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Can the government
manage migration?
A study of UK legislation
and policy from 1996–2006

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Abstract

The purpose of this paper is to examine the methods employed by the state to manage the asylum process, which in recent years has been commonly perceived as an unrestricted migration channel to the UK. In particular, the paper will look at repeated attempts to control asylum seekers' ability to support themselves through restrictions on access to state benefits and their ability to work legally. This paper highlights the limitations of the methods used by the state to control migration, which in recent years have depended heavily on the introduction of new UK immigration and asylum legislation. I conclude that powers exercised should be dependent upon existing measures, where possible, rather than the introduction of new legislation, as the introduction of one or two pieces of primary legislation can create all sorts of problems with existing legislation and generate huge amounts of further legislation - thus adding to the problems of interpretation and implementation (and the problems of the asylum seekers / refugees at the end of the process). I also suggest that any new legislation should have a level of flexibility to allow for exceptional circumstances, rather than trying to legislate for the minutiae of the decision-making process.

Keywords Public policy, managed migration and UK asylum system.

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This paper is concerned with the effectiveness of legislation in providing the level of control required and, more importantly, desired by government. It is divided into four parts. Part one gives a general introduction to the background and debates concerning the use of legislation to control UK borders. Part two focuses on the Asylum and Immigration Act 1996, which was the first major piece of legislation on asylum and the first on immigration since the 1971 Immigration Act. The 1996 Act was enacted under a Conservative government, which is important because it allows a comparison with the subsequent Labour legislation. The 1996 Act represented the government's attempt to tackle the perceived loopholes in the existing benefits system and structure, for example, the 1996 Act amended the appeals system, which was previously covered by the Asylum Appeals Act 1993 (House of Commons, 1993, section 9). The paper also compares the intention and subsequent effect of specific areas of this legislation, such as the attempts to restrict access to support, both through the benefits system and entitlement to work.

In part three, the focus is on the Labour government's continuation and strengthening of the powers introduced by the 1996 Act, despite their pledges to repeal parts of the legislation when in opposition. I shall be looking in particular at policies introduced dealing with support and social policy. The final part of the paper is concerned with proposals for future immigration and asylum policy, by providing a point-by-point breakdown of the proposals made in the 2005 Immigration and Nationality Five Year Plan; *Controlling our borders: Making Migration Work for Britain*. I shall relate each of the 'new' proposals back to previous or existing policy and / or legislation. The five-year plan was effectively a White Paper, outlining proposals for further legislation, which is being enacted in the Immigration, Asylum and Nationality Bill, which is due to come into force in 2006.

Overview of UK border controls

Existing or new legislation?

The UK has a long history of migration and corresponding legislation, but do these 'modern' concerns justify the recent increase in the use of legislation and policy? Many modern laws echo existing statutes that were introduced to control the immigration of the time. For example, the right to seek asylum in the UK is not exclusive to the 1951 Geneva Convention on Refugees, although the UK was a signatory to the Convention, which is considered to be the main document on this area. The right to seek asylum can be traced back through the 1914 Aliens Restriction Act, which allowed entry to those suffering persecution. Furthermore, the requirement for foreign nationals to hold identification documents has origins in the 1793 Aliens Act; under the 1793 Act 'aliens' could be prohibited from landing, or restricted to docking at specific ports and would remain subject to deportation.

Although the basic powers of the state and more importantly, the jurisdiction, are fundamentally unchanged, there is a tendency to add to, rather than exercise existing powers. In terms of jurisdiction, the UK has always maintained a policy that makes 'the preservation of British border controls a key symbolic issue of British sovereignty' (House of Lords, 1999, p. 1). This was graphically illustrated during the debates over the Schengen agreement, where both the UK and Ireland (as 'island' nations) successfully opted out of the operation of a common EU visa area. This position is still advocated by Ministers: 'the [EU] Border Agency... has the potential to enhance the security of the EU's external borders.... It should complement, not replace, the work of national border services' (McNulty, 2005b, column 128W).

So then, should it be argued that these earlier pieces of legislation were particular to their place and time, and that additional legislation is only intended to update it accordingly? This is not an unreasonable supposition; however, as illustrated above, there are controls and

requirements that have not fundamentally changed over time, such as the need for identification documents when crossing a nation state's borders. Indeed, there are examples that I will illustrate later in this paper where new legislation has brought older legislation into play. Furthermore, by using examples of legislation and policy from the past ten years, I will argue that the increase in exacting legislation and policy does little to improve the implementation process, or the level of control exercised by the state, and actually perpetuates further regulation.

Abuse of the asylum system?

Whilst central government has always used legislation as a means to control levels of migration to the UK, there has been a tendency to target asylum in recent years. This is ostensibly because it '...is clear that many people are now using asylum claims as a means of evading immigration control' (Baker, 1991, column 1086). Although this statement was made by the then Conservative Home Secretary, Kenneth Baker, this belief has been upheld under Tony Blair's premiership and echoed more recently by another Home Secretary; '...there is no doubt that large numbers of economic migrants are abusing the system by claiming asylum' (Home Office, 1998, preface).

The argument propounded by the government is that the system of asylum allows a 'backdoor' to immigration controls and acts as a 'pull-factor.' The contention is that it is being used predominantly by those who are not fleeing from persecution, but who wish to circumvent the existing migratory controls. Consecutive governments, irrespective of political party, have tried to develop what they define as 'firm, but fair' immigration policies, where the stated preference is for potential migrants to use legitimate channels of entry to the UK, such as work permits or student visas (Home Office, 2002 and 2005) and that those fraudulently using the asylum route should be penalised. Despite this apparent political consensus, asylum policy remains a divisive and contentious issue within British politics, with the main difference in policy being about the levels of restrictions to be enforced.

So why is the 'asylum route' commonly perceived to be such an easy option? The UK is a signatory to the 1951 UN Geneva Convention on Refugees and the 1967 New York Protocol, which requires that prescribed conditions are met by the member state both in the practical provision of services to any person seeking asylum, and in the granting of refugee status to individuals. This means that those seeking asylum and those granted refugee status under the Convention are accorded rights of entry and residence in the signatory state (House of Commons, 1999a, section 94). The result is that not only those who claim asylum on entry, but also those who have entered illegally or illegally resident, are able to claim asylum and legally remain in the country. This means that anyone who claims asylum may be able to gain access to social benefits through the support system, often without any valid identity documents or evidence to justify their claim.

This presents a twofold problem to the authorities. Firstly, there is a security issue, as the 1951 Convention supports the circumvention of national border controls for the purpose of protecting the right of the individual to claim asylum, although it is also true that Article 9 of the Convention allows states to take provisional measures in the interests of national security. The very nature of the asylum system means that it can be very difficult to verify the identity of the individual, or their explanation behind their claim for asylum because their ability to escape an oppressive political regime could be dependent upon the use of a false identity and corresponding documents. The security issue has risen in perceived importance since the terrorist attacks of September 11th and has been heightened by the origin and numbers of asylum claimants.

The other concern is that the potential access to support and accommodation through the benefit system is attracting 'unfounded claimants', or those who are migrating purely for economic, rather than political reasons. As the legal definition of refugee does not specifically cover economic conditions (UNHCR, 2003, p10), this has led governments to make the distinction between the 'genuine asylum seeker' and the 'unfounded claimant,' by using the definitions set out in Article 1(2) of the

Geneva Convention. In particular, the state seeks to discourage what it believes to be a large number of spurious asylum claims, as high levels of unfounded claimants not only create delays within the system, but also absorb a large amount of state funding for support throughout their application process and any subsequent appeal (Shah, 2001; NAO, 2004).

The funding of the asylum system is a problem that has been acknowledged within Parliamentary debates, but despite any claim that 'we do not need any other changes or legislation. The Government's inefficiency bears the whole responsibility...' (Short, 1991, Hansard, column 1085). The tendency has been to introduce more rules and regulations to deal with these problems (see table 1). The greater the levels of bureaucracy, the higher the level of expenditure by the state to implement; this increases the scope for confusion for the policymakers, the caseworkers and the recipients.

Table 1 - Immigration and Asylum Legislation generated since 1996.

Year	Primary Legislation enacted	Resultant Secondary Legislation
1996	2	31
1997	1	13
1998	2	23
1999	2	16
2000	3	70
2001	4	39
2002	7	45
2003	8	90
2004	6	49
2005	8	67
2006	1	13
Total	44	456

Table 1. (The totals of secondary legislation include Scottish Acts of Sederunt and the Statutory Rulings of the Supreme Court of Northern Ireland.) This table shows the number of pieces of legislation with a reference to immigration and / or asylum that were enacted in each year from 1st January 1996 to 31st March 2006. This could include direct clauses, or revocation of sections of previous legislation.

The figures graphically illustrate the effects that even a small number of pieces of primary legislation can have upon secondary legislation, whether it is amending, adding or enabling the primary legislation. Although the figures for the secondary legislation, (or Statutory Instruments) above are specific to the year that the legislation was enacted, and not to the piece of legislation that they are amending (for example, there may be a Statutory Instrument that came into force in 2003 that revoked a power of the 1971 Immigration Act), it is still a worrying trend and raises questions about the practical viability of so much legislation. For example, in 1987, there were a total of 2311 pieces of Secondary Legislation, but there were 835 in the period 1st January to 31st March 2006 alone (www.opsi.gov.uk).

The Asylum and Immigration Act 1996

This section of the paper provides a background to the legislation and examines a selection of the intended policy outcomes, in particular the government's attempt to simplify and reduce the amount of money paid by the state to support asylum seekers, but also to show a 'crackdown' as appeasement of public opinion and enforce their will. The Asylum and Immigration Act 1996 was introduced by a Conservative government and came into force on 24th July of the same year. It was responsible for introducing a number of significant restrictions on those who were subject to immigration control and new penalties for immigration offences. Most importantly, the 1996 Act attempted to address the question of the increase in spurious asylum claims, but as a direct result, there have been 88 subsequent Statutory Instruments that deal with the 1996 Act (as of 24th March 2006). Each piece of legislation has to be considered when determining policy and consideration given that they often impinge upon the provision of services in other policy areas, such as health or education.

Part of the legislation was based upon the premise that the UK was seen as an attractive destination for work and 'benefit shopping', thus encouraging the circumvention of migration controls and abuse of the asylum system. However, it is unfortunate that even when the Home Office commissioned specific research by academics, the evidence gathered did not support this assumption. Robinson and Seagrott (2002) concluded that resident family and friends were a greater attraction to potential migrants, rather than expectation of any benefits that may be available or the ability to work. This view is further reinforced by the UN Commission for Human Rights, which states that;

Some states hosting the largest refugee populations are not parties to refugee instruments. Geopolitical considerations or family links play a more crucial role as far as 'attractiveness' of destination is concerned. (UNHCR, 2003, p16).

So not only has the increasing level of legislation complicated the understanding and implementation of the law, but these pieces of legislation are based upon questionable and unverified assumptions about migratory choices of individuals.

Support for asylum seekers

Before 1996, adults awaiting a decision on their claim for asylum (asylum seekers) and those who had been recognised as refugees under the 1951 Convention had been supported by social security benefits in the same way as British citizens. Unaccompanied children (those under the age of 18) were supported under the Children Act 1989 and the Children (Scotland) Act 1995 respectively and children continue to be supported under these pieces of legislation. This was a practical approach to support and enabled with the requirement under Article 23 of the 1951 Convention, which states that

...contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

The 1996 Act was specifically intended to reduce asylum seekers' universal access to state provision of benefits and housing. These measures were dealt with under sections 9, 10 & 11 of the 1996 Act and removed asylum seekers' entitlement to social security support if they claimed asylum after arrival (in-country applicants), rather than on entering the UK (port applicants). This was despite the 1951 Convention specifically stating that

Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who... enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence (UNHCR, 1951, Article 31(1)).

The decision to remove benefits for 'in-country' applicants was based upon the unproven assumption that port applicants were more likely to have a genuine claim for asylum than in-country applicants. This meant that although the restrictions were primarily imposed by restricting entitlement to certain benefits, there was the introduction of discrimination in the provision of support system for asylum seekers: they were either entitled to full social security benefits, or no support at all, depending on when and where they claimed asylum in the UK.

The Asylum and Immigration Act 1996 was intended to effectively remove asylum seekers' access to financial resources and specifically to prevent in-country asylum seekers' access to social security benefits. Unfortunately for the government, the policy did not carry through successfully into implementation, and effectively made a large number of asylum seekers destitute, many with dependent families. As a direct result of the legislation, a legal challenge was mounted against the Conservative government and in October 1996 the High Court ruled that destitute adults who were considered to be at risk should be supported by local authorities under section 21 of the National Assistance Act 1948. Although challenged further, the judgement was later upheld by the Court of Appeal in February 1997. This meant that rather than achieving the stated goal of

simplifying the existing system of asylum support, the law effectively introduced another tier of support to be administered by local authorities.

In terms of whether the policy had the desired effect, it is true that the 1996 Act temporarily reduced the numbers applying for asylum. The number of people that claimed asylum in the UK during the period following the 1996 Act showed that the total number of applications for asylum (excluding dependants) in the UK fell from 43,965 in 1995 to 29,640 in the following year (Home Office, 1998, p8). However, these figures are a measurement of those who applied for asylum and should not be used to infer that the numbers entering the country actually fell. It is impossible to say conclusively whether the Act achieved the aim of stemming the flow of people illegally entering, working or living in the UK, as it is not possible to accurately gauge the numbers of people entering or living in the country illegally (Pinkerton *et al*, 2004).

Whilst there is no way of accurately monitoring or recording the numbers entering or living illegally in the UK, it may be reasonable to assume that the number of entrants remained constant and individuals merely delayed making their claim for asylum, finding alternative means of support in the interim. This means that the government may have succeeded in reducing the numbers claiming asylum, but not necessarily the number entering the country or living in the UK illegally. This is supported by the fact that, following the introduction of responsibility of local authorities to provide assistance to destitute asylum seekers, the number of asylum claims rose again substantially from 29,640 to 32,500 in 1997 (Home Office, 1998, p8).

Labour legislation: 1997 – 2001

Piecemeal and ill-considered changes over the last 20 years have left our immigration control struggling to meet... expectations (Home Office, 1998, preface).

This quote from the then Home Secretary, Jack Straw, indicated a desire to address the problems of the previous legislation and to simplify the process. Following the problems incurred as a result of the 1996 Act and the creation of a two-tier system of support provision, Labour published *Fairer, Faster and Firmer: A Modern Approach to Immigration and Asylum*. This heralded the Immigration and Asylum Act 1999 and supplementary secondary legislation, whilst denouncing the previous arrangements for supporting asylum seekers inherited from the Conservatives as 'a shambles' (Home Office, 1998, preface; Home Office, 2005, p5).

The White Paper dealt with a number of specific issues, but is most notable for its tone, recurring themes and the remaining influences of the 1996 Act. In many cases, this meant developing policies previously used by the Conservatives, using the same language and arguments in justifying further legislation. The new Labour government continued the authoritarian language of their predecessors, despite their denunciation of the previous administration's attempts to control the asylum system through legislative means, and the fact that the Conservative government's attempt to prevent in-country asylum applicants, through restricting their access to social security benefits, failed both in its scope and purpose.

Simplifying the support system?

The 1998 White Paper claimed that 'the key to modernising and streamlining the control [of immigration] is to see the system as a whole... by bringing most funding for support of asylum seekers into a single budget managed by the Home Office' (Home Office, 1998, para. 5, pp.1–2). This is a reasonable assertion, until it is considered that all adult asylum seekers had effectively been supported under a single budget, managed by the then Department for Social Security and it was the 1996 Act that had introduced the first level of complication by trying to remove in-country applicants from the support system.

The White Paper proposed that the co-ordination of support for asylum seekers should be carried out by a new single directorate within the Immigration and Nationality Directorate (IND), called the Asylum Support Directorate (ASD). This later evolved into the National Asylum Support Service (NASS) and took on the responsibility of providing support and accommodation for destitute asylum seekers. This represented a new layer of bureaucracy imposed as a direct result of the 1999 Act.

NASS was set up to deal with applications and the provision of support for asylum seekers, under sections 95 and 98 of the Act. Support under both of these sections was wholly dependent upon a valid and outstanding asylum claim. There are important distinctions between these two sections - section 98 deals with those who have applied for NASS support, but who have not yet received a decision, and section 95 deals with the provision of support by NASS; although the Act was intended to provide a single support mechanism, even that was divided into two different components. The Home Office could provide funding to the voluntary sector (House of Commons, 1999a, section 111) and directly fund section 95 support. The assertion in the White Paper was that new support arrangements would 'remove access to Social Security benefits, minimise cash payments and reduce the burden on local authorities' (Home Office, 1998, para. 7, p3). This was not the result. Whilst the 1999 Act was intended to simplify the asylum support system by clarifying the law and tightening legal loopholes, it had the effect of adding further layers of bureaucracy and confusion over the provision of support for asylum seekers.

The 1996 Act had effectively defined asylum seekers as a specific and distinct social group by removing their entitlement to specific benefits and funding, such as access to public housing and Income Support. As a result of this, the support for asylum seekers had to be further defined in legislation because support would have to be provided to this group through the central and local government departments such as health, education and welfare. The 1999 Act did nothing to improve this situation, in fact the legislation did not simplify the provision of support, as suggested by the White Paper, but instead was introducing a further layer

of bureaucracy, by requiring civil servants in the Home Office to co-ordinate with a wide range of departments to ensure the delivery of these services, in addition to the changes made by the 1996 Act.

The 1999 Act also created a wider range of centralised powers; by encompassing a specific support system for asylum seekers, it included new powers to force local authorities to make accommodation available to asylum seekers (House of Commons, 1999a, section 101), in addition to addressing the issues of detention, appeals and immigration controls. There was also a large amount of duplication within the Act, such as introducing measures to prevent marriage of a foreign national to a British citizen for the purpose of obtaining British citizenship, (House of Commons, 1999a, sections 162 and 163) which had previously dealt with by the 1971 Immigration Act (House of Commons, 1971, section 25(1)). It also determined penalties for those found to be carrying illegal entrants into the country, who would have been dealt with under the 1987 Immigration (Carriers' Liability) Act, and restructured the appeals process from the 1993 Asylum and Immigration Appeals Act.

Local Authority support

The Asylum Support (Interim Provisions) Regulations 1999 came into force on 6th December 1999. These were to allow NASS to gradually take over the provision of support to asylum seekers who appeared to be, or likely to be destitute, but meant that local authorities in England and Wales would continue to provide support to asylum seekers and their dependants. The effect of this was that asylum seekers remained supported by local authorities in the same way as under the provisions of the 1948 Act, but they were transferred to support under Interim Regulations. This is relevant because the Interim Regulations provided basic guidelines for local authority support of asylum seekers, following the judicial decision made in 1997 and just as important, for the first time provisions were made for the Government to reimburse certain costs incurred by the local authorities.

To recap, following the 1999 Act and the 'simplification' of the asylum support system, adult asylum seekers and their dependents could be supported in one of four ways: by their local authority, by the voluntary sector, by NASS, or they could receive social security benefits. The type of support that they could receive was entirely dependent on the date and the area that their asylum application had been made. The White Paper had claimed that the forthcoming legislation would simplify the provision of support for asylum seekers through a single, state-operated support system. The reality was that it introduced and formalised yet more layers of complex bureaucracy for asylum seekers.

As further proof that the asylum support could not easily be simplified, the Asylum Support (Interim Provisions) (Amendment) Regulations 2002 was enacted. This piece of secondary legislation came into force on 1st and 8th April 2002 and was responsible for amending the Asylum Support (Interim Provisions) Regulations 1999. Its purpose was to give NASS an extension from the previous deadline of April 2002 to take on all asylum seekers supported by local authorities and provided the Home Office with a new deadline of April 2004. This was intended to allow NASS time to sort out the discrepancies in the provision of support for asylum seekers and to remove the Home Office-subsidised provision of support by local authorities. This can also be seen as an admission that the imposition of new support structures was not going smoothly and that backlogs were occurring in the same way that backlogs had occurred previously following the imposition of bureaucratic measures to implement new legislation and regulation.

Accommodating asylum seekers

In the late 1990s, there were structural and financial pressures evident upon health, housing, education and social services in London and the South East. These pressures were ostensibly created by large numbers of asylum seekers arriving and settling in those areas. This was due in some part to the fragmented and increasingly complex nature of previous state sector support that had been implemented as a direct result of the 1996

Act. Because the state had denied support to in-country asylum applicants, this meant that a disproportionate number of people (on average the split between port and in-country applicants has been anticipated as 20% and 80% respectively), including those with dependent children, were left with no means of support and equally, were less likely to find work following the introduction of section 8 of the 1996 Act. Also, as a result of the 1996 Act, local authorities in London and the South East regions were experiencing severe financial difficulties and generalised problems in the co-ordination of their service provision. The white paper proposed that these problems could be addressed through a policy of dispersing applicants away from London and the South East to places with more readily available housing, in different cluster areas across the United Kingdom.

The policy of dispersing asylum seekers away from London and the South East was done on a 'no choice' basis. Throughout the passage of the Immigration and Asylum Act 1999, the dispersal system had gained general cross-party support from MPs within Parliament. This was because it was seen as a method of lifting financial pressures from many local authorities in London and the South East were legally required to provide support for asylum seekers in their area under the National Assistance Act as a result of the High Court ruling in October 1996. However, the support soon evaporated as asylum seekers were dispersed to different areas of the UK. MPs who had been unaffected by the fallout from the 1996 Act were soon affected by the 1999 Act.

There was the additional problem that the dispersal of asylum seekers was co-ordinated from Croydon, with a single regional manager available for each of the dispersal areas. Originally, there were nine in total, responsible for large numbers of asylum seekers dispersed to metropolitan areas within the regions of Wales, the South West, the Midlands and Scotland. This meant that when there were problems in these regions, the response could be rather limited.

Accommodation Centres

Accommodation for asylum seekers has been dealt with under the provisions of all the immigration and asylum legislation, from access to housing benefit, to the specific provision of local authority housing under the Interim Regulations in 1999 and 2002. The 1999 Act introduced provisions that would enable the government to demand access to any surplus housing stocks for the purpose of dispersing asylum seekers. However, the 2002 Act marked a significant move away from these policies by introducing section 22, which allowed the provision of accommodation for asylum seekers in purpose built 'accommodation centres'. These were intended to provide the bulk of housing requirements, with the added provisions of health and education facilities for the residents.

The reality was that after more than three years and £18 million of development and investment by the Home Office, the plans for a centre in Bicester, Oxfordshire, were finally laid to rest on 21st June 2005 along with any other proposed sites for accommodation centres (McNulty, Hansard, 2005a, column 10WS). This was due in part, to public opinion and local hostility to the proposed sites. There has been public hostility evident throughout the dispersal process, as it was argued that asylum seekers were draining local health, education and housing reserves. The proposed accommodation centres would tackle these problems, but provided a very visual, centralised focus for opposition, despite the fact that it would have provided specialised support co-ordinated and paid for by the Home Office.

Removal of support to in-country applicants

The Nationality and Immigration Act 2002 was heralded by the White Paper, *Secure Borders, Safe Havens* and came into force on 7th November 2002. The most notable introduction of this Act was section 55, which removed asylum seekers' entitlement to financial support if they claimed asylum in-country, rather than on arrival at a UK port. This was an almost

direct resurrection of the Conservative legislation, namely sections 9, 10 and 11 of the Asylum and Immigration Act 1996. Once again, the intention was to prevent in-country asylum applicants from accessing benefits on the (still unproven) grounds that those who claimed asylum in-country were more likely to have existing support.

However, the government had learned from lessons of the 1996 Act; this time the law specifically prevented other support being made available for such asylum seekers, such as support or housing under the National Assistance Act 1948. The result was that the policy was subsequently reviewed five times following a Court of Appeal judgement on 21st May 2004, and ultimately upheld, although with the result that each case had to be decided on an individual basis (NASS, 2002), resulting in more regulations for caseworkers to deal with in determining the provision of support.

Supporting failed asylum seekers

At the other end of the process, section 4 of the 1999 Act made provision for support to be allocated to single failed asylum seekers who could not be returned to their country of origin due to 'exceptional circumstances'. Each application for support under section 4 had to be determined by NASS caseworkers on an individual basis (NASS 2004a); this could include debilitating personal circumstances, such as chronic illness, or the inability for the Home Office to return them to an area of conflict (UNCHR, 1951, Article 33(1); UNHCR, 1967, Article I(1)). Section 2 of the 1996 Act did allow for removal to third countries that were designated as 'safe,' but this was subsequently amended by section 71 of the 1999 Act.

In contrast, section 94 of the 1999 Act allowed NASS supported asylum seekers with dependants to automatically retain access to NASS support after a final negative decision on their asylum claim and until they finally left (or were removed from) the UK. This was a significant financial undertaking by the Home Office and was completely separate from section 4, as it applied to any failed asylum seeker who had a dependent child, or

children. This was a notable discrimination within the application of policy in favour of those asylum seekers with children; however, this was to change with the introduction of the 2004 Asylum and Immigration (Treatment of Claimants, etc.) Act. The 2004 Act was the third major piece of primary legislation introduced by the Labour government since 1997 and focussed mainly on the amendment of previous pieces of Immigration and Asylum legislation. Two particular sections revised the provision of support to failed asylum seekers; sections 9 and 10 respectively, which removed the automatic entitlement of failed asylum seekers with dependants to NASS support under section 94(5) of the 1999 Act and the provision of section 4 support for single asylum seekers unable to return to their home country.

However, section 9 was not a blanket removal of support to those with dependent children. Instead it introduced a further level of discrimination, dealing with cases where the failed asylum seeker had been judged by the Immigration Officer to have failed to comply with a removal direction without reasonable cause (NASS 2004b). This means that failed asylum seekers with dependents would still retain entitlement to support and / or accommodation until their removal, but would stop support to those who refused to leave the UK. In addition to this, section 10 was the second amendment to section 4 of the Immigration and Asylum Act 1999 (section 4 had been previously amended by section 49 of the Nationality, Immigration and Asylum Act 2002). Under the amendments of the 2004 Act, those supported under section 4 would be required to participate in community activities to maintain the provisions of their NASS support. This proved to be particularly controversial, because to gain access to support under section 4, failed destitute asylum seekers had to demonstrate to the Home Office that they were unable to leave. Support could only be provided to those who were unable to leave the country through no discernable fault of their own, yet this amendment meant that they would have to work for the benefit that they had already qualified for.

These policies were all developed in tandem with an increase in the number of removal centres where failed asylum seekers are accommodated until removal. There are still not enough centres in operation to accommodate all failed asylum seekers, and NASS still has responsibility for dispersing and accommodating asylum seekers across the UK.

'No cash' payments

Not only did the 1999 Act perpetuate the provision of support for asylum seekers by local authorities, it also introduced added another complication (and expense) of non-cash vouchers. In terms of minimising cash payments, the aim had been to introduce a voucher system that was designed to provide 'support in kind,' rather than any form of cash benefit for asylum seekers, thus removing the assumed incentive for potential economic migrants. Despite the admission that a cash-based support system would be administratively easier to deliver and usually cheaper in terms of unit cost, the White Paper had gone on to argue that the extra cost was justified by the deterrent effect to potential claimants; *'provision in kind is more cumbersome to administer, [but] experience has shown that this is less attractive and provides less of a financial inducement for those who would be drawn by a cash scheme'* (Home Office, 1998, para. 8.20).

Unfortunately, the government did not provide any discernable evidence to support this bold statement, and it is unclear which precise experience is being referred to. Furthermore, the 'experience' was not borne out in practice or revealed subsequently; not even to justify the policy when it came under attack from public sector organisations.

Regardless of objections from a variety of interest groups, including Oxfam and the Refugee Council, the 1999 Act introduced a 'no cash' scheme for asylum seekers. The no cash element was further reinforced by the 1999 Interim Regulations, which designated that local authorities were to continue with the no-cash policy by only providing 'essential living

needs' (House of Commons, 1999b, section 5(1)(b)) to eligible asylum seekers. Although there were similarities between the NASS support of a single cash voucher providing £10 per person per week, local authorities were allowed to give a cash payment exceeding £10 if there was a dependent/s, or if it was considered to be an exceptional case (House of Commons, 1999b, section 5(5)(a) and (b) respectively). These inconsistencies were later acknowledged by the 2002 White Paper *Secure Borders, Safe Haven*, which announced the abolition of the 'no cash' voucher support scheme for asylum seekers. NASS vouchers were replaced with cash support in April 2002.

Unfortunately, in April 2005 the Labour Government began using vouchers to support 'failed' asylum seekers before they returned home and have now tried to reintroduce the voucher system to include those on section 4 support. This will be done through an amendment to the Immigration, Asylum and Nationality Bill 2005 (House of Commons, 2005b). These asylum seekers will only receive assistance in the form of vouchers and not cash. Furthermore, it is only available to people who have signed a declaration that they will return voluntarily and co-operate with removal.

Employing Asylum Seekers

Methods of support for asylum seekers introduced on and after 1996 were intended for the provision of those who were designated as destitute, but it should be remembered that not all asylum seekers are without sources of financial support. An added complication was the existence of the employment concession; a policy introduced under the Conservative government that allowed those who had not received a first decision on their claim for asylum within six months to apply for permission to work. This was a public acknowledgement that there had been real problems with the ability of the Home Office to process asylum claims in the past and this had resulted in the granting legal entitlement of asylum seekers to work. This was intended to assist the asylum seekers to gain useful vocational experience, but also to enable them to earn money, thus removing a burden from the beleaguered support system.

The employment concession ended abruptly on 23rd July 2002, when Beverley Hughes (the then Home Office minister for immigration) announced its abolition, with only those previously granted permission under the concession allowed to work legally. Formal restrictions were introduced for those who wished to apply after this date, with any considerations for permission to work after that date to be considered by IND on an individual basis, but it was only to be granted to asylum seekers in 'exceptional circumstances.' This led to questions in Parliament about what constitutes 'exceptional circumstances'. This was partially answered by the adoption of Article 11 of the Asylum Reception Conditions Directive in January 2003, which was introduced in a piece of secondary legislation (House of Commons, January 2005) and came into force in the UK on 6th February 2005.

The Asylum Reception Conditions Directive was part of a package of EU measures, which was set out at the 1999 Tampere European Council, to create common minimum standards in the field of asylum and to help promote efforts between Member States on the provisions available for asylum seekers. The UK Government signed up to the Reception Conditions Directive on the basis that it would be consistent with existing key elements of domestic policy and practice. Article 11 allowed the UK to limit asylum seekers' access to the labour market by allowing the UK to determine a period of time during which applicants do not have access. Within this definition, if an asylum seeker has been waiting for a year or more for a first decision to be made on their application, it may be considered to be an exceptional case, although each case still has to be considered individually.

Section 8 of the 1996 Act introduced new powers to prosecute employers found to be employing illegal migrant workers in the UK. If convicted under section 8, employers faced up to a £5,000 fine for each illegal worker found. Although there were existing restrictions upon asylum seekers' entitlement to work under the employment concession, now asylum seekers who were legally able to work also had to prove their eligibility under section 8.

Following claims that there had been direct and indirect racial discrimination of potential employees, using section 8 as an excuse, the Immigration and Asylum 1999 Act introduced section 22. Section 22 could be seen as a form of protection for asylum seekers, amongst others, as it provided a code of practice for employers when applying section 8. While it did not introduce a penalty in itself, it was designed to be used in conjunction with the Race Relations Act 1976 and meant that employers could face an unlimited fine if convicted. However, section 8 checks are not compulsory, so employers could continue to discriminate without the fear of being prosecuted.

The Future of asylum support in the UK?

The Home Office five-year strategy for asylum and immigration, *Controlling our borders: making migration work for Britain*, was announced on 7th February 2005 with the proposed introduction of the following key measures on migration and asylum:

Migration

'A transparent points system for those coming in to work or study.'

This can be seen as an extension of the Highly Skilled Migrant Programme, or even a revival of the special skills category of the Commonwealth Immigrants Act 1962.

'Financial bonds for specific categories where there has been evidence of abuse, to guarantee that migrants return home.'

This proposal is a direct extension of measures previously introduced in primary legislation under sections 16 and 17 of the Immigration and Asylum Act 1999, but these were never enacted by secondary legislation. This was originally intended to be combined with further regulations, such as visas controls and the expanding list of 'visa national' countries, which have already made it more difficult for specific nationalities to visit and

work in Britain. For example, there are currently more than 100 nationalities requiring a visa to enter the UK – this includes all Sub-Saharan African nations, and many countries from the Asian sub-continent (www.ukvisas.gov.uk).

'An end to chain migration - no immediate or automatic right for relatives to bring in more relatives'.

The 1962 Act marked the end of primary migration to the UK, but did not end secondary migration. It guaranteed the right of immediate family members to migrate to the UK, although this was technically removed by the 1969 Immigration Appeals Act, which required spouses and children under 16 to obtain a certificate of entry before travelling to the UK (Juss, 1997), although this was lifted in 1974. Additionally, section 1(5) of the 1971 Immigration Act allowed male spouses who had entered prior to 1973 the right to bring their spouses and was later amended by the 1988 Immigration Act.

This means that the only consistent and automatic right of entitlement for family reunification in the UK has been for those granted refugee status under the 1951 Convention. Those who are given temporary status, for example, ELR /E (as granted before 3rd April 2003), Humanitarian Protection or Discretionary Leave are not entitled to bring their relatives in to the UK. There is provision for some individuals to bring in their spouse or dependents, but if they are 'visa nationals', it would be through the existing immigration channels and often on the condition that they would have no recourse to public funds.

'An end to appeals when applying from abroad to work or study.'

Appeals on refusal of entry to the UK have been legislated upon variously under section 59 of the 1999 Act, section 82 of the 2002 Act and sections 26 – 32 of the 2004 Act. The impetus and stated aim of the legislation has always been to reduce and simplify the appeals process, yet the result has been predominantly complication of the existing regulations and procedures.

'Only skilled workers allowed to settle long-term in the UK and English language tests for everyone who wants to stay permanently.'

This reflects tests of suitability, such as the 1708 Act for Naturalisation of Foreign Protestants and more recently, in section 3 of the 2002 Act, which were introduced to judge suitability of those who wish to become naturalised British citizens.

'Fixed penalty fines for employers for each illegal worker they employ as part of the drive against illegal working.'

This was originally dealt with by section 24 of the 1971 Immigration Act and introduced as an offence under section 8 of the Asylum and Immigration Act 1996. This was followed by provisions under section 147 of the 2002 Act and section 6 of the 2004 Act.

On asylum

'Granting refugees temporary leave rather than permanent status to begin with, and keep the situation in their country under review.'

Temporary status, rather than 'indefinite leave to enter/remain, was originally granted to refugees and their status was reviewed after three years. This policy was discontinued in the early 1990s because it created too much bureaucracy and a backlog that could not easily be dealt with by caseworkers.

'More detention of failed asylum seekers.'

The Home Office currently have a number of operational Immigration Removal Centres for housing failed asylum seekers, including Yarlswood, Tinsley House, Harmondsworth and Dungavel House, with two more (Haslar and Dover) to transfer over to the control and management of the IND from the Prison Service by 2005 (Home Office, 2004d).

'Fast-track processing of all unfounded asylum seekers, with electronic tagging where necessary.'

Fast-track arrangements were introduced in 2000 for those who were deemed to have manifestly unfounded claims and dealt with through the Oakington Centre in Cambridge.

'Strong border controls with fingerprinting of all visa applicants and electronic checks on all those entering and leaving the country.' Embarkation controls were abolished in 1992 because they were deemed to be too draining on administrative resources, given the mass flows in and out of London ports.

'Removals of failed asylum seekers to exceed failed claims.'

Targets for the removal of failed asylum seekers were set by the then Deputy Director-General (Projects), Dr Chris Mace in 1999, but these were subsequently abandoned because they were acknowledged to be unobtainable (Home Office, 2004d, pp. 131 – 134).

Conclusion

In summary, increasing levels of immigration and asylum legislation have been introduced and replicated over the past 10 years, despite successive governments claiming that their new measures would simplify the asylum process. The state's attempt to control migration, which in recent years has led to an inverse lack of control, perceived or otherwise, has further fuelled growth in the amount of legislation introduced and undermining existing controls. This raises the wider question about the current government's obsession with introducing further legislation, when a possible solution would be to utilise the existing legislation, repeal unused laws and allow for a level of ambiguity in interpretation, then perhaps policies could be adapted more quickly and flexibly.

It seems perverse that many hours of Parliamentary time are used up with the introduction of legislation when there are existing measures in statute. This has been illustrated by repeated attempts to introduce

similar pieces of legislation, such as the removal of in-country asylum seekers' access to support, or illegal working, but is most apparent in the current legislation as outlined in section four. The repeated attempts to control asylum seekers' access to state benefits and to restrict their ability to work legally has also complicated the decision-making process for implementers. Caseworkers, in turn then have had to rely heavily upon policy guidance to explain the myriad of regulations surrounding asylum support. This has increased the pressure on caseworkers, who are not only required to understand and apply these complex policies, but also have to deal with large backlogs of individual cases.

In conclusion, the increased levels of legislation that were intended to clarify the legal position of migrants have actually increased the amount of information required for decision-making. This in turn has made it more difficult to communicate government policies both internal and externally. With the growing amount of legislation confusing caseworkers responsible for implementing these policies, this increases the likelihood that mistakes will be made and the call for further legislation, thus perpetuating the problem.

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