



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

The Path to Citizenship: Next Steps in Reforming the Immigration System

Response of the Northern Ireland Human Rights Commission

1. The Northern Ireland Human Rights Commission (the Commission) is a statutory body created by the Northern Ireland Act 1998. It has a range of functions including reviewing the adequacy and effectiveness of Northern Ireland law and practice relating to the protection of human rights,¹ advising on legislative and other measures which ought to be taken to protect human rights,² advising on whether a Bill is compatible with human rights³ and promoting understanding and awareness of the importance of human rights in Northern Ireland.⁴ In all of that work the Commission bases its positions on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), other treaty obligations in the Council of Europe and United Nations systems, and the non-binding 'soft law' standards developed by the human rights bodies.
2. The Commission welcomes this opportunity to respond to the consultation on 'The Path to Citizenship'. In particular, it welcomes the statement that Government will honour the principles of the Belfast (Good Friday) Agreement 1998. We would be grateful for written feedback on how our comments have been considered. Before discussing the detail of the proposals the Commission would like to make a few general points.

¹ Northern Ireland Act 1998, s.69(1).

² *Ibid.*, s.69(3).

³ *Ibid.*, s.69(4).

⁴ *Ibid.*, s.69(6).

Tone of Proposals

3. First, the Commission finds itself once again in the position of not only commenting on the detail of Government proposals in the immigration field but also on the tone of the proposals. To begin with, the Foreword from the Rt Hon Jacqui Smith MP celebrates the reduction in the numbers of asylum applications. The Commission finds it disturbing that despite no corresponding reduction in the scale of global problems that lead people to seek asylum in the first place, Government views positively the fact that less people are seeking refuge in the UK.
4. The document then makes repeated references to 'British values' and 'our values': a concept that is the subject of much debate with, in fact, no agreed notion of what exactly a distinctly 'British' set of values might be. The formula Government has chosen for the purposes of this consultation is to ask people what they would most miss if they emigrated. The conclusion, as listed on page 14 of the document, contends that 'British values' are: 'the NHS, tolerance, fairness and freedom of speech, a healthy disrespect for authority and yet a keen sense of order'. Other 'values' then implied in the document are 'paying your way' and 'obeying the law'. From this listing, it is apparent that there is little distinctively British about any of these values. The values just listed are in fact largely universal. Government claims that the proposals are aimed at aiding integration of migrants. In our view, this aim could be better achieved by taking the opportunity to show how similar human beings are in their needs and aspirations across the globe rather than trying to discern what makes British citizens so different from everyone else.
5. The Government is in danger of leaving itself open to accusations of colonial discourse through the tone of the proposals. As indicated in the document, the reforms proposed to the immigration system do not affect the rights of EEA nationals. The tone of the proposals could be interpreted as British citizens holding a particular set of values that are not shared by non-Europeans and need to be nurtured or taught. Colonial discourse is incompatible with international commitments to which the UK has entered into.

Reference to Universality of Human Rights

6. There is scant reference to the universality of human rights in this document, which is in fact the fundamental concept that binds all human beings together and should be the foundation principle for all Government policy. Where rights are mentioned, it is under the

deeply flawed notion that migrants must earn them. For example, Government is suggesting that we need a journey to citizenship that “matches migrants’ rights more clearly with responsibilities”. There is reference to the UK’s obligations under the UN Convention relating to the status of Refugees and an implied reference to Article 8, European Convention of Human Rights (ECHR) under the discussion of whether it would be too harsh not to allow migrants to allow their immediate family to join them in the UK.

7. Under the ECHR and a range of international human rights treaties to which the UK is a party, migrants in fact have the same rights as UK citizens. While there is no human right to citizenship in the country one migrates to, rights are not conditional on citizenship. The International Covenant on Economic, Social and Cultural Rights (ICESCR), for example, applies to everyone in the state. Article 2 (3) ICESCR contains a concession to developing nations only, and requires developing nations to give due regard to human rights and their national economy to determine the extent to which they can guarantee the economic rights in the Covenant to non-nationals. The UK obviously does not fall with the remit of Article 2 (3). In addition, the Concluding Observations of a number of treaty monitoring bodies have expressed particular concern at the situation of non-nationals in the UK. For example, the Committee on the Elimination of Racial Discrimination (CERD) expressed concern in 2003 about the increasing racial prejudice against ethnic minorities, asylum seekers and immigrants.⁵

Core Premise of Proposals

8. The Commission believes that the core premise of the proposal is in fact flawed because the net result is that a range of rights are dependent on citizenship, and even then tiered in accordance with the stages an individual is at on the path to citizenship. If, in fact, rights were guaranteed to all in the state, Government would first, and most importantly, be honouring the full range of its human rights commitments in letter and spirit and, secondly, would not have to manufacture the detail of the proposals in this document.
9. The central claim from Government is that citizenship aids integration, yet this is not evidenced or substantiated anywhere in this document. The Commission suggests that what aids integration are precisely those values that Government claims to be uniquely ‘British’, i.e. tolerance and fairness. It is also the responsibility of Government to educate people about the

⁵ <http://www.unhchr.ch/tbs/doc.nsf>.

universality of human rights and why it is important that they are accorded to all.

10. The underlying tone of the proposals is that those seeking to reside long-term in the UK should seek to become British by availing of citizenship and assuming British values. Whilst there will be persons who wish to do this, it is important to recognise there will be also other long term residents who do not. One measure of this could be for Government to ascertain the proportion of EEA long-term residents in the UK who wish to accede to British citizenship. Government should recognise that it is a human right to hold an identity and a principle of human rights that no detriment should incur through holding that identity. The current ethos and letter of the proposals are not compliant in this regard. We note that there are estimates of over five million British citizens who live permanently abroad – the Commission would ask: does Government believe that such persons should be required to acquire the citizenship of the countries to which they have migrated for the purposes of aiding their integration?
11. As referenced above, the Commission welcomes the commitment that in developing its proposals Government will ensure they are consistent with the principles of the Belfast (Good Friday) Agreement as outlined in paragraph 12 of the document. However, we would be grateful if the Home Office could outline the detail of the same in reference to the proposals.
12. In addition to our grave concerns regarding the overall thrust of the proposals and accompanying discourse, the Commission has a range of concerns regarding specific proposals in the document. The following examines only two of these and the Commission may wish to comment further once it has sight of further details.

The Right to Health

13. There is reference to the Department of Health and the Home Office undertaking a joint review of the rules governing access to healthcare. Under Article 12 of the ICESCR everyone has the right to the highest attainable standard of physical and mental health. Case law in the UK's domestic courts and the European Court of Human Rights also shows that access to health care has implications for the state's duties under Article 8 ECHR and ultimately Article 2 (the right to life) and Article 3 (the right to be free from inhuman or degrading treatment or punishment). Where migrants might be singled out for having certain forms of health care refused, Article 14 (the non-discrimination clause) is also

engaged. Without having access to the detail of the joint review at this stage, the Commission can only remind Government of its obligations under international law and trust that Government will also consult on the implementation of the review in due course. It, of course, would not be acceptable for migrants and members of their families to be expected to pay for certain types of health care that could be life saving, that might be a danger to the public if not treated (e.g. certain vaccinations), or that would lead to treatment by health professionals or immigration officials, crossing the threshold of Article 3 ECHR.

Migrants and Double Taxation

14. Another proposal in the consultation document is the notion of an additional tax or fee for migrants to 'help alleviate the transitional pressures that migration can bring'. Research by the Institute for Public Policy Research (IPPR) is quoted in the document showing clearly that migrants have a positive influence on public finances. The inclusion of this research conducted in 2005 is to be welcomed. However, the proposal by Government in fact indicates that it is being discounted in favour of the unsubstantiated claim, in our view, that migrants bring with them a transitional pressure on public services. Should there be evidence of 'transitional pressure', it is difficult to see how this can be blamed on migrants accessing services they are entitled to and paying taxes for. There is a danger, in this regard, that Government is leaving itself open to accusations of scapegoating (non-EEA) migrants for problems that are in fact a product of inadequate and flexible planning by the state.
15. The proposals appear to overlook the fact that migrants, through payment of exactly the same taxes as citizens, are already paying for public services and social protection. An approach expecting (non-EEA) migrants should pay twice for services they are receiving is out of line with international standards. A key relevant core instrument is the UN migrant worker convention;⁶ whilst the UK is yet to accede to this instrument (despite this Commission urging it to do so); it nevertheless provides authoritative guidance as to international standards. Article 27(2) indicates that where legislation does not allow migrants a benefit (such as under no recourse to public funds) states should examine possibilities of reimbursing the amount of contributions made with respect to that

⁶ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families adopted by General Assembly resolution 45/158 of 18 December 1990.

benefit. Contrary to this position, the proposals entail dual taxation of migrants for services they may or may not be entitled to.

16. Government claims that whilst the IPPR research reflects the overall position, "the contribution of an individual migrant will be affected by factors which include the number of his or her dependants, and household salary level". The detail is missing in the document and therefore the Commission would ask: is Government proposing that, despite the net contribution of migrants to the UK economy that all (non-EEA) migrants will be essentially 'charged' for a transitional pressure that some might bring, or is it the intention that only some will be charged?
17. The implication from the document is that it is those with the highest number of dependants and lowest incomes bringing the greatest pressure. Therefore, if it is only some that are going to be charged, will it be this latter group? None of these options would be acceptable from a human rights perspective. Under the first suggestion, if indeed it is the case that only some migrants bring transitional pressures, it would be unacceptable for all migrants to be expected to pay for this. Indeed, how could it be justifiable to single out an already vulnerable section of society to fund what brings a net contribution to the whole of society? The latter suggestion can easily be compared to the 'poll tax' proposals, whereby families are charged 'per head' for the consumption of public services and where it is the already seriously disadvantaged that are most adversely affected.
18. The simple fact is that working migrants already pay taxes that are intended to fund public services. Where any transitional pressures are identified, these ought to be funded in exactly the same way that additional pressures emerging from any other large family or vulnerable group of individuals are. The Commission is particularly alarmed at the suggestion that dependents of working migrants are a burden on the state. Dependents, and in particular children of migrants, have their own inalienable rights under the UN Convention on the Rights of the Child: rights that are not dependent on their immigration status or that of their parents or indeed on the economic contribution of their parents.

Conclusion

19. The current reality, given the stark global inequalities in wealth, is that the UK is an attractive place for people to seek work. The motivation for this is not to take advantage of the generosity of the UK state but rather to secure a better life for oneself, one's family

and those held dear. The Commission suggests to Government that this is in fact a universal goal and that human rights are the very basic requirement of every individual wishing to achieve that goal.

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