

Compassionate but Controlled



Reframing Britain's Post-Brexit Immigration
Debate

David Goodhart



Compassionate but Controlled

Reframing Britain's Post-Brexit Immigration Debate

David Goodhart



Policy Exchange is the UK's leading think tank. We are an independent, non-partisan educational charity whose mission is to develop and promote new policy ideas that will deliver better public services, a stronger society and a more dynamic economy.

Policy Exchange is committed to an evidence-based approach to policy development and retains copyright and full editorial control over all its written research. We work in partnership with academics and other experts and commission major studies involving thorough empirical research of alternative policy outcomes. We believe that the policy experience of other countries offers important lessons for government in the UK. We also believe that government has much to learn from business and the voluntary sector.

Registered charity no: 1096300.

Trustees

Alexander Downer, Pamela Dow, Andrew Feldman, David Harding, Patricia Hodgson, Greta Jones, Andrew Law, Charlotte Metcalf, David Ord, Roger Orf, Andrew Roberts, Robert Rosenkranz, William Salomon, Peter Wall, Simon Wolfson, Nigel Wright.

About the Author

David Goodhart is Head of Policy Exchange's Demography, Immigration, and Integration Unit, and Director of the Integration Hub website. He is a former Director of Demos, and former Editor of Prospect magazine, which he founded in 1995. David is a prominent figure in public debate in the UK, as a well-known broadcaster, author, commentator, and journalist. He has presented several BBC Radio 4 Analysis programmes. Before Prospect, he was a correspondent for the Financial Times, including a stint in Germany during the unification period. In 2013, he published *The British Dream*, a book about post-war multiculturalism, national identity, and immigration. It was runner up for the Orwell Book Prize in 2014. In 2017 he published *The Road to Somewhere: The new tribes shaping British politics*, about the value divides in western societies, which was a Sunday Times best-seller. His latest book *Head, Hand, Heart: The Struggle for Dignity and Status in the 21st Century* argues that many of the modern world's troubles arise from allocating too much reward and status to just one form of human aptitude: cognitive ability. He is currently working on a book about why rich countries undervalue care work both in the public economy and the private realm.

© Policy Exchange 2022

Published by
Policy Exchange, 1 Old Queen Street, Westminster, London SW1H 9JA

www.policyexchange.org.uk

ISBN: 978-1-910812-XX-X

Contents

About the Author	2
Summary	5
Introduction	11
First, popular benefit	12
Second, mainly short-term	13
Third, real control	15
Refugee and asylum policy	17
Conclusion and Communication	23

Summary

Legal Migration

The Government has steadied the ship in recent weeks after the Liz Truss misadventure. But if there is any chance of winning back some of the 2019 coalition, one condition of being competitive at the next election, the Government will need some visible policy progress in three big areas: NHS performance, levelling up and immigration (including stopping the Channel boats). This paper focuses on that third policy field.

Attitudes to immigration have liberalised somewhat since Brexit ended free movement reinforced by the persistent publicity about labour shortages. But anxiety about immigration is likely to rise again sharply following the unprecedented post-Covid surge in legal net migration, with the illegal Channel boats as a backdrop, and the probable revival of the Reform party to highlight Conservative failed pledges on immigration.

The net immigration figure of 504,000 in the year to June, easily the largest ever annual increase, creates another headache for the Government but is mainly due to one-off factors—a post-Covid catch up on student migration (277,000) and a surge in mainly legal refugee inflows (276,000) which are unlikely to be repeated, including the large numbers from Ukraine, Hong Kong and Afghanistan. Only about 150,000 of the net migration figure is people coming on work visas (around 20%) but most of them and almost all the students will only be here temporarily.

Notwithstanding this unsustainable surge, Britain's post-Brexit immigration system is broadly striking the right balance. It is already more open than many comparable countries, with greater restrictions on most low paying jobs than in the EU era but with almost two-thirds of jobs subject to a potential work visa. Outside of some very specific areas, such as seasonal agricultural work, there is no case for more liberalisation, especially in the light of the unprecedented half a million number, but this paper makes some suggestions for further reform under three main headings, and concludes with an analysis of the Channel boats problem.

1. Popular Benefit

The test for immigration is that it must benefit the average British person not just employers and the affluent. In other words, it should not suppress wages and should not be used as an alternative to investing in British peoples' skills. This is both obvious and difficult to determine. It was one of the principles behind the post-Brexit Points Based System now in operation. It means that immigration should now be restricted to high skilled incomers; people working in those few sectors, such as agriculture, where British people will not work in sufficient numbers more or less regardless of pay levels; and those we feel a special responsibility towards: Hong Kong citizens with British passports, Afghan interpreters, Ukrainians in the Russian line of fire etc

Employers rather than complaining about labour shortages

should plan their future employment needs, use the work visa system more efficiently and, better still, raise their investment in training, currently the lowest in Europe for comparable countries. Over time we should in fact raise the skill/pay threshold for work visas.

One opportunity for a joined-up approach that is long overdue is linking jobs on the Shortage Occupation List to the training system. We have largely abandoned manpower planning in the UK and have a fragmented and partly consumer-led training system but government and employers can still prioritise vital skills through boot camps, the lifetime skills guarantee, incentivising FE courses etc. Why has this not been happening?

2. Mainly Short-Term

Immigration should be overwhelmingly short-term in nature with a view to satisfying some of the legitimate economic demand for it while also having regard to the anxiety felt by British people of all backgrounds that the country is changing too fast. Currently most people can apply for permanent residence when they have been in the country just five years, this should be extended to seven years (it is 10 years in Switzerland).

If the Government had had a target of annual grants of permanent settlement, now running at around 100,000 a year, rather than a target based on the vagaries of the net immigration system, it would have comfortably achieved its 'tens of thousands' goal. The ONS in its quarterly figures, and Government Ministers, should give much more emphasis to the permanent residence number which is what really impacts the future of the country. And once a proper system of monitoring arrivals and departures is in place (see below) students should be removed from the overall immigration numbers as in the United States.

Student migration is important to the UK but it has sometimes been used as a backdoor to permanent residence and there is no reason why undergraduates should routinely be allowed to bring in dependants, though post-graduates should be allowed to bring in a limited number. An overall cap on student numbers at second tier universities should be considered if numbers do not return to more normal levels.

More thought should also be given to expanding short term schemes that do not lead to permanent residence such as the Youth Mobility Scheme (YMS) which currently allows about 22,000 18 to 30 year olds a year to come (mainly from Australia) for two years with no claim on the welfare state and no right to bring in dependants. It should be a political priority to extend the YMS scheme to other developed countries, if necessary unilaterally.

3. Real Control

A major source of continuing concern about immigration is the belief, partly justified, that we do not really control our borders or know very much about who is coming or going, even after the end of free movement. UK ministers would struggle to answer the simple question, 'how many migrants are in the country?'. The lack of any kind of citizen identity system or household register exposes the UK to a bigger population of undocumented people (between 500,000 and 1m on most estimates) than in comparable countries.

We do already have a form of digital identity, managing access to work and public services, for most non-citizens who are here for an extended period. The Biometric Residence Permit (BRP) which anyone in the UK for more than six months on a visa is obliged to have has been a quiet success story of digital management. The system is moving to online only (rather than a card) and it is vital that this transition works well. In the longer run we should integrate all non-citizen identity, including the biometric EU citizen identity system, around a version of the BRP. The system should also be extended to all would-be refugees and illegal entrants. UK citizens should also be invited to join the system for the advantages it provides in smoothing interaction with the state, once a critical mass has been reached it could at some point in the future be made compulsory.

There is evidence of ethnic minority British citizens being discriminated against by employers and landlords (and most dramatically in the Windrush scandal by the state) who, to avoid potential sanctions, shy away from dealing with anyone who they believe might not have the relevant status. The answer here is to make it a requirement for everyone applying for a job or renting a flat to prove their status and identity.

Refugee and Asylum Policy

We have to select both in our legal migration system and our refugee system, given the many hundreds of millions who would come here if they could. A system of what Gerald Knaus of the European Stability Initiative calls 'humane control' (what this report is calling compassionate control) is required, protecting the integrity of national borders/preventing illegal entry while also recognising our responsibility to those who face especially difficult circumstances or persecution. There can be, however, no absolute right to claim asylum, regardless of method of entry, merits of your case, or numbers involved.

The Channel boats issue is just an especially hard case (partly because people are coming by sea, so cannot be turned back) of a general problem with the current asylum system, which has spiralled out of control and is now unrecognisable from the system established in 1951. A game changer is needed for the Channel. Here are six ideas for improving the system.

1. Best solution is a return deal with France. *Anyone who arrives here from France is detained and immediately returned, whether they have claimed asylum or not.* More cooperation in policing the beaches while helpful is not enough to discourage people from making the attempt and is unlikely to reach the 75% interception level most experts believe is necessary to stop the flow. Most significant uncontrolled flows in recent times have ultimately been halted by such bilateral agreements, whether it is EU-Turkey, Australia-Indonesia, Spain-Morocco. A return to the multilateral EU Dublin agreement, allowing people to be returned to the first EU country they arrived in, is unlikely to make much difference. In recent years, the UK was receiving more people than it was returning under Dublin.

2. Next best option to make coming "visibly futile" is offshore

processing by British officials (not outsourcing as in the Rwanda case, where Rwandan officials are supposed to do the processing) in a third country or British Overseas Territory. For the vast majority of would-be refugees do not simply want to be safe they want to enjoy the benefits of living in a rich and free country like the UK. Richard Ekins of Oxford University argues that this would require primary legislation, focused purely on the Channel boats, mandating the Home Secretary to remove the would-be refugees from Britain permanently and thus removing the incentive to travel here. This must allow for detention for a limited period, probably up to two weeks, prior to deportation. The ability to detain and deport has routinely been thwarted by the ECHR so the Government must be prepared, if necessary, to disregard its rulings, as it has done for many years on prisoner voting rights. If that means being ejected from the ECHR the UK should establish a revised international understanding, allowing for control of illegal entry, with friendly countries in Europe (and elsewhere) facing similar border control problems.

3. Even if the Channel issue is dealt with there will still be some illegal entrants for whom we must provide rapid processing of asylum claims and rapid deportation of those refused. This has many moving parts only one of which is directly under UK Government control: processing claims. The problem of the enormous backlog must be dealt with permanently with more resources and raising the seniority and status of the officials doing the processing. We also need a review of why we are granting asylum in 70% plus of initial cases, double the historic rate and out of step with comparable countries. Even if the ECHR blockage is removed rapid deportation faces other problems, above all returns agreements with relevant countries. Some of the biggest asylum claimant countries refuse to accept most returns—Iraq, Iran, Eritrea, Ethiopia—but those that do, such as Albania, should have a detention fast track to deportation, leaving within days.

4. What about the limbo population? There are hundreds of thousands of people who are either waiting for their claim to be processed or who have been refused but remain in the country. For this group we need a version of the BRP biometric identity system to provide some oversight, a reduction to six months (from one year) of the period people must be here before they can apply to work in jobs on the Shortage Occupation List, a more generous payment to return home, and a limited, and low key, amnesty for those who have been here for more than seven years (it currently kicks in only after 20) dependent on back payment of tax for those who have been working and full disclosure of lawbreaking employers.

5. Safe and legal routes/annual quota. Once illegal entry, and especially boat crossings, are under control we should announce an annual target, perhaps around the 40,000 average of recent years, but overwhelmingly drawn from safe and legal routes. These currently include the Ukraine and Hong Kong schemes and a trickle coming from resettlement schemes set up for Syria and Afghanistan. Intake from resettlement camps should be significantly increased, with guidance from the UNHCR on those in most need, and other unconventional means of applying from outside the country should be investigated including a special online portal and, in exceptional cases, application through British embassies.

In the longer run for the UK to become less of a magnet for illegal immigration two things will be required. First, a national identity system for

regulating access to employment and public services for all non-citizens (extending to all citizens in the much longer run) as mentioned above. Second, a proper labour inspectorate to prevent unscrupulous employers hiring illegal immigrants. There is no point having an identity system specifying the entitlement of different groups if employers just ignore it. Serious sanctions, including jail sentences, are required for people employing those without the right to work.

6. Reforming the Home Office. Immigration lawyers and critics of the system, such as Colin Yeo, argue that too much of the above account leans on scapegoating the ECHR, especially over deportations, for what are in effects just failures of administration or even a deliberate downgrading of the importance of deportations by recent Governments.

It is true that involuntary deportation numbers have plummeted in recent years, from over 20,000 a year in the early 2000s to around 1,000 now, and that is not all down to the ECHR. Insiders say that in the days of the UK Border Agency there was a sharper focus on performance. There have been several recent distractions that have contributed to this loss of focus. Brexit sucked away a huge amount of effort and time. The Windrush scandal brought a loss of nerve and a questioning of the Home Office's core purpose of border protection. Scheduled airlines stopped cooperating with enforced returns. Covid was a further complication. For financial reasons the detention estate was significantly reduced. Then there was the complete lack of preparation for a largely new form of illegal entry, Channel boat crossings, with a lack of reception facilities and accommodation. And finally, constant changes in the senior leadership of the department and the politicians above them and low morale among staff, many of whom have not had a pay rise for many years, has also contributed to poor outcomes. Some of these things are in the gift of politicians and civil servants to do something about but that will require a period of relative stability for the Home Office.

Better Communication

Hitherto the Government's communication strategy on this cluster of issues has been inadequate. The public conversation is often dominated by the assumption that all restrictions on the desperate looking people wrapped in blankets we see on our TVs are inhumane, and the Government is too often unnecessarily on the back foot or making strident claims about "clamping down" that are then never realised.

The truth is that off-shoring, especially to a relatively poor African country like Rwanda, does seem extraordinary to many people, even those who might be sympathetic to the goal of restricting illegal entry. And, even if justified in principle, the current deal with Rwanda only allows for the resettlement of a small number of people, which is unlikely to be enough to stop the flows. In any case, insufficient thought has gone into explaining why offshoring has become necessary.

The argument should be framed like this. Off-shoring is, of course, not desirable, but it's a one-off and short-term game changer that has become necessary to prevent this most dangerous and visible form of illegal entry,

that undermines public confidence in our border and polarises opinion. The problem is that the Channel has ceased to be a protection and become a magnet because, unlike a land border, for legal and humanitarian reasons people cannot be turned back. The action is only necessary because the ECHR has made routine detention and deportation from Britain almost impossible, so forcing the Government to take more radical steps to remove all incentive to come via this route in the first place.

The frame to the argument should always be “compassionate control” balancing the right to control borders and select those for entry, as we have done with Ukrainian refugees, and the rights of those genuinely in need of protection. Thanks to our geographical position we receive hardly anyone who is not already coming from a safe place. All the more reason to emphasise selection of the most vulnerable over the Channel queue jumpers. *Cross party consensus with Labour should be sought on the ECHR and no Minister should speak on this subject without including mention of an annual target for vulnerable refugees we will adopt once the flows are under control.*

Introduction

The Government has steadied the ship in recent weeks after the Liz Truss misadventure. But if there is any chance of winning back some of the 2019 Tory coalition, one condition of being competitive at the next election, the Government will need some visible policy progress in three big areas: NHS performance, levelling up and immigration, including stopping the Channel boats. This paper focuses on that third policy field.

It was, among other things, an argument over immigration that helped to bring down Liz Truss. Her desire to, at least temporarily, boost inflows to help hasten economic growth ran into the strong opposition, and eventual resignation, of Suella Braverman the now reappointed Home Secretary.

This conflict reflects genuine disagreements among politicians and experts about the role of immigration in promoting or damaging long-term growth. It also reflects disagreement among the British public about the importance of reducing numbers, as opposed to just establishing control.

Since the ending of free movement, and the re-establishment of national control over immigration, attitudes have liberalised between 10 and 15 percentage points. A large majority still want to keep numbers steady or cut but those wanting reduction are now in the 40 to 60% range (depending on whose polling you believe) compared to the 60 to 70% range for most of the last 20 years. On the face of it, this seems to support the post-Brexit Johnson Government assumption that people mainly wanted control and not necessarily reduction.

Against that is the fact that 70% plus of Tory voters want control *and* reduction and following the unprecedented post-Covid surge in net migration to half a million, in the year to June 2022, the numbers favouring a significant reduction are likely to shift upwards again in the country as a whole, especially with Channel crossings as a continuing backdrop.

The net immigration figure of 504,000, easily the largest ever annual increase, is mainly due to one-off factors—a post-Covid catch up on student migration (277,000) and a surge in legal refugee inflows (276,000) which is unlikely to be repeated, including large numbers from Ukraine, Hong Kong and Afghanistan (the Channel boats are not included in these figures). Only about 150,000 of the net migration figure is people coming on work visas (around 20%) but most of them and almost all the students will only be here temporarily.

The numbers will settle back down again in the next couple of years but the half a million figure underlines both just how hard it is for an open society like the UK to control numbers and also how much migration policy is really driven by the Treasury, which believes, contrary to recent evidence, that a high level of migration is an essential driver of growth. The Treasury has strong support from employers, universities and other departments like DEFRA, as well as liberal public opinion. The CBI has

been in favour of more migration for 20 years even while the UK was part of the free movement system. The Home Office's more restrictive position is usually on the back foot in both Whitehall and Westminster even though it will be widely blamed for the enormous number.

Critics make a strong case that Britain's growth model has been too reliant on high immigration flows which has contributed to over-dependence on expanding the labour force as the driver of growth—extensive rather than intensive growth—and contributed to some of the lowest levels of employer investment in training in Europe and also some of the lowest levels of automation. Immigration is canvassed as both the cause of declining productivity (one emblem of this is the decline in automatic car washers, mainly replaced by men with sponges) and, at least in its high skill form, the potential solution to declining productivity.

Clearly not all the interests and institutions mentioned above, with different and sometimes conflicting priorities, can be easily accommodated by immigration policy. But there is an approach that could satisfy at least a critical mass of those interested parties and, most important, the British public. Much of it is common sense, some of it is already being implemented, all of it should be driven by three main principles. I set them out below with an additional section on Channel boats and wider reform to the refugee/asylum system.

First, popular benefit

The test for immigration is that it must benefit the median British person not just employers and the affluent. In other words, it should not suppress wages and should not be used as an alternative to investing in British peoples' skills. It should also, a separate but related point, be focused on those categories that attract popular support.

First, genuinely high skilled immigrants, especially those able to advance the country's research and technology strengths, and entrepreneurs and investors bringing in capital and jobs.

Second, on those few sectors where British people really are reluctant to work almost regardless of pay levels, *above all seasonal agricultural work*.

Third, those groups we feel an obligation to: Hong Kong citizens with British passports, Afghan interpreters, Ukrainians displaced by the Russian invasion, and so on.

(Immigrants coming to work in health and social care form a special case. They are traditionally popular, and in recent weeks almost 1,000 a week have been arriving to take up positions in social care. However, Treasury imposed caps on the number of doctors, and to a lesser extent nurses, we train each year—the current doctor cap is 7,500, barely 20% of those who apply—means that we have become far more reliant on foreign medics than comparable countries. This is morally questionable as we end up recruiting doctors and nurses from much poorer countries with much greater health needs. And if we are to ever tackle the problem of low pay

in social care we must only plug the gaps with immigrants in emergency.)

Of course, judging whether immigration is suppressing wages or a substitute for training is not simple. The current Points Based System (PBS) attempts to promote the principle of popular benefit by reducing low skill immigration and making high skilled immigration easier. It is already quite liberal and the definition of a skilled worker has been diluted to anyone with A level or equivalent qualifications paid above £25k (and those on the Shortage Occupation List can come in for jobs paying just £10.10 an hour). According to Professor Brian Bell, chair of the Migration Advisory Committee, about two-thirds of all jobs in the UK could be filled by someone on a work visa.

As already noted, the record breaking 504,000 net migration figure is driven by refugees of various kinds and a surge in the number of people coming to the UK on visas, which rose from 616,000 in 2019 to just over 1m in the year to June 2022. Students accounted for the biggest portion of the visa-controlled flow but the skilled worker inflow was around 150,000 in 2022. Yet in some of the sectors that have been most vocal in complaining about labour shortages there has been rather little take up. According to the Migration Observatory the manufacturing, hospitality, construction, retail and logistics industries combined sponsored only 4,000 entry visas in the second quarter of 2022.

Smaller employers complain that the system is bureaucratic and expensive. Attempts could be made to reduce the friction and cost but these do function as an incentive to look to fill posts at home first, preferably by improving pay and conditions. The UK remains a very attractive destination and can afford to be selective in its immigration policy so long as the private sector and public authorities invest more in training people already here.

One opportunity for a joined-up approach that is long overdue is linking jobs on the Shortage Occupation List to the training system. We have largely abandoned manpower planning in the UK and have a fragmented and partly consumer-led training system but government and employers can still prioritise vital skills through boot camps, the lifetime skills guarantee, incentivising FE courses etc. For example, there has been publicity recently about the need for 80,000 fibre optic engineers for full broadband roll out and that job may yet be put on the shortage list. But the roll out has been going on for years and these are good, well-paid jobs. How come there is a shortage? If incentives were introduced to train for shortage jobs the dependence on immigration would fall away after a period. Why has this not been happening?

Second, mainly short-term

Immigration should be overwhelmingly short-term in nature with a view to satisfying some of the legitimate economic demand for it, as well as the need to attract students, while also having regard to the anxiety felt

by British people of all backgrounds that the country has been changing too fast in recent decades. Currently most people can apply for permanent residence when they have been in the country just five years, this should be extended to 7 years (it is 10 years in Switzerland). Earlier settlement rights could be used as a sweetener for the most desirable skilled or entrepreneurial migrants.

Students should have to wait 10 years with at least 5 years on a work visa. The student route, and the extended three year post-study work visa, has been used as a backdoor to permanent residence and, as the Home Secretary Suella Braverman recently pointed out, a relatively easy way to bring in dependants. There is no reason why students under the age of 25 should be allowed to bring in any dependants, though post-graduates should be able to bring a limited number. Student migration is important to the UK but an overall cap on foreign students at second tier universities should also be considered if student numbers do not return to more reasonable levels.

Since the ending of free movement most migration to the UK is, in fact, already temporary with grants of permanent settlement currently running at just 100,000 a year. This reflects the somewhat lower net migration figures from 5 or 6 years ago just after the Brexit vote but this is a number that most people would not be alarmed by compared with the much higher number of short-term visas issued for more than one year (1m-plus) and the net immigration number of around 500,000 a year. The ONS in its quarterly figures, and Government Ministers, should give more emphasis to the permanent residence number rather than the vagaries of the net immigration number. Once a proper system of monitoring arrivals and departures is in place (see below) we should remove students from the overall immigration numbers, at least while they remain students.

More thought should also be given to expanding short term schemes that do not lead to permanent residence, such as the Youth Mobility Scheme which allows a few tens of thousands of 18 to 30 year olds to come for two years with no claim on the welfare state and no right to bring in dependants. This is an ideal form of immigration that respects mass immigration sceptics but also helps plug labour shortages. In 2017 (the last year for which figures are available) about 22,000 young people came through this route, about half from Australia.

The scheme was originally designed as a form of cultural exchange. The main countries it currently applies to are: Australia, New Zealand, Canada, Japan, Taiwan, and South Korea. The system is reciprocal and the annual intake is capped, though in recent years the respective national caps have not, in most cases, been reached. A deal along these lines has recently been struck with India, allowing 3,000 young Indians to come in with the same number of young Brits able to go to India under the same terms. It should be a political priority to extend this scheme to other countries, especially other developed countries, including the US and many European countries, where there is less risk of abuse. If necessary this should be done unilaterally at least where there is a strong likelihood of reciprocation. The

EU might try to prevent individual member states taking up the offer, but that should not prevent the offer being made, especially to countries whose Governments' share our perspective on the importance of border control such as Italy, Sweden, Poland, Hungary. Several sectors including hospitality and social care could benefit and employers could even market for young people in the relevant countries. (Immigration should not, however, be used as a bargaining chip in free trade agreements.)

Third, real control

A major source of continuing concern about immigration is the belief, partly justified, that we do not really control our borders or know very much about who is coming or going, even after the end of free movement. UK ministers would struggle to answer the simple question, 'how many migrants are in the country?'.

This concern has been exacerbated by the continuing flow of small boats across the Channel exposing the legal constraints on preventing illegal entry and the inability to swiftly deport people. A sense of fuzziness about the border and who is in the country starts with uncertainty about how we count people in and out. The failures of the old international passenger survey for counting migration are well known—it led to a significant undercounting of the number of EU citizens in the country—and it has now been replaced by reliance on a cluster of different sources.

The lack of any kind of citizen identity system or household register exposes the UK to a bigger population of undocumented people (between 500,00 and 1m on most estimates) than in comparable countries. Deporting people has become far too hard in recent years, with involuntary, non-prisoner deportations running at barely 1,000 a year, thanks mainly to the European Convention on Human Rights and lack of return agreements with relevant countries. There is a security aspect to this, too, with 25% of all foreign nationals convicted of Islamist related terror offences coming from an asylum background, according to research by Rakib Ehsan.

Once people are in the country, even those who have come legally on work or student or family visas, it is hard to contact them or know whether they are still here (though students and workers should be traceable through colleges and employers). Visa overstaying by students and workers is said, by the Home Office, to be relatively rare and data on people leaving the country (including those with visas) is collected through the Advanced Passenger Information system that almost all carriers (by air, boat and rail) record. We do not yet have a proper system of counting people in and counting them out as many countries do.

One success story of migration oversight in recent years has been the biometric residence permit (BRP) card that all people resident for more than six months (without permanent residence) are required to have which has both finger print and facial biometrics. This is now being replaced with an online identity system with no physical card. If we are to attract

more short term immigration it is essential that it is policed properly. The gradual abolition of the BRP in favour of an electronic “authority to work” code has worked reasonably well so far but it presupposes that the UK has a fully joined up system across Whitehall which enables departments to link entitlements with immigration status.

Many other European countries now have biometric identity systems for all citizens which are difficult to defraud and can quickly and effectively determine immigration status and entitlement for employers, landlords and public service managers, via biometric recognition databases.

We need one in the UK and have the foundations for it in the BRPs for non-citizens. In the medium term we should integrate all non-citizen identity schemes, including the EU Settlement Scheme which uses facial biometrics, into one system.

Meanwhile, some version of it should also be applied to all would-be refugees and asylum seekers. All asylum seekers are currently supposed to be finger-printed and photographed and to have their details checked against Home Office and police records. Resource pressures arising from the Channel boats means that this is not always happening as it should. Once interviewed, asylum seekers do receive an Asylum Registration Card with their photograph on it which also states their work status, (they get a different card after one year when they can legally work in some sectors).

In the longer run, UK citizens should be invited to join the integrated system using either a finger print or facial biometric for the advantages it provides in smoothing interaction with the state, once a critical mass has been reached it could at some point in the future be made compulsory. (The folk memory of ID cards as an aspect of second world war authoritarianism has largely disappeared for younger generations completely used to proving their identity online or to a bar-tender. Nobody is any longer proposing a card based system, let alone a requirement to carry a card, and civil liberties are easily protected.)

The internal border (aka the hostile/compliant environment) is required in this country because of the relative openness of the external borders. It has worked quite efficiently in the workplace with employers able to check the eligibility of employees online but it has been challenged on grounds of potential discrimination against British ethnic minorities in relation to landlords and other everyday functions. The simple answer is to make everyone who is renting a flat or opening a bank account prove their status, if people knew this minor hassle was helping to clamp down on illegal immigration few would object. (The implementation of the hostile environment without a properly administered biometric identity management system was a major cause of the Windrush scandal.)

Refugee and asylum policy

The system has been strangled by good intentions over many decades. The relevant international legal conventions were drawn up at a time when hardly anyone in poor countries could move. The European Convention on Human Rights has subsequently radically opened up the ability of asylum seekers to defy deportation. This is usually by using articles 3 and 8 of the Convention (the first on protection from inhuman or degrading treatment the second on the right to family life) thus allowing people to stay and claim humanitarian protection, meaning in effect that hundreds of millions could now *legitimately* claim the right to remain in the UK, once in the country. (The Labour Home Secretary, Charles Clarke, was complaining about this 15 years ago.)

Anyone who lives in a country that is authoritarian by western liberal democratic standards, or has some conflict on its soil, has a good chance of resisting deportation. The distinction between genuine asylum seekers and economic migrants has become largely redundant as a result of this liberalisation and the system now bears very little relationship to the focus on persecution of the original 1951 Refugee Convention.

The UNHCR reckons there are almost 100m people “of concern” who have been forced out of their homes, another 21m under its direct mandate, and 1.4m in temporary camps needing resettlement. Moreover, although the world has become much more equal in the last 30 years thanks to economic growth in China and India, most human beings live in relative poverty, without decent healthcare and under authoritarian legal and moral codes compared to rich westerners.

Not all of these people can, or want to, come and live in rich western countries but surveys show that many billions do wish to short-circuit the long, slow development process for themselves and their families. As they are usually the most energetic and educated in struggling places, they therefore further slow that development process. And this global application of *exit* rather than *voice* is permanently weakening the reform movements in many authoritarian countries. This is not what the international refugee system was designed for.

We have to *select* both in our legal migration system and our refugee system. A system of what Gerald Knaus of the European Stability Initiative calls ‘humane control’ (and this report is calling compassionate control) is required for our refugee system, protecting the integrity of national borders/preventing illegal entry while also recognising our responsibility to those in especially difficult circumstances and in some cases facing persecution. There can, however, be no absolute right to claim asylum regardless of method of entry, viability of claim or numbers involved.

The UK in 2021 received almost 50,000 asylum applicants, the highest level since the Balkan-led spike of the early 2000s, though the country has been only mid-table in recent years among European countries in asylum numbers. (Ministers sometimes, rather misleadingly, claim that the UK accepts more refugees than other European countries, but this refers to

the relatively small numbers admitted under official resettlement schemes from places like Syria.)

The country was protected partly by its geographical position. But the protection of being an island has now become a vulnerability because once people are on water heading our way, legal and humanitarian factors require us to bring them ashore. They cannot be physically turned back in the way that Belarussians are at the Polish border. Added to which the UK is a more attractive destination than most comparable countries because of the lack of a citizen identity system, the easy access to illegal work, the English language, and the existence of significant diasporas from all corners of the globe.

There are several ways for the UK to try to deal with the multi-dimensional Channel boats problem, and the broader problem of illegal entry. None of them simple. But none of them impossible armed with political and legal clarity and the support of a large majority of the public. It must, in the words of John Finnis the eminent legal philosopher, become “visibly futile” to enter the UK from a safe country. Here are six proposals to tackle different aspects of the problem.

1. A deal with France

The most obvious answer is a return deal with France. Anyone who arrives here from France is detained and immediately returned, whether they have claimed asylum or not. More cooperation in policing the beaches while helpful is not enough to discourage people from making the attempt and is unlikely to reach the 75% interception level most experts believe is necessary to stop the flow. Most significant uncontrolled flows in recent times have ultimately been halted by such bilateral agreements, whether it is EU-Turkey, Australia-Indonesia, Spain-Morocco.

Such a deal is arguably in both countries interests as it would reduce the flow of refugees into France seeking to come to the UK, though France might argue that the outflow to the UK is also reducing the numbers in France. It is also compatible with the 1951 Refugee Convention. Brexit has complicated Anglo-French relations and the UK needs to offer something to France as the price of accepting people back. Establishing a processing centre in northern France would merely become a magnet for even more applicants, but agreeing to take back some of those with a strong case for protection and UK connections would be a reasonable condition for the UK to accept.

A return to the multilateral EU Dublin agreement, allowing people to be returned to the first EU country they arrived in, is unlikely to make much difference. The numbers involved have generally been quite small and, in recent years, the UK was receiving more people back than it was returning via Dublin.

2. Offshoring

In the absence of a return deal with France the next best option to make coming here “visibly futile” is offshore processing by British officials (not outsourcing as in the Rwanda case, where Rwandan officials are supposed to do the processing) in a third country or British Overseas Territory. This could be anywhere in the world where a would-be refugee is safe but in normal circumstances would not pay money to be taken there. For the vast majority of would-be refugees do not simply want to be safe they want to enjoy the benefits of living in a rich and free country like the UK.

Managing such a process would be a difficult logistical operation and would test the capacity of the Home Office to deliver. It would need comfortably fitted-out detention centres with the capacity to hold a few thousand people for a short period. It would need a large number of security personnel to present absconding and smooth transporting to ships or planes. But as hardly anyone is happy to be carted off to a British Overseas Territory such as Ascension Island the flow of Channel boats should stop quite abruptly once it was clear the deportation was *really* happening, as was the case in Australia.

Richard Ekins of Oxford University argues that this would require primary legislation, focused purely on the Channel boats, *mandating* the Home Secretary to remove from the UK any refugees arriving by boat from a safe country, so removing the incentive to travel here. This must allow for detention for a limited period, probably up to two weeks, prior to deportation to a British Overseas Territory or similar.

The ability to detain and deport illegal entrants, regardless of the justice of their claim, is essential to this process. And it is an ability that has routinely been thwarted by the European Convention on Human Rights and the court in Strasbourg that upholds it.

So, does this option two require leaving the 1951 Convention and/or the ECHR? The 51 Convention is less of an obstacle than is often supposed. It protects the right of countries to deny entry and would allow the removal to a safe third country for processing. On the other hand the European Court blocked the removal of asylum seekers to Rwanda (though the full case has yet to be heard) and often opposes the detention that is necessary to deport people.

If the Strasbourg court does reject removing asylum seekers to be processed elsewhere, Richard Ekins argues that so long as there is primary UK legislation mandating such a removal the plan should go ahead regardless. The UK has maintained legislation that the Court thinks is incompatible with Convention rights in other contexts, notably for many years in relation to voting rights for prisoners.

More generally, in future there should be a bias against claiming asylum in-country (as currently required) and it should be easier to claim from processing centres outside the country (see point three below). The criterion for claiming the right to remain in a rich country also need to be much more tightly drawn. A system that allows hundreds of millions of people to claim humane protection and remain is clearly not working as

was originally intended.

If these changes, along with the ability to detain prior to deportation and facilitate offshore processing of claims, do require changes to the ECHR, the UK should very publicly lead a coalition of countries to promote such changes. Many European countries face very similar refugee dilemmas as the UK. Italy and Sweden are likely to be firm allies, especially when the new Governments in both countries elected in part on pledges to control illegal entry find themselves in legal conflict with Strasbourg.

If such a reform initiative should fail the Government should, as mentioned above, announce its intention of by-passing the Strasbourg court on the specific issue of deportations and offshore processing, without leaving the Convention as a whole. If subsequently forced out of the ECHR it should establish a revised international understanding, allowing for control of illegal entry, with like-minded nations. Importantly, at the same time the UK should announce an annual refugee target.

3. Safe and legal routes/annual quota

The target or quota, as proposed by Rishi Sunak during the Tory leadership contest, might be set at the average number of recent years of about 40,000 but could rise or fall depending on circumstances and political priorities.

The point is the refugees would be selected via safe and legal routes. This has already been happening with the schemes for Ukrainians and Hong Kongers and the resettlement schemes for Syrians and Afghans, now largely wound down. There is a case for re-opening the latter, to deter the many Afghans on Channel boats. And, in future, the annual target could include more people from resettlement camps around the world, perhaps selecting those most in need with the help of the UNHCR.

We should also expand sponsorship schemes set up by families or organisations. Canada takes a significant number of refugees via sponsorship, a system that also helps with integration. In exceptional cases people should be able to apply to travel legally to the UK via an online portal or through British embassies. These forms of selection are fairer and more humane, as well as safer, than the current Darwinian system that privileges the mainly fit young men from families that can afford to pay considerable sums to people smugglers. Critics say that the people coming on Channel boats cannot be queue jumpers because there is no queue to jump. There is a queue, but it needs to have more safe and legal entry points.

4. Rapid processing and rapid deportation of failed applicants

Even if the Channel problem can be sorted out there are still likely to be significant numbers entering the country less visibly in lorries and overstaying visas. In principle we will always need *rapid processing of asylum and other claims and rapid deportation of those who are refused*. As is well known the processing system has become badly blocked in recent years with most people now waiting more than a year, leading to the £6m daily bill for hotels.

More staff are now being employed but this is a difficult and stressful job and should be undertaken by more senior staff than the relatively junior executive officers who currently do it. How do you know whether someone coming from Iran claiming to be Christian or gay is telling the truth? A junior civil servant with a few months training should not be making this decision.

The very high proportion of initial acceptances (now around 75%), much higher than comparable countries, is itself in part a function of the long delays allowing more claims to be made under European Convention protections. It is also a function of the point made earlier that the grounds for remaining here have been significantly liberalised in recent decades and immigration lawyers, people smugglers, and asylum seekers themselves, are well aware of the right buttons to press once in the system.

Rapid processing is one of the few parts of the system that is actually in Government control. Rapid deportation requires not only the ability to detain, something that refugee lawyers are expert at challenging once an asylum claim has been lodged, but also agreement with countries of origin to accept people back. Neither of these two conditions routinely exist at present which is why only a few hundred non-prisoners are being deported against their will each year.

Gerald Knaus argues that rich countries could achieve more return agreements with a country like the Democratic Republic of Congo if they were prepared to offer more legal visas and maybe student/academic exchanges. That should certainly be attempted with relevant countries, with the stick of withholding aid as well as the carrot of more legal entry. But the UK is very unlikely to achieve return agreements with the big refugee countries of origin: Iraq, Iran, Eritrea, Sudan, Afghanistan etc

And, even where we do have returns agreements, for example with Pakistan, Jamaica and India (Indians are the worst offenders for overstaying visas), legal gaming of the system often prevents deportation. A detention fast track to deportation, regardless of claims that have been lodged, is the only answer for nationals from countries, like Albania. Life in Albania, a middle income country with a functioning legal system, is a struggle for many but claims of modern slavery should be dealt with in the country itself, as they are in the UK.

5. The limbo population

Without rapid deportation the question arises of how to manage the large body of people, now running into the hundreds of thousands, who remain in limbo, who are either waiting an official permission to stay or have been refused one, but are not deported.

Currently, people who are awaiting a decision are provided with housing and a small weekly allowance of around £40. Those who have been refused asylum but not deported are supposed to report to the Home Office every few weeks but many just disappear. Some sort of biometric identity card, like the Biometric Residence Permit which all legal migrants (except those accepted under the EU scheme) here for more than six

months are required to have, should be issued to all such people in limbo (replacing the existing photographic identity card, as proposed above).

This would give the limbo people a more official status and could control their limited access to public funds and services. Under such circumstances we should consider allowing those who are able to do so to work in certain limited areas where there are shortages, such as social care, after they have been here six months (the current period is one year) though not for people whose claim has been refused.

Consideration should also be given to a very limited, and low key, amnesty for illegal immigrants, especially those with children, who have been in the country more than 7 years (the amnesty currently extends only to people who have been here 20 years). There is no realistic chance of deporting people who have been here that long and who can claim a right to family life. The regularisation should be dependent on back payment of tax if they have been working illegally and full disclosure of the law-breaking employers.

A review is also required of the system that pays people a small sum for returning home voluntarily. This used to be outsourced to an NGO and since it was returned to the Home Office has been far less effective. It may be offensive to some people to pay people to return home who have arrived illegally and have no right to be here in the first place. But the sums involved are not large and could legitimately be drawn from the foreign aid budget, helping to reduce that large hotel bill for housing those seeking asylum.

6. Reforming the Home Office

Immigration lawyers and critics of the system, such as Colin Yeo, argue that too much of the above account leans on scapegoating the ECHR, especially over deportations, for what are in effects just failures of administration or even a deliberate downgrading of the importance of deportations by recent Governments.

Court judgements both domestic and from the ECHR clearly have made life much harder for the immigration enforcement process in recent years, and some argue that ECHR rulings have been applied more liberally in the UK than in other countries. But the ECHR is not the only obstacle. There remains the problem of being unable to remove people to some of the countries that produce most asylum seekers such as Iran, Iraq and Eritrea. However, critics also have a point about the lack of administrative efficiency.

Involuntary deportation numbers have plummeted in recent years, from over 20,000 a year in the early 2000s to around 1,000 now. Insiders say that in the days of the UK Border Agency there was a sharper focus on performance. There have been several recent distractions that have contributed to this loss of focus. Brexit sucked away a huge amount of effort and time. The Windrush scandal brought a loss of nerve and a questioning of the Home Office's core purpose of border protection. Scheduled airlines stopped cooperating with enforced returns. Covid was

a further complication. For financial reasons the detention estate was significantly reduced. Then there was the complete lack of preparation for a largely new form of illegal entry, Channel boat crossings, with a lack of reception facilities and accommodation. And finally, constant changes in the senior leadership of the department and the politicians above them and low morale among staff, many of whom have not had a pay rise for many years, has also contributed to poor outcomes. Some of these things are in the gift of politicians and civil servants to do something about but that will require a period of relative stability for the Home Office.

Conclusion and Communication

Having been on a downward trajectory since 2016 immigration anxieties are starting to rise again. The Reform party is not yet winning significant support by highlighting the issue and most newcomers tend to go to big cities where attitudes are more welcoming. But this relatively benign political backdrop to the immigration debate is unlikely to last, especially after the unprecedented net migration figure announced at the end of November.

The Channel boats are a continuing cause of public irritation and illegal immigration could flare up as an issue at any moment, perhaps in relation to a terrorist act or a new dangerous virus entering the UK.

For all these reasons a clear-eyed strategy based on the three main principles above should be advanced by the Home Secretary in the coming months to sit alongside new initiatives to stop the Channel boats. Keir Starmer's Labour party is less hostile to proper control of both legal and illegal immigration than in the recent past, so a degree of political consensus is worth seeking especially on Channel boats if we need to challenge the Strasbourg court.

Hitherto the Government's communication strategy on this cluster of issues has been inadequate. The public conversation is often dominated by the assumption that all restrictions on the desperate looking people wrapped in blankets we see on our TVs are inhumane, and the Government is too often unnecessarily on the back foot or making strident claims about "clamping down" that are then never realised.

The truth is that off-shoring, especially to a relatively poor African country like Rwanda, does seem extraordinary to many people, even those who might be sympathetic to the goal of restricting illegal entry. And, even if justified in principle, the current deal with Rwanda only allows for the resettlement of a small number of people, which is unlikely to be enough to stop the flows. In any case, insufficient thought has gone into explaining why offshoring has become necessary.

The argument should be framed like this. Off-shoring is, of course, not desirable, but in the absence of a returns deal with France, it's a one-off and short-term game changer that has become necessary to prevent this most dangerous and visible form of illegal entry, that undermines public

confidence in our border and polarises opinion. The problem is that the Channel has ceased to be a protection and become a magnet because, unlike a land border, for legal and humanitarian reasons people cannot be turned back. And because of ECHR inspired human rights legislation it has become increasingly difficult for the Government to promptly detain and deport those crossing the Channel. The Government has to make the Channel crossing visibly futile. The only way to do this is by removing people, whose main motive is evidently a better life in the UK not protection as such, to somewhere safe and comfortable elsewhere. And off-shoring, if successful, is by definition a short-term event, lasting just a few weeks, because people will see their life savings, invested in getting to the UK, going down the drain, and will therefore not come at all or seek a different way into the UK.

The frame to the argument should always be “compassionate control” balancing the right to control borders and select those for entry, as we have done with Ukrainian refugees, and the rights of those genuinely in need of protection. Thanks to our geographical position we receive hardly anyone who is not already coming from a safe place. All the more reason to emphasise selection of the most vulnerable over the Channel queue jumpers. And no Minister or Secretary of State should speak on this subject without including mention of the annual target for vulnerable refugees we will adopt once the flows are under control.

Taking back control still requires plenty of careful diplomatic interaction with the outside world in situations where we are often the supplicant. As the above account makes clear most of the moving parts are not controlled by us alone. A returns agreement with France remains overwhelmingly the best and simplest option for the Channel boats. For reforming the broader system easier deportation, and therefore the right to detain, is essential and if necessary exemptions must be made to allow for this within the existing international legal conventions.

In the longer run for the UK to become less of a magnet two things will be required. First, a national identity system for regulating access to employment and public services for all non-citizens (extending to all citizens in the much longer run). Second, a proper labour inspectorate to prevent unscrupulous employers hiring illegal immigrants. There is no point having an identity system specifying the entitlement of different groups if employers just ignore it. Serious sanctions, including jail sentences, are required for people employing those without the right to work. Britain’s “light touch” labour market is a great job creation machine and has served the country well in many ways but its shadow side is evident in the large undocumented population.



£10.00
ISBN: 978-1-910812-XX-X

Policy Exchange
1 Old Queen Street
Westminster
London SW1H 9JA

www.policyexchange.org.uk