

## **Draft (partial) Immigration and Citizenship Bill**

### A Brief Guide to Key Issues

#### **Background**

In July 2008 the UK Government published the Draft (partial) Immigration and Citizenship Bill, which is the next step in their ambitious project to 'Simplify' UK Immigration Law. A consultation has been issued on the Bill, although this is at ministerial discretion and there have been indications that UK Border Agency does not intend to consider any information received in response to this consultation separately from material already gathered as part of the Simplification Process. **The Home Affairs Select Committee and the Justice Committee will be scrutinising the Bill in the autumn and submitting evidence represents the best opportunity for stakeholders to feed into the development of the Bill.**

The Bill is not complete and additional sections are currently being prepared. UK Border Agency is undertaking consultation on a number of the additional elements of the Bill, including reform of the support system and the appeals system. It is expected that the complete Bill will be presented to Parliament at the start of 2009.

The scope of the Bill is significant, and this paper focuses on key areas of concern for COSLA Strategic Migration Partnership.

#### **Part 1: Regulation of entry into and stay in the UK**

This part of the bill simplifies the various categories of leave to enter or remain in the UK (entry clearance, leave to enter and leave to remain). The various concepts will be replaced by a single concept of permission which UK Border Agency hope is simpler and easier to understand. Overall, we welcome the creation of a simpler immigration system and the system is clearly set out in terms of those with permission to stay in the UK and those who do not have permission.

#### **Part 2: Powers to examine etc**

The second part of the Bill outlines and extends the powers of the UK Border Agency to examine people coming to or leaving the UK. The Bill extends the agencies' powers in-country and overseas.

#### **Part 3: Citizenship**

The Bill sets out the eligibility for citizenship and the time taken to obtain it is determined by the shared values of speaking English, making an economic contribution, obeying the law and being involved in the community. **CSMP will provide a more in-depth examination of citizenship as an additional paper on the agenda and will develop work in this area to ensure that the UK-wide initiative complements already successful work on integration and community cohesion in Scotland.**

## **Part 4: Expulsion Orders & Removal, etc. from the UK**

Part 4 outline's UK Border Agency's strategy to tackle the issue of those without permission to stay. Local Government has consistently voiced grave concerns around the number of people who have no recourse to public funds (NRPF) and the implications this has on community cohesion and the potential burden on local authorities. **Lengthy periods between withdrawal of permission to stay in the UK and removal clearly exacerbates the NRPF issue, and CSMP welcome targets that will move towards resolving cases quickly counteracting this growing issue.**

## **Part 5 & 6: Powers to detain & Immigration Bail; detained persons and removal centres**

These parts of the Bill relate to the UK Border Agency's powers to detain those without permission and to consolidate existing provisions for removal centres in which immigration detainees may be held and for escort arrangements for when detainees are moved. While **CSMP recognise the role of detention within the immigration system, we would stress the need to use detention as a last resort only within the asylum system.** We emphasise the importance of developing alternatives to detention for those who have not committed immigration offences. We are **cautious about the new concept of 'immigration bail' and will seek assurance from UK Border Agency that it will not introduce the assumption that detention is the norm for asylum seekers awaiting a decision.**

## **Part 7: Offences**

Part 7 of the Bill consolidates provisions for criminal offences relating to immigration control and the penalties they carry.

## **Part 9: Illegal Workers**

This part of the Bill relates to how UK Border Agency will target employers regarding illegal workers. This retains the powers introduced during 2008 and continues the policy of targeting employers rather than employees. COSLA is working with UK Border Agency Scotland to ensure that Scottish Local Authorities as employers are fully informed of the procedures regarding preventing illegal workers. CSMP is highly aware of the impact of rogue employers, as well as organised facilitators and rogue landlords, on communities particularly the vulnerable (including migrant workers). **CSMP will continue to facilitate the efficient exchange of information and intelligence between Scottish Local Authorities and UKBA regarding illegal immigration and immigration crime.** We also emphasise the importance within this context of educating employers about how to determine if a person has the right to work in the UK in order to minimise the possibility of migrants being discriminated against because potential employers are unaware of their rights.

## **Part 10: Appeals**

The system of appeals to the Asylum and Immigration against initial decisions is dealt with in this section of the Bill. UK Border Agency aim to simplify and clarify the provisions for appeals against immigration decisions. UK Border Agency is also currently consulting about reforms to the onward rights of appeal, but there is no detail on this in the Bill.

## **Part 11-13: General supplementary provisions, definitions and final provisions**

The concluding parts of the Bill are largely technical and follow the existing provisions according to UK Border Agency. The duty regarding the welfare of children that UK Border Agency has

consulted on recently is also included in this part of the Bill. **UK Border Agency's commitment to safeguarding and promoting the welfare of all children in the United Kingdom, regardless of their immigration status is welcome. It is worth noting that the Bill defines 'children' as any person under the age of 18, whereas in Scotland it is generally accepted that children are any person under the age of 16. All partners should consider the implications of this.**

## **What is not in the Bill**

There are a range of other provisions that are expected in the full Bill, which will be presented to Parliament in 2009. Two of the main areas of concern to CSMP are outlined below:

### **1. Reform of the asylum support system**

The current support system will be reviewed and reformed as part of the simplification process. UK Border Agency have indicated that this will lead to one form of support from start to end, and CSMP hope this will minimise administrative destitution within the asylum system. UK Border Agency have begun consulting on the reforms to the system and a regional consultation event will be facilitated by CSMP in September.

The team responsible have indicated that they are looking at ways to structure the support system that will encourage return when people are refused asylum. **CSMP has informed UK Border Agency about work in Scotland to promote voluntary return based on the 'informed returns' principle, and suggested this may be more successful than using destitution as a means to encourage return.**

### **2. Reform of the appeals system**

UK Border Agency recently issued a consultation on Immigration Appeals (*Fair Decisions, Faster Justice, August 2008*). The consultation suggests bringing the Immigration Tribunal in line with the common framework introduced for tribunals in England and Wales and tribunals with cross-UK jurisdiction, which was introduced in 2007. **This effectively restores a two-tier appeals system, which was abolished by the 2005 Immigration and Asylum Act.** However, it appears the second tier of the appeal will sit under the High Court in England. CSMP and UK Border Agency Scotland and Northern Ireland will explore the implications of this restructure for Scotland, and encourage partner organisations to do the same.

## **Conclusion**

CSMP will continue to monitor the progression of the Bill and to address the issues raised within this paper. We will keep members of the SSCG up-to-date on the progression on the Bill and our work in this area. We will make members aware of opportunities to contribute to UK Border Agency's consultations on the published Bill and the sections still under development as they emerge.