration policy, and understanding the social impacts of migration' (National Statistics Population and Migration Theme *Review of Command Paper 'Control of Immigration Statistics*, March 2005 para 1.8).

### **Immigration and Asylum Research**

The following topics in immigration and asylum research are being undertaken by IRSS:

- **Illegal Migrants, Enforcements and Returns.** Examining the nature and extent of illegal migration and illegal working. Includes commissioned research to 'investigate methods used in other countries and to estimate the size of their illegal populations in order to work towards methods appropriate for the UK.' Work has also been undertaken with detainees to 'investigate their experiences of illegal migration and residence.'<sup>23</sup>

<sup>21</sup> RDS Immigration and Asylum: Immigration and Asylum Statistics [www.homeoffice.gov.uk/rds/immigration1.html](http://www.homeoffice.gov.uk/rds/immigration1.html) All the main statistics are published but more detailed data are available on request, although possibly subject to a fee.

<sup>22</sup> National Statistics Population and Migration Theme *Review of Command Paper 'Control of Immigration Statistics: United Kingdom' Publications* Project Initiation Document, March 2005 paras 1.8, 2.1. The review final report is due in October 2005.

<sup>23</sup> RDS Immigration and Asylum [www.homeoffice.gov.uk/rds/immigration\\_returns.html](http://www.homeoffice.gov.uk/rds/immigration_returns.html) see also the recent publication: Home Office *A Survey of the Illegally Resident Population in Detention in the UK* London 2005.

- Reception and Integration Policy and Practice. Current projects include: research seeking to establish a framework of indicators by which to measure refugee integration; monitoring of passenger arrivals by ethnicity; collation of best practice in community relations; and the development of statistical methodology for estimating refugee populations ([www.homeoffice.gov.uk/rds/immigration\\_integration.html](http://www.homeoffice.gov.uk/rds/immigration_integration.html)).
- Citizenship, Social Cohesion and Migrants. Social and statistical research in aspects of immigration and citizenship; focus group research to provide an evidence base on the relationship between perceptions of British Citizenship, the naturalisation process and the decision to apply for naturalisation ([www.homeoffice.gov.uk/rds/immigration\\_citizenship.html](http://www.homeoffice.gov.uk/rds/immigration_citizenship.html)).
- Longitudinal Research with Migrants. This programme aims to establish long term data about the integration of migrants and to identify what helps, influences and hinders refugee and other migrant integration. As such, the programme has four areas of research:
  - Interviewing refugees who have resettled to the UK;
  - Surveying a statistical sample of refugees and other migrants about their integration experiences over time;
  - Testing ways of linking existing government data sources to locate and analyse data about migrants' economic outcomes;
  - Developing ways of collecting data from those with different levels of literacy or English ([www.homeoffice.gov.uk/rds/immigration\\_longitudinal.html](http://www.homeoffice.gov.uk/rds/immigration_longitudinal.html)).
- Methodological Approaches to Migration Research. A cross-cutting programme aimed at ensuring best practice in conducting research with asylum seekers and refugees.

### **Evidence of Progress?**

The foregoing demonstrates that immigration research in the Home Office has made considerable progress in the years since the publication of *Migration: An Economic and Social Analysis* and now has a substantial body of commissioned and in-house studies to draw on, along with an array of active research and data gathering themes. Research includes long-term studies, development of indicators, statistical surveys, focus group studies and, perhaps crucially, a theme dedicated to examining best practice and research methodology. The commitment to progressive improvement suggested in this latter area is also borne out in the Command Paper review and its aim to tell a complete narrative of migration.

However, the 2004 Home Office Departmental Report identified migration as one of four areas in which there is a need to secure 'a robust picture of where significant evidence gaps remain' (Home Office Departmental Report 2003-2004 'Building a What Works Approach' in Section 4, 2004) indicating that, despite the progress that has been made, a great deal remains to be done to achieve a full understanding of migration in the UK. Moreover, the challenges of implementing an evidence based approach to policy are considerable and immigration, if not a 'scared cow', has certainly developed into one of most contested topics in British politics during New Labour's tenure.<sup>24</sup> Whilst the development of IRSS's research themes and reviews

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<sup>24</sup> Immigration and asylum has transformed from an issue that less than five per cent of public rated as the most important in 1997 to one 35 per cent rated as the most important issue in February 2004. See [www.mori.com](http://www.mori.com) and 'Maintaining public confidence in the immigration system' earlier in this chapter.

indicate that the structural challenges of commissioning and managing research have been considered, there remains a question over the government's commitment to put evidence into practice. The recent Five Year Strategy provides a tellingly simple example. The Strategy proposes the restriction of appeal rights for student and family visa applications (Home Office *Controlling our Border*, 2005), but without reference to the evidence that considerable numbers of visas are currently awarded on appeal.<sup>25</sup> Therefore, along with being a denial of access to justice, the effect of these proposals will be to prevent access to the UK for migrants whom the government have identified as being 'in the country's interests' (Home Office *Controlling our Borders*, 2005) as a result of procedural or administrative failure. When straightforward statistical evidence such as this is ignored by policymakers, a question has to be raised over the impact of the more subtle and nuanced results of IRSS's social research.

## 2.2 Including stakeholders

### Stakeholder groups

The Home Office's Immigration and Nationality Directorate (IND) declares itself 'committed to developing and maintaining an open and constructive relationship' with its stakeholders, including community groups, voluntary sector organisations, local authorities, the police, legal organisations and other government departments (for a list of stakeholders, go to: [www.ind.homeoffice.gov.uk/home/0/stakeholders.html](http://www.ind.homeoffice.gov.uk/home/0/stakeholders.html)). The primary mechanism for contact with stakeholders is a range of 'User Panels':

- IND User Panel: the main discussion group, meeting twice yearly and chaired by IND's Director General. Covers all IND business.
- National Asylum Support Service (NASS) Forum: for all asylum welfare and support issues.
- Batch Scheme User Group: facilitates communication between IND and Batch Scheme users covering all operational and casework issues.
- Work Permit User Panel: facilitates regular customer feedback to Work Permits UK.
- Asylum Processes Stakeholder Group: discussion and consultation forum between IND and stakeholders on asylum processes.
- NGO Quarterly: dialogue on European and international asylum issues with non-governmental organisations.
- UASC Stakeholder Group: all issues relating to Unaccompanied Asylum Seeking Children (UASC).
- Voluntary Returns Steering Group: explores issues concerning voluntary return programmes and informs group members on the strategic direction of the programmes.
- National Refugee Integration Forum: to discuss and take action on integration.
- Detentions User Group: operational issues surrounding detention and removal centres.

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<sup>25</sup> See 'Priority Groups of Immigrants' in this chapter, above.

- e-Borders Communications and Stakeholder Management Working Group; and e-Borders Security Working Group: both relating to introduction of e-Borders (in which identity is confirmed at point of departure prior to travel to UK).
- Integration Research Group; and Longitudinal Steering Group: both contact fora for IRSS (IND Communications Directorate *IND User Panels* 2005).

The Home Office initially invite stakeholders to join User Panels on the basis of those organisations that are most influential, whilst also aiming to create a balance of interests, professions and sectors amongst the representatives.<sup>26</sup> New members are allowed to join at the discretion of the User Panel Chair, who will consider both whether the interest of the stakeholder is already represented (for example, through an umbrella group) and whether the size of the panel will remain manageable. Current leading stakeholders (represented on three or more panels) are Immigration Law Practitioners' Association (ILPA), Joint Council for the Welfare of Immigrants (JCWI), Refugee Council, the International Bar Association, Medical Foundation for the Care of Victims of Torture, Refugee Legal Centre and the Law Society (IND Communications Directorate response to questions, May 2005).

The extent of stakeholder engagement has grown in recent years, with five of the fifteen panels that IND co-chairs having been established in the last twelve months. A recent internal review of User Panels has allowed IND to engage in a process of improving the stakeholder engagement framework, and it is intended that external stakeholders will be drawn into this development process.<sup>27</sup> The review has also allowed best practice / problems in the User Panel process to be identified and this information has been communicated back to the Chairs (IND Communications Directorate response to questions, May 2005).

## Consultations

A second important mechanism for stakeholder interaction is through formal consultations on policy developments. The Prime Minister has declared that 'effective consultation is a key part of the policy making process' and the Cabinet Office provides a Code of Practice on Consultation to ensure standards across departments. Whilst the Code does not have legal force, 'it should be regarded as binding on UK [government] departments and their agencies, unless Ministers conclude that exceptional circumstances require a departure from it.' The Code employs six consultation criteria, including: a requirement to provide for at least one consultation period during the development of policy, with a minimum of 12 weeks for responses; ensuring clarity and accessibility in the proposal and the consultation remit; and to 'give feedback regarding the responses received and how the consultation process influenced the policy' (Cabinet Office Regulatory Impact Unit *Code of Practice on Consultation* January 2004). In providing feedback:

Responses should be carefully and open-mindedly analysed. Do not simply count votes when analysing responses. Particular attention may need to be given to representative bodies, such as business associations, trade unions, voluntary and consumer groups [...]  
Particular attention should be paid to: possible new approaches to the

<sup>26</sup> IND Communications Directorate response to questions, May 2005. Business models are used to identify the most influential stakeholders.

<sup>27</sup> IND Communications Directorate response to questions, May 2005. In May 2005 IND were considering the best approach to achieve this.

question consulted on; further evidence of the impact of the proposals; and strength of feeling amongst particular groups (Cabinet Office Regulatory Impact Unit *Code of Practice on Consultation* January 2004: Criterion 4, paras 4.1, 4.2).

Responses to consultations should include a 'summary of the next steps for the policy, including reasons for decisions taken (Cabinet Office Regulatory Impact Unit *Code of Practice on Consultation* January 2004: Criterion 4, para 4.5).

The IND website currently lists 17 closed consultations, the majority (although not all) of which are accompanied by outcome reports, and two consultations that are open for responses (Immigration and Nationality Directorate, accessed 12 April 2005 [www.ind.homeoffice.gov.uk/ind/en/home/](http://www.ind.homeoffice.gov.uk/ind/en/home/)). Two examples from amongst the closed consultations illustrate the variety in the process.<sup>28</sup> A consultation that lasted from 21 July 2003 until 13 October 2003 sought replies on the Government's strategy to tackle illegal employment (Home Office *Prevention of Illegal Working 21/7/2003*). The consultation requested replies to specific questions concerning the government's proposals and the response document sought to provide both a statistical and summary analysis of the replies received.

The consultation document was sent to 150 organisations that the Home Office considered to have an interest and placed on the Home Office website. A total of 50 replies were received, including those from other government departments (eight replies), trade unions (three), employers and employers' associations (19), legal bodies (six) and NGOs (three) (Home Office *Breakdown of Summary and Statistical Analysis of Responses to the Consultation on Proposed Changes to Document List Under Section 8 of the Asylum and Immigration Act 1996*, undated). The statistical analysis in the outcome report breaks down the replies to each consultation question by the number of organisations that offered each reply.<sup>29</sup> In summarising the replies, the response document examines the 'headline' issues to emerge for each question and gives a response to each of the issues raised. This is the most productive area of the response document as it extracts a Home Office statement on the issues raised by each of the replies to the consultation, providing insight into the decision making process and priorities of government. The replies to the consultation were generally ambivalent to or supportive of the thrust of the proposed changes, leading to some clarification of but no real change to the government's proposal. Accordingly, the proposal was laid before Parliament on 16 March 2004.

On 27 October 2003, prior to the introduction of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, a set of proposals was sent to 180 stakeholders that the Home Office and Department for Constitutional Affairs (DCA) believed to have a specific interest, including refugee groups, non-governmental organisations and industry bodies. The consultation received around 100 responses but did *not* provide 12 weeks for replies; indeed the Bill was introduced to Parliament on 27 November 2003 (Home Office Immigration and Nationality Directorate, *New Legislative Proposals on Asylum Reform – Consultation Report* Covering Letter,

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<sup>28</sup> Note that both consultations closed before the new Code of Practice was published and are therefore regulated under the previous Code (November 2000). The new January 2004 document aims to 'strengthen the commitment to providing respondents with feedback' and to the use of 'best practice in developing policy options'. (Cabinet Office Regulatory Impact Unit *Code of Practice on Consultation* January 2004: Foreword by the Prime Minister.) The provisions of the new Code therefore strengthen those that already existed in the original November 2000 document.

<sup>29</sup> Thus in theory there could be fifty different replies to each question, however in practice many organisations offered the same reply or had no comment on a particular question.

17/12/2003). The consultation report did not provide statistical analysis (possibly due to the high number of replies), including instead responses to 33 comments. Unsurprisingly, a number of replies focussed on the consultation process itself, questioning the necessity of restricting the consultation period to below the recommended 12 weeks. In response, the Home Office/ DCA state:

[...] we believe that these are urgent reforms and have therefore introduced them as soon as parliamentary time has allowed. [...] Further dialogue is taking place with stakeholders on specific measures and we welcome further input during the parliamentary process (Home Office Immigration and Nationality Directorate, *Report on the Responses to the Consultation on the New Legislative Proposals on Asylum Reform 17/12/2003*, Comment 1).

The sweeping changes to the asylum system that were suggested in the proposal generated a raft of highly critical comments from the respondents, questioning, along with the consultation process itself, proposals for new criminal offences, findings of adverse credibility, withdrawal of support for failed asylum seekers, changes to the appeals system, designation of safe third countries, the role of the Office of the Immigration Services Commissioner, and race equality impact (Home Office Immigration and Nationality Directorate, *Report on the Responses to the Consultation on the New Legislative Proposals on Asylum Reform 17/12/2003*). The consultation report also carried comments on a proposal to require carriers to hold copies of travel documents, which was itself sent out even later – on 7 November – to industry representatives (Home Office Immigration and Nationality Directorate, *New Legislative Proposals on Asylum Reform – Consultation Report Covering Letter, 17/12/2003*).

The rushing through of controversial legislation that the government considered to be of high political value clearly demonstrates the limits of the consultation system. Whilst the approach is a positive development that integrates stakeholders into the decision making process and requires government to respond to concerns, the balance of power remains firmly with a government that is able to abuse its own practice guidelines in the interest of political expediency (the ‘urgent reforms’ implemented in the new act follow hot on the heels of reforms introduced in the Nationality, Immigration and Asylum Act 2002). Similarly, little credibility can be given to the process when proposals, drafted in short time scales, receive universally critical responses and yet no subsequent concession or admission of fallibility from the government. For example, Comment 8 questions the wisdom of legislating a requirement to find adverse credibility against an asylum seeker who is without appropriate documentation:

Recognition should be given to the fact that many genuine asylum seekers fail to have appropriate travel documentation, by the very nature of their circumstances. Those that do travel through agents often have documentation removed prior to passport control (Home Office Immigration and Nationality Directorate, *Report on the Responses to the Consultation on the New Legislative Proposals on Asylum Reform 17/12/2003*, Comment 8).

The Home Office/ DCA response is representative of those given to the other 32 comments in avoiding any acknowledgement of the negative impact of the proposals:

Where we accept that a person did not start their journey to the UK with a passport then no adverse inferences would be drawn against them for not having one on arrival here. The people we are looking to catch with this provision are those who are undocumented without reasonable explanation (Home Office Immigration and Nationality Directorate, *Report on the Responses to the Consultation on the New Legislative Proposals on Asylum Reform 17/12/2003*, Comment 8).

A 'reasonable explanation' is, however, severely limited in the government's view:

Where a person has a passport we would expect them to keep it not to dispose of it, whether by handing it over to an agent or by other means. We need to send out a strong message that individuals are expected to cooperate with us when making an asylum claim (Home Office Immigration and Nationality Directorate, Department for Constitutional Affairs *Report on the Responses to the Consultation on the New Legislative Proposals on Asylum Reform 17 December 2003*, Reply to Comment 8).

The consultation report offers no indication of any changes to policy that result from the exercise, only an invitation to continue to provide input during the parliamentary process. It seems unrealistic, to say the least, to expect voluntary or charity organisations to expend time and resources on contributing to a process that demonstrates itself to be meaningless. Thus, the flawed consultation on the proposals for the 2004 Act risked not only the quality of legislation that followed, but also the participation of stakeholders in consultations thereafter.

### **Other stakeholder mechanisms**

Employers organisations, trade unions and NGOs all contribute to the migration debate through other mechanisms including ad hoc press releases, reports and campaigns as well as through formal mechanisms such as providing input to parliamentary committees. The Confederation of British Industry (CBI), for example, canvassed its members in order to produce a detailed response (March 2002) to the 2002 *Secure Borders, Safe Havens* White Paper, whilst the Trades Union Congress (TUC) maintains an interest in migration and has recently produced documents reporting on EU enlargement, reacting to government statements on asylum and immigration and highlighting forced labour in the UK (Trades Union Congress – International [www.tuc.org.uk/international/index.cfm?mins=288](http://www.tuc.org.uk/international/index.cfm?mins=288)). In November 2004, the TUC published research examining the role of migrant labour in rural Britain (Trades Union Congress *Propping Up Rural Britain: Migrant Workers from the New Europe* November 2004) and subsequently hosted a conference on 'Migrant Workers and Trade Unions' at which the Home Secretary gave a keynote speech on the economic benefits of migration (TUC Press Release 9/11/2004. [www.tuc.org.uk/international/tuc-8953-f0.cfm](http://www.tuc.org.uk/international/tuc-8953-f0.cfm)). The Institute for Public Policy Research (IPPR), an academic think-tank, maintains a strong research interest in migration and integration, has published extensively in the field ([www.ippr.org.uk](http://www.ippr.org.uk)) and its academics frequently contribute evidence to parliamentary committees. The IPPR also responds to government proposals, producing, for example, a lengthy response to *Secure Borders, Safe Havens* (IPPR *Secure Borders, Safe Havens: Integration with Diversity in Modern Britain – Response from the Institute for Public Policy Research* March 2002). A further source of academic input into government policy is the Migration Research Unit at University College London, a research team that specialises in national, European and international migration trends and policy,



and frequently produces commissioned research for the Home Office (Migration Research Unit [www.geog.ucl.ac.uk/mru/?page=home](http://www.geog.ucl.ac.uk/mru/?page=home)).

A final example of the stakeholders who contribute to the development of policy is found in the hastily produced Home Affairs Committee report into what would become the 2004 Asylum and Immigration (Treatment of Claimants, etc.) Act. The Committee's report was produced on 16 December 2003 in time for the second reading of the Bill before parliament (House of Commons Home Affairs Committee *Asylum and Immigration (Treatment of Claimants, etc.) Bill – First Report of Session 2003-04* 16 December 2003, para 3). Those organisations who contributed evidence to the Committee did so at short notice and are therefore fewer in number than those that have provided evidence to similar reports. Nonetheless, the list provides a representative cross-section of non-governmental organisations that are willing and able to move forward the debate on migration in the UK: Citizens Advice, Immigration Advisory Service, Jesuit Refugee Centre, JUSTICE, The Law Society, Medical Foundation for the Care of the Victims of Torture, Migration Watch UK, Refugee Children's Consortium, Refugee Legal Centre, Bail for Immigration Detainees, Immigration Law Practitioners' Association, and The Refugee Council (House of Commons Home Affairs Committee *Asylum and Immigration (Treatment of Claimants, etc.) Bill – First Report of Session 2003-04* 16 December 2003, para 3). Each of these organisations provided written evidence to the Committee, which was subsequently referred to as the source material for the Committee's report.

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