

A high-angle photograph of a paved surface made of rectangular grey tiles. A long, dark shadow of a person is cast across the tiles from the top right towards the bottom left. The shadow is sharp and clearly defined against the lighter pavement.

## **Earned amnesty:**

**bringing illegal  
workers out of  
the shadows**

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## ■ Executive Summary

The idea of a regularisation, or amnesty, for the estimated 500,000 illegal immigrants thought to be in the UK is deeply controversial. There are, however, persuasive reasons why the British government should introduce an 'earned' regularisation programme.

A key rationale is that a regularisation programme protects society. By reducing the number of unknown residents, it allows the security services to better focus resources on those that might pose a threat to national security or who are involved in immigration crime, such as people smuggling. It may also encourage newly legal residents, who would previously have avoided contact with the authorities, to engage positively with government to counter threats. This argument has been made forcefully in the United States by, among others, the Department for Homeland Security and the White House. There are other compelling reasons to regularise: there would probably be a fiscal gain for the government and a reduction in the exploitation of immigrant labour. Furthermore, there is no practical alternative solution on the table.

Any regularisation must meet three conditions to succeed. First, it must be deployed jointly with other migration strategies. Second, it must reflect and respond to the behaviour and needs of both migrants and their employers. Third, it must be designed in a way that incorporates the lessons learnt from other programmes.

Greater information is crucial to making regularisation a more effective tool for migration management and national security policy. It is vital to learn more about the motivation and behaviour of migrants and about the impact of the market and other forces on their decisions about where to live and work. Such information is key to developing successful immigration policies and effective regulatory regimes.

By exploring such issues policymakers can better shape regularisation programmes to overcome the main practical and political objections,

most particularly the claim that regularisation rewards law breaking and encourages further illegal migration.

This paper proposes a three tiered 'earned' regularisation programme leading to permanent residency:

**Tier 1:** A short enrolment period open to all illegally resident immigrants who have been in Britain longer than three months. Any applicants with a serious criminal record previously unknown to the authorities, as well as those who feature on security watch lists, would be liable for immediate deportation. Those already undergoing deportation proceedings as a consequence of criminal behaviour would also be excluded. All those enrolled would be given a guarantee against deportation in the form of a temporary residence and work permit which would include their biometric details.

**Tier 2:** Once applicants have received a temporary residence permit, they enter a five year period during which they can earn the right to permanent residence. They could earn this right earlier if they reach the necessary bar quicker (as would be the case, for example, for illegally resident migrants who managed to obtain a National Insurance number and a formal job and who have been paying taxes prior to entering into the regularisation programme).

**Tier 3:** A six month period during which immigrants are either awarded permanent residence or arrange their voluntary departure for those that fall at this hurdle. Those voluntarily departing could return to Britain under a legal route. Those who fail to leave within the time limit (biometric details would allow for the proper recording of who has left and who has not) would be subject to deportation and restrictions on re-entry.

The 'earned' regularisation process outlined in the three tiers above is neither a one-off, nor an open-ended 'permanent amnesty' but a time limited programme which would help reveal those illegal immigrants who contribute to society. The policy proposal made in this paper is that of an additional migration tool that will improve the quality of migration management. The concept of 'earned' regularisation moves the policy discussion beyond the dead-end arguments for and against a 'blanket amnesty', and towards a more nuanced approach that deals with the complex realities of illegal immigration. Such a policy has the potential to enhance public safety, cement the rule of law, increase tax revenues, create more orderly labour markets, cut down on exploitation and foster greater social stability.

## ■ Introduction

### Regularisation

Regularisation refers to a process which gives illegally resident immigrants some form of legal status. This status is usually for a finite period of time, after which an immigrant may have the opportunity to graduate to permanent residence.

'Earned' regularisation refers to the process of allowing regularised migrants to 'earn' permanent or temporary settlement rights through the fulfilment of various criteria. This could include language proficiency, social integration, respect for the law and other valued behaviours.

Britain is experiencing a larger wave of immigration than ever before. Net immigration rates have been running at record levels during the first decade of this century.<sup>1</sup> Furthermore, immigrants are coming from a greater array of countries and staying for shorter periods of time. The vast majority arrive legally – to study, to work or to join their families – and many are nationals of European Union countries. A small fraction of the overall number arrives to seek asylum, a legal right for all those with a well founded fear of persecution. The government has worked to reduce the flow of asylum seekers – both genuine and not – since 1997, while actively encouraging students and workers.

The number of illegally resident immigrants has also risen despite much greater enforcement efforts. Illegally resident immigrants include those who have entered the UK clandestinely, those who have overstayed their visas or breached their terms and conditions, as well as those who unsuccessfully sought asylum but remain in the country. A full analysis of the illegally resident population appears later in this paper.

In 2005 the UK government released a report on the size of the illegally resident population, placing the figure at 430,000 or 0.7 per cent of the UK population.<sup>2</sup> The size of this figure provoked strong reactions, most

of them focused on the inadequacies and failings of existing government policy. The government's rhetorical response to illegal immigration over the last 11 years has been forceful. Policy has combined prevention – increasing border enforcement – with a reactive approach such as restricting access to public services, forcing employers to monitor the status of their workforce, and deporting those illegally resident migrants it is able to identify.<sup>3</sup>

As in other countries, government policy in this area has been the subject of intense debate over the last few years. Yet the option of 'regularisation' has received little serious policy attention, despite being one of the oldest and most frequently used tools for managing illegal migration. This paper sets out how a regularisation programme could be designed for the particular circumstances of the UK. In doing so, it seeks to show that regularisation can be an effective policy instrument for the management of migration.

## ■ 1. The British approach

More than 6 million people have been regularised in countries now belonging to the European Union since a 1980 programme in France, which marked the first large scale amnesty in Europe. An even larger number have been granted amnesty in the Americas, with a 1986 programme in the United States alone regularising 2.8 million immigrants. Canada, Mexico and most immigrant receiving countries in the Caribbean and Central and Latin America have also experimented with amnesties.

EU member states, including France and Germany, as well as most other advanced industrial democracies, have quietly but continuously regularised migrants. The UK has also adopted this approach. Both the frequency and the scope of regularisations have continued to increase across the world. Yet regularisation remains at best a stop-gap measure. It is both evidence and consequence of the ongoing failure of migration management and control policies.

### UK GOVERNMENT POLICY

The Labour government has reshaped immigration policy over the last decade. Policy on illegal immigration has been no exception.<sup>4</sup> While Home Office strategy documents, released in 2006 and 2007, led to refinements, both in terms of policy and execution, the government's overall approach to illegal immigration has remained broadly the same since the 2002 White Paper.<sup>5</sup> There are five main strategies employed by the government to combat illegal immigration. These are: strategic enforcement measures; identity management; increasing employer compliance; greater policy co-ordination both within and between governments; and regularisation.

#### ***Strategic enforcement measures***

The organising principle behind enforcement measures was set out in the Home Office's 2007 enforcement strategy which called for action

to be targeted on those who cause the most harm.<sup>6</sup> Consequently, the government has targeted the 'worst' offenders, such as businesses that employ significant numbers of illegal migrants. Enforcement units have focused on making a smaller number of high profile, high impact raids rather than general sweeps.

Failed asylum seekers remain the key group targeted for removal. UK policy on illegal immigration is closely entwined with policy on asylum. The government has employed various measures to reduce the number of asylum applications. These include the streamlining of asylum appeals, the introduction of fast-track decision procedures and the greater use of detention to strengthen its enforcement policies.

The government has also introduced two quantitative targets for removals that explicitly connect asylum and illegal migration policy. The first deportation target was to remove annually 30,000 failed asylum seekers from 2001-02 onwards. This target was dropped after concern over its appropriateness and the failure to meet the figure. The second, known as the 'tipping point' target, was personally associated with then prime minister Tony Blair, in which he presented a target of deporting more failed applicants per month than those who made unfounded applications. The second target was met, but not within the original time limit and only in the context of a steep fall in asylum claims.<sup>7</sup>

Nonetheless, 29,040 illegally resident immigrants were deported in 2006 (the latest year for which records are available) – probably an all time high.<sup>8</sup> Spending on enforcement has also increased significantly, from £48 million in 2000/01 to £138 million in 2003/04.<sup>9</sup> Looking ahead, the government has stated its intention to double the amount it spends on enforcement and compliance by April 2009.

### ***Identity management***

The government has also invested substantially in identity management systems. Examples include the Asylum Registration Card (an identity card for asylum seekers containing biometric data), biometric visas, and more resources in airports and ports.<sup>10</sup>

Biometric identity cards have become central to the policy response. In December 2006, two 'action plans' were published which provided much of the detail of future policy. The first plan established the goal of introducing compulsory identity cards for all foreign nationals, as a step towards a national identity card scheme.<sup>11</sup> The second set out how this would be achieved through biometric visas for all foreign nationals which could be checked against national databases in the UK prior to travel.<sup>12</sup> Biometric visas are now compulsory for all foreign nationals entering the UK for longer than six months. The Home Office has also

set out further implementation targets, including that of checking 95 per cent of passengers in and out of the UK by 2011.

The government's aim is to ensure that all citizens and residents have an identity card linked to a database that carries key personal information, some of which would be biometric. The justification for identity cards has changed in successive government announcements, but has coalesced around preventing fraud and ensuring appropriate access to public services and employment. This will have major consequences for the illegally resident population. In short, there is likely to be a moment of reckoning some time in the next fifteen years (exactly when will depend on the passage of legislation that makes identity cards mandatory), when those living here illegally will become more visible when they try to access services and jobs. There is currently no planning taking place within government for what to do when this happens.

### ***Increasing compliance***

The government has made a concerted effort to tighten immigration control through increased regulation of employers. The Immigration, Asylum and Nationality Act 2006, for example, contained a range of new obligations, restrictions and penalties. These included annual employment verification checks on all employees and a penalty scheme, with employers facing fines of up to £10,000 for each unauthorised worker from 29 February 2008, supplemented by a new offence of knowingly employing an illegal worker. Furthermore, the newly introduced points based work permit system requires employers to provide a 'certificate of sponsorship' for non-national employees.

Compliance has focused mainly on employers, but not exclusively so. The government has also introduced measures which restrict illegal immigrants' access to services. For example, new regulations have made it more difficult to access primary healthcare (GP services). They also require schools that teach the children of unauthorised migrants to register that fact with the authorities.

### ***Co-ordination and co-operation***

Labour has made efforts to improve the co-ordination of migration policy across government. For example, there has been more emphasis on operational co-ordination between law enforcement agencies. The government established a Border Management Programme in 2006 which sought to build more formal links between the various law enforcement agencies involved in tackling illegal migration. This was followed by a Home Office agreement on inter-agency collaboration in 2007 leading to the creation of a 'unified border force' (to be introduced by September 2008).<sup>13</sup>

In parallel, the government has enthusiastically supported greater co-operation on combating illegal migration at the EU level. It has supported the development of the common border security agency, FRONTEX, and increased data exchange.<sup>14</sup> The UK government has also supported exchanges of information outside of the EU. For example, the UK is working with the USA, Canada and Australia to develop a framework for data sharing that will be operational by 2009.

Finally, migration policy has increasingly been integrated into foreign policy. The Foreign and Commonwealth Office has been active in attempting to secure agreements with countries to ensure they accept greater numbers of deportees, in an attempt to improve deportation rates. Such agreements have been negotiated with several countries, including Afghanistan, China and Somaliland.<sup>15</sup> New visa requirements have also reduced the numbers of illegal immigrants and asylum seekers (genuine and otherwise) entering the UK.<sup>16</sup>

### ***Regularisation***

There has never been an official amnesty or regularisation in the UK. However, since 1997 there have been three discrete attempts to clear backlogs which have had the same effect.<sup>17</sup>

The first applied to overseas domestic workers, some of whom became illegal after they left (or switched) their employer. Given that many such workers left their employers because of abuse, the government introduced a concession in the immigration rules to regularise them. Domestic workers who brought themselves to the attention of the Immigration and Nationality Directorate between July 1998 and October 1999 – or domestic workers who had enforcement action pending – were regularised.<sup>18</sup> This scheme attracted only some 200 applicants, however.<sup>19</sup> This is probably due to the strict criteria which demanded possession of a valid passport, proof of the means to support oneself and proof that the person entered the UK expressly for employment as a domestic worker.

The second exercise took place between 1999 and 2000. People who applied for asylum prior to July 1993 and were awaiting an initial decision were granted settlement immediately while those who applied between July 1993 and December 1995 were treated “sympathetically”.<sup>20</sup> These new rules were applied to 11,140 cases in 1999 and a further 10,325 cases in 2000.<sup>21</sup>

The third and most significant scheme was the ‘family amnesty’ which so far has applied to 24,415 main applicants (with a further 8,540 considered under a separate but similar scheme).<sup>22</sup> The rules are complex, but applicants must meet two conditions – they must have applied for

asylum before October 2000 and have at least one dependent child under the age of 18 in the UK. The deadline was recently extended and it appears there is effectively no longer a cut-off for applications.

In addition to these three schemes, two de facto regularisations took place in May 2004 and January 2007 as a number of countries acceded to the European Union. Nationals from these countries were immediately permitted legal residence in the UK (although Romanian and Bulgarian nationals were not given the right to seek work).

The government has not only carried out small-group regularisations. Like all developed countries, the UK also allows case-by-case (individual) applications. In general, permanent residence is granted to all foreign nationals where a person has had up to 10 years or more of continuous legal residence or 14 years of continuous residence of any legality (including those who have been residing illegally).<sup>23</sup> Those with a criminal record and those who have deliberately evaded immigration controls are barred. For illegally resident immigrants with children, there are further discretionary guidelines for regularisation, known as the 'seven year concession'. For families with a dependent child (under 18) or if a child has been living continuously with a family for seven years or more, the government accepts that "enforced deportation or removal will not normally be appropriate". There are few figures available on the number of such case-by-case regularisations. Nevertheless, the total is likely to be significant. One report estimated that long residence concessions totalled 5,900 in 1998, for example.<sup>24</sup>

If these various exercises are calculated cumulatively, excluding the de facto regularisations that occurred with European expansion but including the asylum backlog-clearing exercises, the current Labour government has regularised between 60,000 and 100,000 persons since 1997.

## PROBLEMS WITH THE CURRENT APPROACH

Most governments, the UK's included, have applied visa, border and interior controls with increasing tenacity over the last decade. However, illegal entries and stays have not been significantly reduced. Over the last two decades in the US, for example, the border patrol's budget has increased five-fold yet the illegally resident population has still doubled.<sup>25</sup>

Other policy options have proven equally weak when applied in isolation. For example, one useful way of reducing illegal immigration is to expand the volume of work permits to meet demand. Such expansion can also be used as an 'enforcement' tool of sorts. Firms and sectors that use illegal immigrant labour could be regularly inspected for compliance with

employment regulations.<sup>26</sup> Companies which continue to employ illegal workers could be fined, or even have their business licences suspended or revoked. At the same time, expanded economic migration channels can serve as a 'soft' regularisation option if they permit illegally resident workers to apply for legal work without leaving the host country. For example, allowing free access to the UK labour market in May 2004 to the eight EU Accession States meant that the UK automatically reduced illegal immigration by regularising all those working illegally at the time and by legalising future flows.

However, increased legal migration opportunities such as this, used on their own are unlikely to make significant inroads into reducing illegal migration unless they are of a very large scale. But no large scale system can work well without committed and well resourced enforcement to minimise fraud.

Equally, efforts to control the underground or informal economy are not a cure-all for illegal immigration. The existence of relatively small numbers of illegal immigrants in countries with thriving underground economies (such as Germany), or the reverse case, where there are substantial numbers of illegal immigrants in countries with relatively little informal employment (such as the US) is a strong demonstration of this point. Finally, regularisations when deployed in this way and/or expulsion of illegal immigrants are clearly only remedial measures that do not alter the fundamental dynamics that drive illegal immigration.

While each of the elements for controlling illegal immigration identified above is of limited usefulness on its own, together they can increase the probability of success. The deliberate omission of a key policy tool – regularisation – from the public discussion of UK migration management puts additional pressure on other tools and contributes to the likely eventual failure of policy.

## ■ 2. The case for and against regularisation

This chapter examines some of the arguments against regularisation before providing six core social and economic justifications for the policy.

### THREE ARGUMENTS AGAINST REGULARISATION

Regularisations are often criticised on ‘moral hazard’ grounds for encouraging more illegal migration into the countries that use them. Their effect, in the words of countless ministers, is to make the country in question a ‘magnet’ for further illegal immigration.

There is some evidence to support the ‘moral hazard’ argument. Some surveys of those apprehended at or near border crossings in the US and elsewhere indicate that the hope of upcoming regularisations is one reason people attempt to enter a country illegally (although the data and survey methods are often contested).<sup>27</sup> In Portugal, the Service of Foreigners and Borders responsible for carrying out the 2007 legalisation process claimed that the programme had proved a major pull factor, and suggested immigrants from other parts of Europe were arriving in Portugal to take advantage.<sup>28</sup>

There is also some evidence of a correlation between the top destinations of certain illegal immigrant groups and the countries that have performed the most regularisations. Correlation is not causation, however. Indeed, the causation may run in the opposite direction: large flows of immigrants force governments to regularise. Some critics have also argued that newly legalised immigrants might attract illegal relatives or family members, creating a ‘snowball’ effect.<sup>29</sup> Such an argument is usually made in relation to Mexican immigrants and is less convincing in the case of the UK, which has reciprocal free movement arrangements with its neighbouring countries (that is, consequent family arrivals).

The consensus view is that amnesty or regularisation is only a modest pull factor for illegal immigrants. In southern European countries – where the risk of apprehension is low, informal job opportunities abundant, and prospects for formal sector employment uncertain – the prospect of regularisation is a far less important draw than the availability of work for unauthorised migrants. In the US, unauthorised immigrants work overwhelmingly in legal but low wage jobs in low value added sectors of the economy. The key pull factor there remains availability of work and levels of pay which are significantly higher than that in source countries.<sup>30</sup> Nonetheless, the possible appeal that repeated mass regularisations may pose to illegal immigrants cannot be entirely dismissed.

A second related reason for opposing regularisation concerns the organisational and cost implications for the public administration. At one extreme, the civil service can become completely overwhelmed, as happened in Portugal when the authorities were forced to abandon the recent regularisation process after registering 900,000 calls in the first five days. Even a well managed process has its costs. In the Netherlands, for example, the government estimates that the regularisation of pre-2001 asylum seekers (which had attracted 27,500 applicants by January 2008) will cost €80 to €100 million over the first two years. This includes the administration and welfare costs of newly regularised immigrants using state funded job-seeking services.<sup>31</sup>

If a regularisation programme were to be considered in the UK, significant thought needs to be given to the associated administrative burden. The proposal outlined below tackles this problem by off-setting near term expenditures through the payment of fees. In combination with the longer term economic benefits (increased tax revenues etc), this should ensure that the financial costs of a regularisation programme are outweighed by the benefits.

The third point of tension is the uneasy relationship between removals and regularisations. A regularisation programme in which not all applicants qualify, or in which some regularised immigrants later lose legal status, makes it easier for governments to engage in large scale deportations. The fear of expulsion could discourage many migrants from applying for regularisation and undermines security goals. Unless addressed up front – typically applicants are given a guarantee against deportation unless they have committed a serious offence – such fears can hamper the effort to check as many people as possible against security criteria. In other words, a policy on regularisation and a policy on removal do not comfortably co-exist.

Overall, however, it is important not to overestimate the difficulties. The pull factor of legalisation is likely to be minor relative to other factors,

most obviously the lure of economic opportunities. The administrative challenges, while valid, are not insuperable and the trade-off between regularisation and removal need only be temporary.

Furthermore, these arguments need to be weighed against the powerful economic and social arguments in favour of regularisation.

## THE ECONOMIC CASE FOR REGULARISATION

There are three major economic rationales for regularisation:

- The high cost of pursuing a full scale expulsion policy. This is estimated by one study at £4.7 billion in the UK – at least 20 times the resources allocated to removals at present.<sup>32</sup>
- The opportunity cost of lost tax revenues. Tax revenues accruing from regularising workers who are currently illegal are estimated to be worth between around £500 million and £1 billion to the UK exchequer every year, depending on immigrant earnings.<sup>33</sup> This may underestimate the revenues generated, since it does not include the money currently spent on the welfare of failed asylum seekers who cannot be removed. Such support was estimated at £308 million in 2003-2004.<sup>34</sup>
- The unfair competitive advantage which the current system gives to exploitative employers who systematically hire illegal workers. The resulting ‘race to the bottom’ as firms try to compete by employing illegal labour, further expands the underground economy, and reduces tax revenues.<sup>35</sup> The size of the ‘unobserved’ economy in the UK is estimated at 13 per cent of GDP.<sup>36</sup>

## THE SOCIETAL CASE FOR REGULARISATION

There are also three societal rationales for regularisation:

- Regularisation makes us safer. By reducing the number of unknown residents in the country, regularisation allows the security services to focus their resources and energies on those residents who pose a real threat. This would allow some of the money currently spent on deportations and enforcement (some £270 million by 2009) to be redirected towards counter- terrorism and combating organised crime. Furthermore, useful intelligence may be gained from new, legal residents who previously were not in touch with the authorities due to the fear of deportation. A regularisation programme has the potential to make these individuals less fearful of the state and more likely to co-operate with the police in tackling serious crime and terrorism. Already, organised immigration crime

is the second most important task of the Serious Organised Crime Agency (SOCA) with a concomitant resource allocation.

The White House and the Department of Homeland Security have made this security case forcefully, particularly in the period 2004-05, when President Bush proposed a temporary worker scheme (a form of regularisation). In 2004, for example, the Department of Homeland Security testified to the Senate that “[with] a temporary worker program in place, law enforcement will face fewer problems with unlawful workers and will be better able to focus on other threats to our nation from criminals and terrorists”.<sup>37</sup>

- Regularisation reduces the negative effects of deportations on communities and families. This particularly applies to communities containing large numbers of families where some family members are legal and others illegal.
- Regularisation limits the potential for widespread exploitation of migrant workers by employers, agents, traffickers and landlords. Most such cases involve the infringement of labour and health and safety laws, as well as problems relating to housing.

## THE PRAGMATIC CASE FOR REGULARISATION

Finally, there is a pragmatic case for regularisation. The alternative approach, centred on wide scale deportations, would be prohibitively expensive and virtually impossible to implement. In confidential interviews, senior public servants (including the police) acknowledge that mass deportations are simply not feasible. Obstacles include the difficulty and expense associated with locating, apprehending and forcibly removing the estimated 500,000 illegally resident immigrants in the UK, the refusal of other countries to take such individuals back, the particular problems of dealing with ‘failed states’, as well as the manifold human rights and community impact issues involved in such cases. Given this, a rational policy framework must contain at least some reference to the regularisation of those illegal immigrants currently in the UK.

We should be honest about the failures of the current reactive policy approach. While the government has extended the policy of deportations successfully, it has done so at a high social and financial cost and at a rate that will not resolve the problem for decades, if ever. Deportations on the scale required are, in short, utterly unrealistic. A regularisation programme must therefore be a critical part of any serious attempt to deal with illegal immigrants currently in the country.

### ■ 3. New thinking on regularisation

This paper has shown that there are strong, evidence based arguments in favour of regularisation. But evidence based policy and political reality are not always easy bedfellows. The idea of a regularisation (or amnesty) in the UK is deeply controversial as Liam Byrne, the immigration minister, found out when he refused to rule out the regularisation option upon taking office. He was quickly rebuked via press briefings by the then prime minister Tony Blair. Even the release of an estimate of the illegally resident population proved highly contentious as the government was accused of suppressing it until after the 2005 election.

The lack of support among the political classes is not, however, universal. In 2007, the Liberal Democrat party voted to support a regularisation policy. The Liberal Democrats' 'earned citizenship' policy is aimed at those who have been illegally resident in the country for more than ten years. Under the proposals applicants would receive a two year work permit subject to fulfilment of a number of criteria including having no criminal record and meeting an English language and civics test (or proof that the applicant is taking a course in these subjects). The regularisation would be subject to a fee, although this would be waived for those who have completed a set number of hours of service in the community or volunteering.

More recently, the three leading candidates for Mayor of London agreed to support an earned regularisation scheme.<sup>38</sup> As a useful litmus test of support, a Parliamentary Early Day Motion calling for an earned regularisation has been signed by 93 MPs, 72 of whom are from the Labour Party and include Jon Cruddas (primary sponsor) and Keith Vaz, chair of the Home Affairs Select Committee, along with four other members of that committee.<sup>39</sup> If we add to this figure the remainder of the 63 Liberal Democrat MPs (who presumably support their party's policy), it would appear that at least one in five MPs are in favour of some form of regularisation.

Much of the political support that exists has been driven by grassroots community organising. There is significant civil society support for regularisation. A scan of recent calls for regularisation includes calls from senior Trade Unionists, the Archbishops of the Anglican and Roman Catholic Churches, as well as a major campaign, Strangers into Citizens, which was instrumental in influencing the 2008 London mayoral candidates.

Most opinion polls on immigration do not refer directly to regularisation. In fact, the public trenchantly oppose immigration: four out of five people would prefer less immigration and believe that the government does not have control of immigration policy. Polling directly on the issue of an earned regularisation has been carried out by the Strangers into Citizens campaign (in April, 2007) which revealed more positive reactions. The survey found that two out of three people believed that illegally resident immigrants who had been in the UK more than four years, paid taxes and worked, should be allowed to stay.<sup>40</sup>

The proponents of regularisation and deportation policies *both* have valid points. Yet while removals and regularisations are ways of reducing the number of illegally resident immigrants, neither tool can really affect the future flows of illegal immigrants.

The fundamental factors prompting illegal migration flows are essentially unchanged. Greater control efforts have simply pushed migrants towards using more dangerous and elaborate ways of crossing borders and remaining illegally in countries of destination. People-smuggling networks have been the main beneficiaries of such policies while ever greater controls have their own costs. For example, tighter visa policies can only do so much before inhibiting commerce and legitimate travel, at least until real-time intelligence cooperation between agencies and countries becomes the norm (in other words until visa technology develops to the point at which information updates can be made instantly, 24 hours per day, worldwide).<sup>41</sup>

The policy response to illegal immigration must, therefore, involve a range of policy tools: there is no magic bullet. At present, the simple, black-and-white approach to regularisation (or removals) constitutes a policy dead-end. Our work points to three preconditions for successful policy:

1. Regularisations must be deployed *jointly* with other policy approaches such as clear routes for legal migration, ongoing enforcement action against illegal immigration both at the border and internally, and enhanced international co-operation.
2. Regularisation programmes must reflect the behaviour and respond to the needs of both migrants and their employers.

3. Government must learn from the lessons of past regularisation programmes. That there has been little evaluation of, and even less systematic experimentation with regularisation programmes is a potentially significant obstacle.

## HOW ILLEGAL IMMIGRANTS AND THEIR EMPLOYERS BEHAVE

Policymakers typically assume either that all illegally resident immigrants will return to their home country within a few years, or that they all want and deserve to live permanently in the host country. Both assumptions are largely incorrect.

The evidence suggests that a significant proportion of immigrants who have gone through a regularisation process (i.e. have been given temporary legal residence) 'drop out' of legal status after a time, usually because their new visa is dependent on proving formal sector employment. In other words, their temporary legal status is dependent on employment so when an immigrant loses a job, they lose their legal status at the same time. The majority of such immigrants stay on while a minority return home.

The minority that do return are particularly likely to do so if their temporary visas allow back and forth movement. Both Italy and Greece experienced this with Albanians after granting them work visas that allowed re-entries. Similarly, there is evidence of high mobility among Polish immigrants to the UK since 2004 when Poles were granted complete freedom of movement. The policy implications of this are important: increased border controls, without concomitant openings to legal immigration, disrupt circular migration patterns between adjacent or closely interconnected countries. This encourages would-be migrants to attempt to enter illegally. The costs and risks of illegal migration typically lead migrants to stay in the destination countries longer than might otherwise have been the case. Illegal immigrants effectively become 'locked in'.<sup>42</sup>

The majority of migrants illegally resident in the UK are believed to be young, male and working in the informal economy, particularly in the hotel, catering and construction sectors. Such assumptions are, however, based on limited evidence. A Home Office funded survey of the population in detention centres found that 88 per cent were male with an average age of 29 and that three quarters of them had worked illegally in the UK.<sup>43</sup> The extent to which illegally resident immigrants work in the informal rather than the formal sector remains unclear from the available evidence. Another large scale survey found similarities between the working patterns of illegally and legally resident populations.<sup>44</sup> A

report looking specifically at illegal immigrants from Zimbabwe found that many gravitated towards jobs in formal care settings in southern England where they worked alongside legal immigrants.

Much of the illegally resident population in the UK is likely to have been caught up in the asylum system. The National Audit Office has estimated that failed asylum seekers may total 283,500 (almost double the Home Office estimate).<sup>45</sup> Consequently, in thinking about the illegally resident population in the UK, it is important to note that a significant number are likely to have experienced mental and/or physical trauma, even if they do not meet the legal bar for international protection. Some may have failed their asylum application but cannot be deported under the European Convention on Human Rights.<sup>46</sup> Others may have moved for humanitarian reasons but never claimed asylum.<sup>47</sup> Finally, they may have come from countries without a history of immigration to the UK and with no established communities or extended family support networks in the country.

The Home Office pledged in July 2006 to clear 'asylum legacy' cases within five years. While the exact definition of what constitutes a legacy case remains unclear, it is likely to include many of those whose humanitarian protection has expired (or is due to expire) and those with appeals outstanding. Such cases are estimated to total 450,000, a figure that includes not only failed asylum seekers still living in the UK but all cases which have not been definitively concluded, such as those where temporary leave has been granted, the case is still being appealed, or the applicants have given up and returned without this being registered.<sup>48</sup> More than 1,000 staff have been employed in the newly created 'Legacy Directorate' to manage the process.

Regularisation programmes will be undermined if they fail to take account of these factors. For example, the requirement that an illegally resident person should provide proof of formal employment even to begin the process of becoming regularised does little to draw migrants out of vibrant informal labour markets. The limited evidence in the UK on the employment of illegal residents, which shows that the majority are paid 'cash-in-hand', supports the view that such an approach risks excluding large numbers of illegally resident workers.<sup>49</sup>

This paper therefore proposes granting regularised migrants unconditional work permits and then targeting the sectors and companies in which they previously worked for greater enforcement of labour and immigration laws. This contrasts with the vast majority of regularisation programmes elsewhere in the world (as well as with the programme proposed for the UK by the Liberal Democrats) but has a number of advantages, including improving security and better reflecting immigrant behaviour.

Another issue on which too little reflection – and even less experimentation – has taken place is the duration of residence permits. Decisions in this area tend to be shaped by political anxieties about granting permanent residence too readily to people who have entered or stayed illegally. Yet, this understandable response perverts a programme's logic and undermines its effectiveness. Providing a temporary residence permit of three years or longer (rather than the typical one or two years) should increase the likelihood that an illegally resident immigrant will reach the required standard of language, formal employment or other desired behaviours set by the programme. Not only does the longer time period give people more time to reach the 'residence bar', it also means that those who do are likely to have invested heavily in their own human capital. This is the best possible selection system.

## LEARNING THE LESSONS FROM REGULARISATION AROUND THE WORLD

It is remarkable how little attention is given to improving regularisation policies by learning the lessons of previous programmes.

Regularisations come in different forms. They can be organised both by the status granted and the group targeted. The status granted tends to vary from country to country. Immediate permanent or quasi-permanent status is granted infrequently in Europe and usually only when the length of stay is part of the qualification process. Temporary status – for the period of employment, the duration of the relevant humanitarian crisis, or for a set number of months or years – is more common, although permit renewals and future regularisations can make such stays anything but temporary.

With regard to those targeted, regularisations range from large group programmes to individual cases. The most frequently used are 'one time only' programmes where immigrants qualify within a defined period of time by satisfying a small number of requirements. The commonest of these is proof of steady formal employment, or at least of the existence of an employer offering such employment (though the criteria are not always job-related). Often, applicants may be asked to show that they have been resident from a certain date. This is designed to discourage a further influx of immigrants seeking regularisation.

The most recent Spanish regularisation shows clear institutional learning, with policymakers building on the experience of four previous exercises in 1986, 1991, 1996, and 2000–2001. The 2005 regularisation programme attracted 692,000 applications and an approval rate close to 90 per cent.<sup>50</sup> All received one year renewable residence and work permits. An additional 400,000 family members received residence permits.

The new design elements in the 2005 scheme included built-in mechanisms to reduce fraud and to ensure that newly legalised migrants were drawn out of informal labour markets. All applicants were required to show that they had been living in Spain since August 2004 (through registration with the municipality) and that they had committed no criminal offence for the five years prior to their application. All applicants had to prove their identity and ability to do their job. The scheme was deliberately broad in scope.

This contrasts with the 1985 programme, which was restricted to applicants who held jobs only within the formal labour market. There were two categories of application in the 2005 programme. In the first category were those presented by employers, who had to certify that they would employ or continue to employ the applicant for at least six months (three months for more seasonal employment sectors). In the second category were applications filed directly by workers who worked in part-time jobs and/or had several employers. About 30 per cent of all applicants used this second application route. Recent data indicates social security contributions increased by 3 per cent as a result of this regularisation.

Despite these improvements in programme design Spain has been criticised for its repeated regularisations – the 2005 exercise was its fifth ‘one-off’ programme in less than twenty years. This has been the case in several southern European countries. Italy, for example, has regularised a total of nearly two million immigrants since 1982. Such programmes are usually sold as a way to ‘clean the slate’. When, in 2003, then Home Secretary David Blunkett introduced the UK’s largest ever asylum regularisation scheme, he did so with the claim that he was ‘clearing the decks’. Consequently, such regularisations may become a de facto migration policy as ‘one-time-only’ programmes are repeated time and again.

An alternative approach is that of ‘continuous’ or ‘permanent’ regularisations. These are done on a case-by-case basis by administrative or judicial bodies, usually with minimal publicity. Typically, in the case of the UK, lawyers will petition the Home Office on the behalf of an illegally resident client. The criteria used to judge whether such a petition will succeed are similar to those that apply to the broader regularisations, and are usually economic or humanitarian in nature.

The UK is hardly unique in carrying out such individual case-by-case regularisations. To different degrees, virtually all advanced industrial societies employ such an approach, including those without a publicly acknowledged policy of regularisation. For example, a continuous regularisation programme existed in France between May 1998 and July 2006.

One of the principal goals of regularisation has always been to reduce the number of people living in a country without the responsibilities and protections of legal status. Today, an additional aim is to limit the number of people unknown to the security and intelligence services. The success or otherwise of regularisation programmes should therefore also be judged in these terms.

By definition it is difficult to determine the exact size and characteristics of the illegally resident population. Consequently, it is hard to estimate how many unauthorised immigrants will apply or qualify for regularisation. It is clear, however, that a programme's qualification criteria play a critical role. Various regularisation programmes provide several important lessons.

One of the most important is that the criteria for regularisation can create incentives for fraud. Criteria that require migrants to prove past behaviour which cannot be verified independently by public records, do so most directly. For example, the residence requirement of the US 1986 regularisation law, which granted legal status to nearly 2.8 million migrants, created a market for false documents to demonstrate residence and employment.<sup>51</sup> If the UK considers a regularisation programme, it is essential that verifiable public data is used to assess individuals once they have entered the regularisation process.

This is also the case with less formal criteria that depend on promises about future behaviour. During Italy's 2003-04 regularisation, about 20 per cent of inspected applications were found to contain false information concerning the job offer, and many migrants paid their own fines in the name of their employer. Even legitimate employers who declared their intent to provide the applicant with a job often failed later to employ the migrant at a formal sector wage and social contribution rate.

Perhaps paradoxically, stringent requirements do not necessarily prevent large numbers of migrants from participating in regularisation schemes. In the same Italian regularisation, the requirements that employers pay fines for missed social contributions and that immigrants demonstrate that they had a formal sector job offer did not prevent over 700,000 migrants – almost three times the number predicted by the government – from applying. If it were to proceed in this direction, the UK government would need to prepare and manage the public's expectations. A planning estimate of 570,000 applications (the upper end of the Home Office estimate of the size of the illegally resident population) would appear sensible.<sup>52</sup>

Realistically, there are no qualification criteria that can entirely eradicate the problem of fraud. However, governments can minimise the risks through careful programme design. Choosing the right selection criteria, and maintaining enough flexibility to change the programme's terms and conditions to prevent abuse are critical in this respect.

## ■ 4. Earned regularisation

The policy proposal at the heart of this paper is an ‘earned’ regularisation programme for the entire illegally resident population. The proposal is neither a rolling programme nor a one-off, but a time-limited programme that could be used in the future if required. We envisage illegally resident migrants entering a three tiered process. The criteria for qualifying for each tier and the exact privileges, rights and responsibilities awarded at each stage can vary without altering the basic concept.

### TIER ONE

In the first tier, applicants would qualify virtually automatically for a probationary status that grants them temporary residence and a work permit by registering with the government and submitting to full background checks. The all important security concern – that the numbers unknown to the state would be reduced as far as possible – would therefore be met. In return for participating, applicants would receive a guarantee against deportation unless they were guilty of a serious crime, in which case they would be liable for immediate removal.

An initial fee of £200 from the applicant would offset the expected administrative costs of the programme. A total fee of £5,000 over five years – the estimated time that the entire process takes to achieve permanent residency – would be required of all applicants to cover near-term local government expenditure and fund additional investment in integration services. This sum would be payable in annual instalments of £1,000 and be non-refundable. Those who left the country before the process was completed would lose the sum of the payments they have made up to that point. For those who completed the process but do not pass the hurdle to receive permanent residence, half the fee would be returnable on voluntary departure from the country.<sup>53</sup>

The fee of £5,000 may be perceived as high. It is not, however, intended as a barrier to participation. For regularisation to be politically palatable,

it must be self-financing in the immediate term. Furthermore, the £5,000 fee is likely to be less than the cost of long term residence visas available on the black market (though such figures remain anecdotal). The charging of fees would also create further incentives for success (and increase the likelihood of those failing to make the grade leaving) while reassuring the public. To encourage participation, it may be possible to introduce credit or loan arrangements.

The only requirement to enter Tier One (aside from the initial £200 fee) would be a residency period of three months. This period is short enough to ensure that the vast majority of the illegally resident population can participate, but long enough to prevent new migrants from illegally entering the UK for the purpose of becoming regularised. In any case, the risk of a mass influx of illegally resident immigrants from elsewhere in the European Union is further reduced by the difficulties involved in entering a sea-locked country like the UK.

Participants would be given one calendar month to register for the scheme.

## TIER TWO

Migrants would then move to the second tier by applying for permanent residence and permission to work. Permanent residence would be granted to those who meet a number of criteria including: a record of stable formal employment, the payment of taxes, a basic language test, a measure of community engagement and a willingness to work in economic sectors and parts of the country where the population is declining or workers are needed.

All migrants would be expected to file applications by the end of the third year, but would have up to five years to reach the criteria. Of course, it is possible that some illegally resident immigrants might stay for five years under the pretence of attempting to achieve permanent residence whilst actually intending to do no such thing. This risk certainly exists, but would likely be mitigated by a number of factors. First, those in the programme do not have access to welfare benefits. Second, they are paying a substantial annual fee. Third, they would become known to the authorities and will be open to voluntary or compulsory removal at the end of the five year period. Finally, and most importantly, such a scenario does not accord with the evidence which shows that the illegally resident population records extremely high levels of employment participation.

Applicants in tier two would be awarded 'points' for meeting various requirements and would earn permanent status if they gained enough points within the agreed time frame. Success would be assessed according

to objective criteria (see the appendix for the details on how points would be awarded). The time frame for reaching permanent residence (0-5 years in our proposal) would allow more time for applications to be finalised. We anticipate that few applicants would qualify during the first three years; however, illegally resident immigrants (most likely visa overstayers) with jobs in the formal economy and a record of community involvement may qualify more quickly.

We expect the majority to qualify between three and five years. The two year qualification period is deliberate as experience shows that when governments try to process large numbers of applications in a short period of time, administrative breakdown and fraud occur. Many applicants would, of course, meet the pass mark before the five year deadline, allowing applications to be staggered – something that would contribute to the goal of administrative and managerial efficiency.

### TIER THREE

The third stage of the process will result in one of two outcomes: either permanent residency, with British citizenship as the end goal, or voluntary departure or deportation. To encourage return, these individuals would have six months legal residence, at the end of which they would be required to return to their home countries. A grace period would be a humane and cost efficient mechanism that would align administrative incentives with human nature. This would be easily verified by the new biometric checking system. As the original visa would have been issued only to applicants who submit their biometric data, all those seeking regularisation will be on the database. This builds on the existing biometric visa ID system that is currently being rolled out for all foreign nationals.

Furthermore, those who leave within the six month time limit would be granted preferential treatment for return to the UK under legal labour migration routes while also being reimbursed half the cost of their regularisation claim – £2,500. Those who fail to leave within the six-month limit, by contrast, would lose the full cost of their application as well as any chance of re-entering the country for an extended period of time.

## ALTERNATIVE STRATEGIES FOR REGULARISATION

### ***Ad hoc regularisation***

It is possible to envisage a more ‘ad hoc’ approach that deals with different groups (and individuals) in different ways so as to accommodate their differing circumstances. Such a ‘multi-layered’ policy might, for example, expand the number of ways in which a legal residence visa

can be obtained from within Britain (rather than applying from outside the country). Several types of work permit might be applicable to in-country applicants if they meet the necessary requirements. Over the last decade in the UK it has become easier for immigrants to switch visa categories (for example, from a student visa to a work permit) without leaving the country. These easier transitions have done much to reduce illegality and the government should be congratulated on its success in achieving a more seamless system.

This approach could be employed for those who will become legal in the future, such as Croatians. Since Croatia will join the EU in either 2009 or 2010, Croatian nationals could, for administrative purposes, be considered 'provisionally legal'. There may also be strong moral arguments to give preference to other particular groups. For example, the children of asylum seekers – a number recently estimated to total 41,387 – are obvious candidates for regularisation.<sup>54</sup>

The drawback to such an approach is that it undermines the integrity of the system by eroding two rules: that visa applications must be made outside the country; and that current EU membership is needed for legal residence. It is also a piecemeal, patchy response to the wider problem and is best described as regularisation by stealth.

For these reasons, this paper does not support such a multi-layered approach. We instead support a more uniform policy: an 'earned' regularisation for the whole illegally resident population of the UK. Such a policy is more practical and transparent and avoids the downsides of an ad hoc approach.

### ***The Liberal Democrat proposals***

Another proposal is that made recently by the Liberal Democrats. While we support the objectives of the Liberal Democrat programme, we believe its design to be flawed, for four reasons.

First, it requires a decade of residence, just four years less than existing legal precedent on case-by-case regularisations. This suggests that the policy would have only a marginal impact on the illegally resident population. By contrast, our policy, with its maximum three month residency requirement, would allow almost all illegally resident immigrants the opportunity to apply for legal status, bringing a far larger number of workers 'out of the shadows'.

Second, the Liberal Democrat proposals less accurately reflect the behaviour of employers and the illegally resident population, as they do not provide incentives to move out of informal labour markets. Our proposals allow applicants a period of time to make adjustments and become part of formal sector labour market, to learn English, and to

contribute to communities, while making it more likely that those who are unable or unwilling will be deported.

Third, the Liberal Democrat proposals are more likely to run into administrative problems as they fail to build on the lessons learnt from other programmes around the world. For example, there are no incentives for illegally resident immigrants to leave if they fail to meet the bar for residence. Nor is there any reference to the problem of fraud and how it might be overcome.

Finally, and most importantly, because our proposals are designed to maximise the number of applicants, they are better equipped to answer the security imperative of reducing the number of ‘unknowns’ in the country.

## ADVANTAGES OF EARNED REGULARISATIONS

There are 11 clear advantages to the proposed earned regularisation programme over other amnesty policies:

1. By setting the bar for gaining temporary legal (first tier) status relatively low, it can pull the largest possible number of illegally resident immigrants out of the pool of the unknown population and with time, out of the informal economy.
2. The scheme immediately vets applicants, allowing the government to reduce the number of unknown foreigners. By making the proverbial ‘haystack’ smaller in this way, it becomes easier for the security services to identify the small number of ‘needles’ they are looking for.
3. By allowing applicants to achieve the probationary status of the first tier (that of legal temporary status with full work privileges and all applicable social protections and obligations), the host society removes many of the biggest problems associated with illegal residence and work, such as gross violations of labour laws and the payment of below poverty line wages.
4. Earned regularisation takes account of the fact that many migrants may want to stay and work towards earning permanent residence status and that they could be an asset to the host nation if allowed to do so. A well designed earned regularisation programme grants permanent residence rights primarily to those foreigners who demonstrate the desire and ability to succeed economically and integrate socially.
5. The fact that the cost of the regularisation process is covered by fees, payable by applicants, should help to reassure the legally

resident population that the system being introduced is both tough and fair.

6. The proposed earned regularisation programme would place most of the burden of evidence on criteria that are a matter of public record, and thus less prone to fraud. The fact that a significant proportion of Britain's illegally resident population are failed (and therefore registered) asylum seekers will help in this regard.
7. The variable length of time it would take to achieve permanent residency (this paper estimates three to five years – see appendix) provides essential administrative flexibility. This allows time to effectively investigate, record and award status, all of which would improve confidence in the programme's operation. The recent creation of the Legacy Directorate will make any attempt to regularise immigrants significantly easier as 1,000 skilled staff are already in place.
8. An earned regularisation system makes it easier for government to remove failed applicants efficiently, fairly and at relatively low cost. Those who do not apply will likely do so in the knowledge they cannot earn residence (for example, they have a serious criminal record). Domestic enforcement resources can then be targeted on this small proportion of the illegally resident population.
9. By evaluating applicants' claims after they have been granted probationary legal status, an earned regularisation programme creates incentives for ongoing positive behaviour.
10. By requiring applicants to pay a substantial additional fee of £5,000 to offset central and local government expenditures, two critical goals are met. First, local government is actively brought on board, which is crucial if such a programme is to be successful. Second, a pool of money is created that can be used flexibly at the local level to help recently arrived immigrants integrate successfully in society. Better integrated immigrants, in turn, contribute to stronger communities that benefit all of their members.
11. The programme proposed here becomes, in effect, a transitional arrangement – a way of 'selecting' permanent immigrants better than under any immigrant selection formula that can be employed for prospective legal migrants. Such a selection process hugely increases the prospects of long term success both for the immigrant and the host society.

## ■ Conclusion

Policies on deportations and regularisations have different advantages and pitfalls. Large scale deportations are extremely, even prohibitively, expensive, can be socially and economically disruptive, and may have serious humanitarian consequences. For this reason, they are simply not acceptable in modern liberal democracies. Voluntary returns seem unfeasible on a large scale, even when they are accompanied by financial and other incentives.

Yet regularisation can be even more controversial. A large proportion of the host population is likely to oppose any form of amnesty and may organise to stop it. The US experience over the last few years illustrates the point.<sup>55</sup> Furthermore, critics claim that regularisations encourage further illegal migration. Accordingly, and almost invariably, governments claim that the proposed programme is 'exceptional' and unlikely ever to be repeated.

Within Europe's Schengen area, where internal borders have been dismantled, a regularisation in one country could also attract illegally resident (or recently regularised) third country nationals living in other member states. Moves to harmonise European migration rules on regularisation (strongly promoted by Nicolas Sarkozy of France and supported by Britain) are, however, almost certainly destined to flounder on the rocks of national sovereignty and lack of shared interest.

In the UK, what might be called the 'politics of amnesty' are pointedly against regularisation. In international terms, however, the UK takes an extreme position. In the United States, President Bush has strongly supported earned regularisation as has John McCain, the Republican nominee for the 2008 presidential election (though it should be noted that both men are out of step with their party's base on this issue). Barack Obama, the Democrat party's nominee for President, also supports earned regularisation. In southern Europe the issue is regularly

debated, and often forms part of the “bargain” that governments must strike to get immigration legislation passed. Even in countries such as Germany where opposition is as extensive as in the UK, regularisations still occur. The German example is of particular relevance as the illegally resident population there also includes a high proportion of asylum seekers, an analogous situation to that of the UK. In March 2007 the German government agreed that asylum seekers resident in Germany for eight years – six years for those with children – would be regularised, a law that has benefited at least 50,000.<sup>56</sup>

A radical rethink of how best to deal with the estimated 500,000 illegal immigrants in the UK is long overdue. The significant national security benefits that a well designed regularisation policy brings with it could provide the catalyst for the political realignment that will be required if such a policy forms part of a more nuanced approach to migration management.

Implementing such a policy will require us to move decisively beyond the simplistic arguments about regularisation ‘rewarding’ and ‘encouraging’ law breaking, however. Such observations lead only to policy dead ends. Instead, the debate should focus on what we know about immigrants’ motivations and behaviours – about the complex array of factors that drive them to leave their country of origin, to cross borders and seek illegal residence in another country. By considering such issues, the incentives that are built into regularisation programmes can be more carefully shaped. Getting this right is crucial both to the programme’s design and its effective implementation. Effective programmes in the future will be time-limited (but not insult the public’s intelligence with the “one-off” label) and screen those who contribute to society from those that do not.

Ultimately, the absence of an evidence based debate about regularisation is a failure of politics, not policy. Earned regularisation can and should form a part of the UK’s wider immigration strategy. Deporting our current stock of illegal immigrants is not a serious option and policymakers must face up to this reality. If well designed and competently executed, an earned regularisation programme has the potential to become an investment in our future safety, in the rule of law, in orderly labour markets, and in longer term social stability.

## Appendix: Three-tiered earned regularisation programme for the UK

<b>PREREQUISITES FOR REGULARISATION PROGRAMME</b>	
	Any applicant convicted of a serious crime would be barred from participating in the regularisation program.
	Applicants would have a minimum of three and a maximum of five years to earn the required number of points (this chart assumes three years). The countdown starts when the applicant receives a temporary work permit in Tier One.
	An initial fee of £200 will offset expected programme administration costs. A total fee (over five years) of £5,000, payable in quarterly instalments of £250 or annual instalments of £1,000, is required of all applicants to offset local government expenditure and provide additional resources earmarked for integration services.
	Each participant would be required to accept a Provisional Biometric Immigration Document (PBID) which will be the same as the BID that the government will roll out to all non-EEA foreign nationals from 2008. An electronic marker would be used to identify the carrier as a programme participant.
	Documentation to prove participants have met requirements should be based primarily on public records.

<b>TIER ONE: APPLICATION</b>	
Criterion for entry	Minimum requirements and rationale
Residence	The entry requirements are deliberately very broad. To prevent fraud (notably other unauthorised immigrants travelling from elsewhere in the EU) documentation from public records or legally witnessed documents would be required proving residence for three months or longer. This would include, for example, an employer letter (notarised) or proof of address (as would be required for a bank account) dated beyond three months.
	Detailed criterion
	Continuous residence in the United Kingdom for three months or more, prior to registering for programme.

TIER TWO: EARNED REGULARISATION					
Characteristics	Total possible points	Maximum points	Partial credit	Minimum requirements and rationale	
Stable job	30	A three year formal relationship with employer(s) and an employer letter of intent to continue to employ the applicant.	10 points for each year of a formal relationship with an employer.	Demonstrates likelihood of long term attachment to the labour market (a proxy for future employment "success").	
Paying taxes	15	Three years of "on-the-books" employment.	5 points for each year of "on-the-books" employment.	Partial credit recognises the transition from the informal to the formal economy may take time.	
English language	15	English fluency tested at International English Language Testing System (IELTS) Level 6 (or equivalent).	5 points for completion of IELTS 4 and IELTS 5 respectively.	LANGUAGE BAR. Participants must reach IELTS Level 3. The rationale is that language fluency is a basic integration indicator.	
Integration	8	Documented voluntary activity and passing of residence test.	Points are awarded for degree of involvement in voluntary activity: including churches, elderly care, youth, sports and community projects.	INTEGRATION BAR. Must pass the existing "Life in the UK" Test. Otherwise, rewards participation in the life of the community. This could be certified by a letter signed and approved by the Director or Board Member of registered charity.	

Service to Britain	8	Member of the Armed Services or Reserves or a similar form of governmental service.	4 points for public sector service, e.g. mentoring, skills building, school programmes, youth development programmes etc.	Integration proxy showing extraordinary commitment to the adopted country.
Family	8	Children.	Children/ spouse granted Leave to Remain.	Addreses one aspect of mixed status households and acknowledges the importance of family.
Employment sector	8	Employment in sectors where demand is highest-designated by the Migration Advisory Committee (MAC).	8 points for work in employment sectors of national economic strategic interest, e.g. environmental science.	Recognises the realities of and rewards employment in labour market sectors of high demand and future growth.
Geographic location	8	Willingness to live and work in parts of the country where population may be declining and labour needs are (or are projected to be) most pronounced.	N/A	Addreses the needs of the devolved administrations (e.g. Scotland) and certain regions (e.g. North East) which have been experiencing or are projected to experience declines in their working-age population due to ageing and emigration.
Lawfulness index	0	No conviction for illegal act other than one related to illegal immigration status.	Minor convictions (e.g. driving violations) result in deduction of between 1 to 5 points.	SERIOUS CRIMINAL BAR. Those convicted of a serious crime are barred from participation and are liable for immediate deportation.
Maximum points: 100. Passmark: 75% over a maximum of five years.				
NB Both the time required and the passmark can be adjusted to reflect administrative and political concerns.				

TIER THREE: RESIDENCE OR RETURN	
Residence	Return
<p>If the passmark is reached (a score above 75%) the applicant is granted Indefinite Leave to Remain. Application for full citizenship is encouraged.</p>	<p>If the passmark is not reached, the applicant is provided with a six-month temporary visa during which he or she must leave the country. If the applicant returns within six months, then they are free to apply to any legal migration programme. If they do not, rigorous return policy is enforced along with long term penalties for entry into Britain.</p>

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## Earned amnesty: bringing illegal workers out of the shadows

How to deal with the estimated 500,000 illegal immigrants in the UK is one of the seemingly most intractable and emotive policy challenges facing government.

This pamphlet proposes a detailed strategy and rationale for an 'earned' regularisation programme, which identifies those illegal immigrants who contribute to British society. This would give some illegal immigrants the opportunity to attain permanent residency – producing fiscal gains for the taxpayer but also drastically reducing the numbers of illegal immigrants unknown to the security services.

Such a strategy has the capacity to enhance public safety, cement the rule of law, cut down on exploitation and foster greater social stability. A carefully crafted earned amnesty would move the policy discussion beyond the dead-end arguments for and against a 'blanket amnesty' and towards a more nuanced approach that deals with the complex realities of illegal immigration.

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