Institute for Public Policy Research

BEYOND THE HOSTILE ENVIRONMENT

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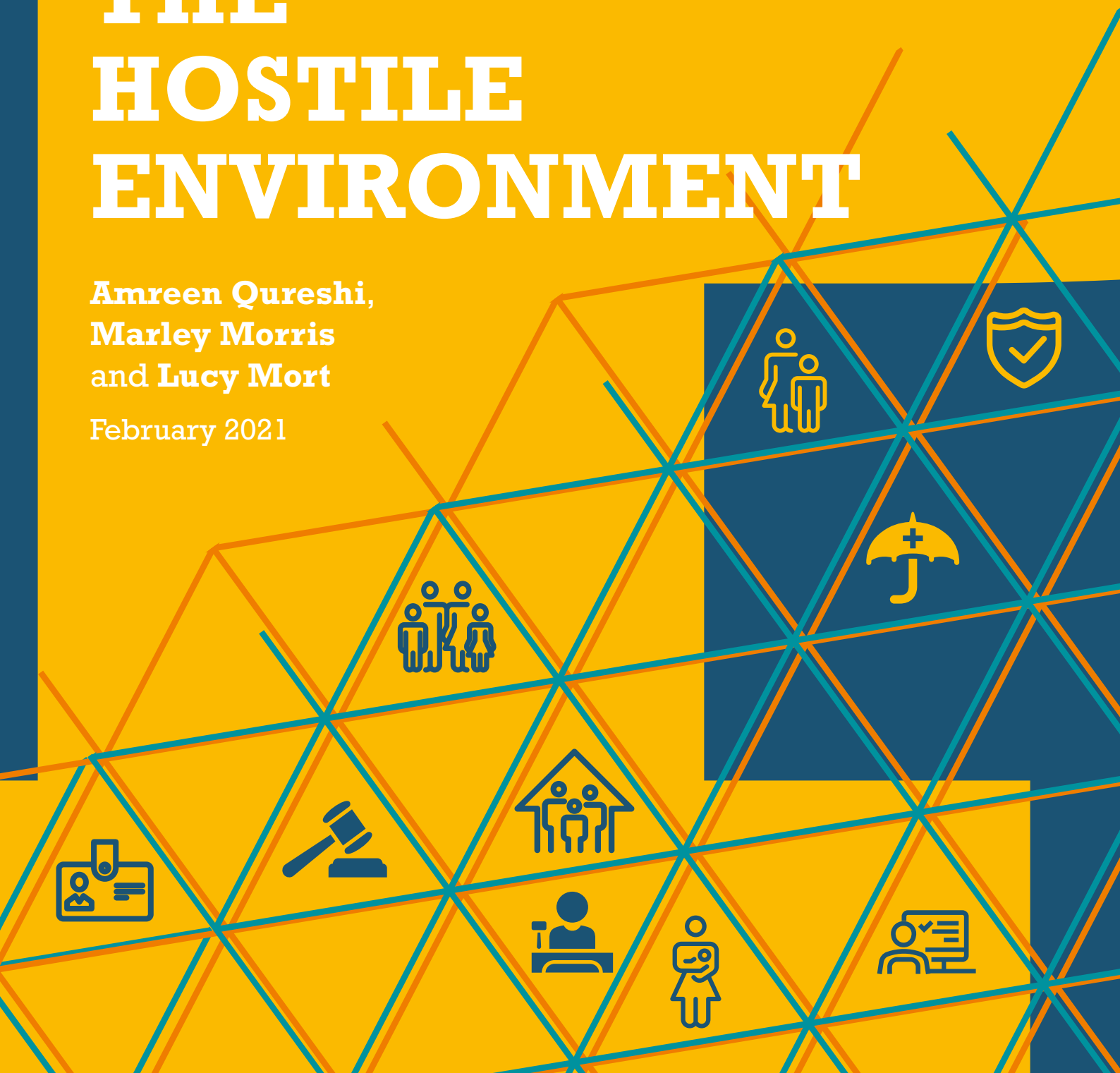

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ABOUT THIS REPORT

This report meets IPPR's educational objective by promoting research on the impacts and efficacy of the hostile environment. The analysis also contributes to our objective of relieving poverty by making proposals to address the impact of the hostile environment on destitution and disadvantage.

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SUMMARY

Over the past decade, the government has rolled out a series of measures with the specific aim of creating a 'hostile environment' for people who are currently residing in the UK without immigration status. These measures prevent people without the correct status from accessing employment, housing, public funds, free healthcare, and financial services, and are designed to encourage them to leave the UK of their own accord.

In our interim report for this project, *Access denied*, our comprehensive analysis of the hostile environment found that it had contributed to forcing individuals into destitution, fostered racism and discrimination, and was a driving factor in the emergence of the Windrush scandal. We highlighted evidence that the Home Office's enforcement of rules on illegal working had disproportionately affected specific ethnic groups and that requirements for landlords to check the immigration status of their tenants had introduced new forms of discrimination into the private rental sector. We found little evidence to show that this approach to enforcement is encouraging individuals to voluntarily leave the UK and we reported that it had damaged the reputation of the Home Office and created policy paralysis within the department.

In this final report we assess six different policy options for addressing the adverse impacts of the hostile environment on individuals and communities and for reforming the current system of immigration enforcement. These options – which we have developed based on interviews with migrants' rights organisations, policy and legal professionals, former government officials, and people with direct experience of the hostile environment – are not mutually exclusive, but represent differing approaches to tackling the adverse impacts of the hostile environment. These options could therefore be combined in different ways as part of an overall programme of reform.

POLICY OPTIONS

Option 1: Repealing the hostile environment

The government could repeal legislation enacting key measures of the hostile environment – including relevant provisions on 'right to rent' and 'right to work' in the Immigration Acts 2014 and 2016.

This option would seek to remove many of the adverse impacts of the hostile environment by directly targeting the current system of checks and charges. There is little evidence to suggest that this would have a major impact on voluntary departures. However, one challenge with this option is determining the scope of the legislation to be repealed and judging the appropriate balance between reforming and repealing different hostile environment measures.

Option 2: Reforming the Home Office

The government could build on the Windrush Lessons Learned review to change Home Office culture, rooting out practices that foster racial discrimination and ensuring that all policy and operational decisions are grounded in evidence rather than anecdote.

This option would improve the evidence base on the impacts of the hostile environment, help to identify and address any discriminatory practices in operational decision-making, and safeguard against the development of new

policies that foster ethnic inequalities. However, such institutional and cultural change would require time and political will. Moreover, this option would need to be accompanied by wider legislative reform to fully address the negative impacts of the hostile environment.

Option 3: Introducing an 'amnesty'

The government could introduce a temporary pathway for people currently living in the UK without immigration status to become regularised without any repercussion from immigration enforcement – modelling the application process on the recent EU settlement scheme.

This option would offer clear benefits for those who were eligible by providing a pathway to regularisation. In addition to the wider economic and fiscal benefits of an 'amnesty', there is also a case for introducing one on public health grounds – especially in the context of the current pandemic. However, this option raises questions over effective design and concerns that it could entrench other punitive enforcement practices.

Option 4: Securing improved pathways to regularisation

The government could reshape the pathways for people without immigration status to become regularised – focusing efforts on helping the most vulnerable groups to secure immigration status.

This option, in particular, would benefit people in vulnerable circumstances to secure a pathway to regularisation and would complement the Home Office's wider agenda on tackling modern slavery, trafficking, and domestic violence. However, there are challenges in reshaping and designing new routes to regularisation, including determining how eligibility is defined and the type of status granted.

Option 5: Providing access to safe services

The government could create a 'firewall' to prevent the sharing of immigration data between public services – including the NHS, social services and policing – and Immigration Enforcement.

A firewall could allow migrants to come forward to report crimes or seek treatment without fearing that their information will be passed on to Immigration Enforcement. 'Safe services' could additionally help to rebuild trust between migrant communities and frontline service providers. However, it is important to consider the legal and logistical barriers in achieving a firewall, as well as the concerted effort and time it would take to build a culture of safety and sanctuary across different public services

Option 6: Introducing ID cards

To help avoid a repeat of the Windrush scandal, the government could require all people living in the UK to have an ID card (either physical or digital) in order to conduct immigration checks and charges.

Positive arguments for this option include claims that an identity-based system of checks could reduce the risk of administrative error and could be less discriminatory compared with the status quo. However, there are concerns that ID cards would exacerbate the hostile environment by automating the system of checks and charges. Moreover, the argument that this option would prevent another Windrush scandal is not persuasive, given that marginalised communities would still risk being excluded from any ID card system.

RECOMMENDATIONS

Drawing on our analysis of these six options, we recommend a programme of policy reform based on three primary pillars: new legislation on checks, charges and data-sharing; reforms to the operation of the Home Office; and a restructuring of the routes to regularisation for people without immigration status.

1. Changes to checks, charges and data-sharing

We propose: **repealing 'right to rent'** and other key parts of the hostile environment; **reforming 'right to work'** by removing the offence of illegal working and administering checks only through national insurance numbers; and **introducing new legislation to create a 'firewall'** preventing the sharing of immigration data between public services and the Home Office. This package of legislative reforms would: help to deliver a major transformation in the government's approach to immigration enforcement; end a number of discriminatory practices; and significantly reduce the role of employers, landlords and frontline workers in administering immigration controls.

2. Home Office reform

We propose **reforms to the Home Office to foster an evidence-based, non-discriminatory approach to immigration enforcement throughout the department**. This includes: expanding the resources of the Analysis and Insight directorate to more accurately assess the impacts of Home Office policies; regularly measuring the impacts of decision-making on different ethnic groups and developing action plans to address any bias or discrimination; and sponsoring an independent body led by people with direct experience of the immigration system to promote the rights of migrants and investigate Home Office practices where there is evidence of adverse impacts. These measures would: help to tackle discrimination and racism in government decision-making; ensure effective scrutiny of Home Office practices; and improve the reputation and operational effectiveness of the department.

3. Improved routes to regularisation

We propose **reshaping the current routes to regularisation available for people living in the UK without permission**. This includes developing a system with two clear routes for people to secure indefinite leave to remain: a 'long residence' route for people without immigration status who have lived in the UK for long periods and a 'vulnerable situation' route for people facing vulnerable circumstances, including people subject to or at risk of exploitation and abuse and people with serious physical or mental health issues. This restructuring would help to simplify the routes available for people without immigration status and would ensure that people in particularly vulnerable circumstances would be able to safely access the support they need.

Our interim report found that the hostile environment is not working for anyone: not for migrants, the Home Office, nor the wider public. Our proposed reforms set out in this report seek to build on the lessons learnt from the Windrush scandal to develop a system which is well evidenced, fair and protects the wellbeing of all those living within the UK. While we recognise that these proposals are ambitious, they could pave the way towards a transformed immigration system which supports the most vulnerable, improves Home Office decision-making, and safeguards against discrimination.

1. INTRODUCTION

The 'hostile environment' approach to immigration enforcement – also referred to as the 'compliant environment' by the Home Office – has been developed under successive governments over the past couple of decades. It refers to a series of measures aimed at excluding people currently in the UK without immigration status from basic necessities, including employment, housing, public funds, free healthcare, and financial services. These measures are designed to be a deterrent to others and to force people to leave the country of their own volition – that is, without the direct involvement of the Home Office.

In *Access denied*, our interim report for this project, we found that the hostile environment had resulted in a series of adverse impacts on individuals and communities. We collected evidence that the hostile environment had contributed to forcing many individuals without immigration status into destitution, fostered racism and discrimination, and mistakenly impacted individuals who had the legal right to live and work in the UK – as witnessed through the high-profile cases that emerged as a result of the Windrush scandal. We also documented the impacts of the government's approach to immigration enforcement on wider public health and safety, concluding that it had undermined efforts to protect the public by deterring migrants from seeking hospital treatment and from reporting crimes.

Our interim report found that there was little evidence that the 'hostile environment' approach to immigration is working on its own terms. Our analysis revealed that the number of voluntary returns that were independent of Home Office involvement had dropped considerably since 2014, the year that many of the key measures were introduced. We noted that the Home Office had failed to adequately demonstrate the success of this policy, despite increasingly stringent measures, and had suffered reputational consequences from the Windrush scandal. There were reports of operational confusion, low morale and policy paralysis within the department. Ultimately, we concluded that the hostile environment approach did not appear to be working for anyone: not for migrants, the Home Office, nor the wider public.

Our research on the impacts of the hostile environment indicates systemic flaws in immigration enforcement. Calls for reform have been made across the political spectrum – most prominently as a result of the Windrush Lessons Learned review. The government is currently undergoing a comprehensive evaluation of the hostile environment as part of 'sweeping reforms' to Home Office policies and practices.

The aim of *Access denied* was to assess the impacts of the hostile environment on individuals and communities, professionals and frontline workers, and on the Home Office itself. This final report now explores what solutions could be put in place to address the adverse impacts of the hostile environment, in the spirit of promoting an evidence-based, fair and equitable immigration system. In this report we will:

- outline the current policy context and the Home Office's current plans to learn from the failures exposed by the Windrush scandal (chapter 2)
- propose, discuss and analyse six specific policy options which can play a role in mitigating the adverse impacts of the hostile environment (chapter 3)

- produce a programme of policy reform for addressing the adverse impacts of the hostile environment, drawing on the analysis of our six policy options (chapter four).

The policy options presented here are informed by the research and analysis in our interim report. For each of the 18 interviews in our first report, we asked participants for their views on how the immigration system should be reformed. These interviews formed the basis of the six policy options we developed. In October 2020, we then held a virtual policy workshop to debate these six options. Thirty participants with a range of expertise from migrants' rights organisations, think tanks, and the legal and policy profession, as well as people with lived experience, attended the workshop and debated the six policy options. The discussions that emerged from the workshop are reflected throughout the paper, informing our own proposals for immigration reform.

2.
WHERE ARE WE NOW?
THE CURRENT POLICY CONTEXT OF THE HOSTILE ENVIRONMENT

In recent years, the Home Office's 'hostile environment' approach to immigration policy has faced mounting criticism. In 2018, it emerged that many people who had originally come to the UK in the postwar period as part of the Windrush generation had been mistakenly barred from working, renting, and accessing benefits and public services as a result of the hostile environment. The scandal emerged because members of the Windrush generation had in many cases not been provided with any documentation to prove their immigration status, despite having lived legally in the UK for decades.

The Windrush scandal shone a spotlight on the hostile environment and put pressure on the government to rethink its approach to immigration enforcement. After suspending proactive data-sharing with government departments and introducing new safeguards, the home secretary commissioned an independent review to learn lessons from the scandal. Led by HM Inspector of Constabulary Wendy Williams, the Windrush Lessons Learned review found a series of failings in Home Office policy and processes had led to the injustice, including a 'culture of disbelief and carelessness' and an 'institutional ignorance' on matters of race (Williams 2020). Further independent reviews in recent months have found that the Home Office lacks an evidence base for its hostile environment approach, does not have a clear understanding of the impact of its policies, and risks basing decision-making on 'anecdote, assumption and prejudice' rather than reliable data (NAO 2020, PAC 2020).

In response to the Windrush Lessons Learned review, the home secretary Priti Patel has accepted all 30 of Wendy Williams' recommendations for reform and has promised a more compassionate approach to immigration policymaking based on 'people not cases' (HoC 2020). The Home Office has set up a Windrush Cross-Government Working Group to support the Windrush generation and improve take-up of the Windrush schemes, to input into the Home Office's response to the Windrush Lessons Learned review, and to collaborate with the government's Commission on Race and Ethnic Disparities.

Most recently, the Home Office has launched a 'comprehensive improvement plan' to deliver on all 30 of the review's recommendations (Home Office 2020). The plan is broken down into five themes.

1. **Righting the wrongs and learning from the past –** including continuing the Windrush scheme to allow people from the Windrush generation to apply for documentation to prove their residency rights and taking a proactive approach to identifying those people affected.
2. **A more compassionate approach** – including reviewing the 'compliant environment', implementing a programme of major cultural change in the department, and developing an ethical decision-making model for immigration decisions.
3. **Robust and inclusive policymaking** – including improving the department's historical understanding of immigration legislation, expanding training on the Public Sector Equality Duty, and simplifying and consolidating immigration law.

4. **Openness to scrutiny** – including improving external engagement with community groups and stakeholders and considering the introduction of a migrants' commissioner, who would be an independent advocate for people affected by the immigration system.
5. **An inclusive workforce** – including recruiting external experts on race and immigration onto the Home Office's strategic race advisory board and revising the department's diversity and inclusion strategy to improve black, Asian and minority ethnic representation in senior civil servant roles.

The Home Office's review of the 'compliant environment' is a critical element of the comprehensive improvement plan. The Home Office has said that, while it does not plan to deviate from the key principles underlying the 'compliant environment' approach to immigration enforcement, it will make changes if the review finds evidence that its approach is not working or that it is creating unintended consequences. The review will look at all hostile environment measures individually and collectively, breaking down the different elements of the hostile environment into six components: access to work, housing, public funds, health, financial services, and driving. Outputs will be ongoing, but an initial analysis is expected to be complete by autumn 2021.

Alongside these developments from the Windrush scandal, the hostile environment has faced further calls for reform over the past year in light of the Covid-19 crisis. The pandemic has exposed the risks that NHS charging poses to public health: despite Covid-19 being exempt from the charging regime, there are reports of migrants being deterred from seeking treatment over fears of healthcare charges or of their data being shared with Immigration Enforcement (Patients not Passports 2020). As the UK rolls out its vaccination programme, there are likely to be concerns too about the consequences of the deterrent effect on the programme's ability to protect public health. Given rising levels of unemployment, the no recourse to public funds (NRPF) condition has also faced criticism for leaving migrants – including many from black, Asian or ethnic minority backgrounds – without a social safety net and placing further financial burdens on cash-strapped local authorities (House of Commons Library 2020a). As a result, there have been repeated calls for the suspension of some hostile environment measures for the duration of the Covid-19 crisis, in order to help control the spread of the virus and protect public health (BBC News 2020; Mayor of London 2020; Migration Exchange 2020).

Concerns have also been voiced about the forthcoming impact of the hostile environment on EU citizens in the UK. As free movement has now ended as a result of the UK's exit from the EU, any EU citizen who has not applied to the EU settlement scheme before 30 June 2021 will be exposed to the full force of the hostile environment. There is a risk that some will miss the deadline, due to barriers in applying to the scheme, and could therefore face restrictions in accessing work, housing, and public services (the3million 2019; Migration Observatory 2020).

In the midst of the fallout from the Windrush scandal and widespread calls for reform, recent evidence from David Bolt, the Chief Immigration Inspector, suggests there has been a fall in morale among Home Office officials. Bolt's 2019 report on illegal working highlighted that the Windrush scandal had strained the Home Office's relationships with businesses and other government departments, inhibited recruitment, and had had a 'negative impact on the frontline' (ICIBI 2019). As our interim report noted, the Home Office has faced policy paralysis and a reduction in enforcement activity, which has been further exacerbated by the pandemic. The Home Office itself therefore has much to benefit from reforms to its current approach to immigration enforcement.

3. POLICY OPTIONS FOR REFORMING THE HOSTILE ENVIRONMENT

In this chapter we assess a number of alternatives for addressing and mitigating the adverse impacts of the hostile environment. Through our interviews with expert stakeholders – including policy researchers, immigration lawyers, former government officials, migrants' organisation representatives, and people with lived experience of the hostile environment – we have identified six options for reform. These options are not mutually exclusive, but they represent different approaches to tackling the damaging effects of the government's hostile environment policy. In the following sections, we develop a holistic assessment of the strengths and challenges of each of these options.

OPTION 1: REPEALING THE HOSTILE ENVIRONMENT

The government could repeal legislation enacting key measures of the hostile environment – including relevant provisions on 'right to rent' and 'right to work' in the Immigration Acts 2014 and 2016.

As explained in our interim report, the hostile environment is composed of a range of laws, initiatives and practices that have slowly developed over the past couple of decades. At its core, the hostile environment has been introduced via legislation requiring employers, landlords and service providers to enforce checks and charges targeted at those without immigration status. This legislation is complex and has built up over time, but there are a number of key building blocks:

- **Immigration, Asylum and Nationality Act 2006** – introduced a civil penalty scheme for employers who employ individuals who do not have a right to work in the UK
- **Immigration Act 2014** – introduced penalties for landlords who let to tenants who do not have a right to rent in the UK, as well as restrictions on people without immigration status opening bank accounts and obtaining driving licences
- **Immigration Act 2016** – introduced a new criminal offence of working illegally and tightened the rules on 'right to rent'
- **Charging Regulations** (including the National Health Service (Changes to Overseas Visitors) Regulations 2015 and subsequent amendments) – required overseas patients ineligible for any exemptions to be charged 150 per cent of the NHS tariff for their treatment and introduced upfront charging for care which is not urgent or immediately necessary.

One policy option for reducing the harmful effects of the hostile environment is therefore to repeal some or all of this legislation.

Our research with experts and stakeholders identified the following strengths and challenges with this policy option.

Strengths

As outlined in our interim report, the legislation enacting the hostile environment has had a range of adverse impacts on individuals and communities. It has forced people into destitution, helped to facilitate racism and discrimination, and mistakenly affected people who have a legal immigration status. Directly removing this legislation would therefore help to remove many of these impacts. Repealing hostile environment laws would also be likely to limit the 'deterrent effect' for many migrants in accessing services; ending upfront charging in the NHS, for instance, would be likely to encourage people without immigration status to come forward for treatment. In the midst of a pandemic, this could have positive implications for public health.

Moreover, it is not clear that removing some or all of the hostile environment laws would undermine the government's efforts at immigration enforcement. As our analysis in our interim report revealed, the major legislative extensions to the hostile environment in recent years have coincided with a fall in voluntary returns, despite their purpose being to encourage people without immigration status to leave the UK. Without any evidence to show that the hostile environment is working on its own terms, there is little reason to think that removing legislation would have a major impact on immigration enforcement outcomes.

Challenges

One of the main challenges with this policy option is determining the precise scope of the hostile environment. It is not clear whether efforts to repeal hostile environment legislation should be confined to the Immigration Acts 2014 and 2016 – which introduced many of the principal recent policies – or whether they should extend further back to other legislation, such as earlier policymaking on access to benefits or 'right to work' checks. A programme of legislative repeal would therefore need to carefully consider each piece of law on its own merits, assessing the different impacts of repeal and the risks of any unintended consequences.

There are elements of the hostile environment for which there is a particularly strong case for repeal. The 'right to rent' checks for landlords, for instance, have been demonstrated to lead to discriminatory outcomes and are in many cases misunderstood by landlords themselves (Patel 2017). Similarly, the new criminal offence of illegal working has been critiqued on the basis that it is inappropriate to further criminalise people who may well be victims of exploitation and that this could inhibit efforts to tackle trafficking and modern slavery (FLEX 2016).

In other areas, however, repealing legislation related to the hostile environment could conflict with other policy priorities. The most prominent of these is the 'right to work' civil penalty scheme introduced in 2008. Most of the experts and stakeholders we spoke to considered this to be an important component of the hostile environment even if it predated the former home secretary Theresa May's programme of reforms in the 2010s. This is because 'right to work' bars access to employment for people without immigration status and so risks forcing undocumented migrants into poverty and destitution. Yet at the same time the government is likely to resist any effort to repeal 'right to work' because restricting access to the labour market is its most direct way of controlling immigration. With the UK ending the free movement of people within the EU, 'right to work' checks are the primary means by which the government plans to regulate its new points-based system. Therefore, on 'right to work', it may be

more feasible to explore options for reform rather than repeal (see box 3.1 for a discussion of different reform options for 'right to work').

A further challenge for this policy option is whether repealing legislation could leave a policy vacuum which is filled by inconsistent and potentially discriminatory practices on the frontline. There is a risk that, if legislation such as 'right to rent' is repealed and the accompanying guidance is withdrawn, some landlords could continue discriminatory practices. Indeed, there is a risk in some instances that racist and discriminatory practices could increase without formal guidance in place. Any efforts to repeal legislation would therefore need to be implemented carefully to avoid unintended consequences and to clarify the new roles and responsibilities of employers, landlords, and frontline professionals.

On the basis of this assessment, we consider that an effective reform package must in part involve repealing at least some of the government's hostile environment measures. We discuss the appropriate balance of repeal and reform in the following chapter, which outlines our policy programme for addressing the adverse impacts of the hostile environment.

BOX 3.1: REFORMING 'RIGHT TO WORK'

The 'right to work' regime in the UK imposes civil penalties on employers who employ individuals without permission to work in the UK. It is also a criminal offence to both employ a worker without permission and to work without permission, if one knows or has reasonable cause to believe that permission to work has not been granted. As discussed in the main text, it may be unfeasible to fully repeal 'right to work' but there are other ways in which it could be reformed to address some of the impacts of the hostile environment. We have identified three potential avenues for reform.

1. Changing the 'right to work' requirement for employers

Currently an employer is liable for a civil penalty if they employ an adult with no permission to work in the UK. They can be excused from paying a penalty if they have conducted the required 'right to work' checks on their employee and they had no knowledge of their employee's true status. Such a system risks facilitating discrimination towards minority ethnic groups. This is because employers are not simply fined for failing to conduct 'right to work' checks on employees with legal permission to work in the UK; they are only fined when checks have not been conducted on employees without legal permission to work. Employers concerned about civil penalties could therefore be more likely to scrutinise workers who they suspect to be in the UK without permission – encouraging discrimination based on ethnicity and nationality.

The risk of discrimination could be mitigated by amending the requirement for employers. Rather than imposing civil penalties on employers who hire workers without permission to work, penalties could be imposed on employers who fail to check an individual's documents, regardless of whether that individual has a right to work.

Going further, the 'right to work' requirement could alternatively be combined with checks on national insurance numbers (NINOs). Currently, HMRC conducts 'right to work' checks before allocating NINOs, but these cannot be used as a substitute for 'right to work' checks for employers (House of Commons Library 2020). Under this proposal, employers would only need to check an employee's NINO to determine their right to work in the UK. An individual's 'right to work' could be checked by HMRC when they first apply for a NINO and then could be rechecked regularly as their

immigration status changes. The employer's sole duty would then be to verify whether their employee's NINO was valid, as this would signify that their employee had the right to work in the UK.

While this would not resolve all the challenges of the hostile environment, such a reform would shift the burden of immigration enforcement away from employers and back onto government officials. This in turn could help to reduce racial discrimination in the labour market.

2. Changing the sanctions for employers and employees

Under the current rules, hiring an employee without permission to work in the UK can incur a civil penalty of up to £20,000 per worker, while employing them knowingly or with reasonable cause to believe they do not have permission can lead to criminal prosecution and custodial sentences of up to five years. An individual who works without permission can also be subject to criminal charges and face imprisonment and the seizure of their earnings. These sanctions can be so severe that they result in bankrupting small businesses, many of which may not have intentionally hired workers illegally (Vassiliou 2020). Moreover, the sanctions targeted at workers themselves risk deterring victims of exploitation and modern slavery from coming forward to the authorities.

One approach to reforming 'right to work' is therefore to adjust the sanctions for employers and employees involved in working without permission. Most straightforwardly, the legislation creating the offence of illegal working could be repealed. This would reduce the risk of 'right to work' rules undermining efforts to tackle trafficking and modern slavery.

3. Changing the Home Office's enforcement of 'right to work' provisions

Our interim report found that the Home Office's enforcement of 'right to work' disproportionately affects South Asian and Chinese restaurants and takeaways. Most of these interventions are based on allegations from members of the public. This approach to enforcement risks being both discriminatory and ineffective, as it focuses enforcement action on only a narrow group of employers. According to the chief immigration inspector's recent report into illegal working, Home Office officials recognised the problems inherent in this approach but continued to target their deployments on nationalities believed to be 'removable' (ICIBI 2019).

The Home Office could reform how it enforces the 'right to work' provisions by taking a more evidence-based approach, considering carefully the potential discriminatory impact of patterns in enforcement action. Any deployments by immigration compliance and enforcement (ICE) teams would only be based on robust, accurate and detailed intelligence. Where evidence was lacking, enforcement action would not be taken. Moreover, where it was clear that patterns of discrimination were emerging – through, for instance, the targeting of specific premises or locations – intelligence and operational decisions would be reviewed to ensure a balanced and unbiased approach to enforcement.

OPTION 2: REFORMING THE HOME OFFICE

The government could build on the Windrush Lessons Learned review to change Home Office culture, rooting out practices that foster racial discrimination and ensuring that all policy and operational decisions are grounded in evidence rather than anecdote.

The Home Office is the government department responsible for enforcing immigration rules. Our interim report brought together evidence of important deficiencies in the Home Office's implementation of the hostile environment. We found, for instance, that the department's enforcement of 'right to work' disproportionately affected South Asian and Chinese businesses, on the basis that they employed migrants who were easier to remove from the UK (Qureshi et al 2020; ICIBI 2019).

Other research has drawn similar conclusions. The Windrush Lessons Learned review found serious failings in Home Office decision-making and a 'culture of disbelief' which contributed to the Windrush scandal (Williams 2020). The review came close to describing the Home Office as institutionally racist. The Public Accounts Committee's recent report into immigration enforcement found that the Home Office had a limited understanding of the impacts of its policies on individuals, warning that without an evidence base the department risked making decisions on the basis of 'anecdote, assumption and prejudice' (PAC 2020).

There is therefore a case for reforming the Home Office – and in particular its Immigration Enforcement division – to facilitate evidence-based policymaking and safeguard against racism and discrimination. The home secretary has already accepted the recommendations of the Windrush Lessons Learned review, including implementing a programme of major cultural change across the department, developing an ethical decision-making model, and improving impact assessments to fully consider the adverse effects of new policies on different ethnic groups. There are further steps, however, which can be taken to transform the Home Office's approach to immigration decision-making, in order to ensure it is firmly based on evidence. This would involve:

- **expanding the Home Office Analysis and Insight directorate** to gather more information on the implications of policy and operational interventions on the lives of people without immigration status – ensuring this information then shapes Home Office decision-making
- **assessing on a periodic basis the impact of all proposed and existing policies on ethnic inequalities**, alerting the home secretary to any evidence of discriminatory interventions and developing action plans for how these should be addressed
- **creating a new independent body responsible for migrants' rights**, complementing the independent chief inspector of borders and immigration, to proactively evaluate evidence of the impacts of immigration enforcement on different migrant communities through a complaints and investigation function.

Our research with experts and stakeholders identified the following strengths and challenges with this policy option.

Strengths

This option would aim to reform the Home Office's approach to immigration enforcement, resulting in decision-making which is rooted in evidence and takes account of the differential impacts of enforcement action on communities. Through improving the Home Office's analysis and insight functions, this option would also shed further light on the impacts of hostile environment measures on people without immigration status and other affected groups. Moreover, Home Office reforms would help to safeguard against the risk of future policies which discriminate against ethnic minority groups or which have an adverse impact on marginalised communities.

As noted by some of the experts we engaged with, one further strength of this policy option is that there is a broad consensus that the Home Office is in need of fundamental reform. The current home secretary Priti Patel has recognised that the Windrush scandal exposed 'institutional failings at the heart of the Home Office' and has firmly committed to implementing in full the recommendations of the Lessons Learned review (Home Office 2020). The Home Office is therefore in principle open to radical reform towards a more compassionate, inclusive and rigorous approach to policymaking.

Challenges

There are, however, limits to addressing the hostile environment through Home Office reform. During our policy workshop, we heard from our expert stakeholders that institutional reforms may not ultimately help to address the impacts of the hostile environment. There was some scepticism about the efficacy of the Home Office's comprehensive improvement plan and doubts that the plan would achieve more than merely superficial change.

The Home Office itself acknowledges that securing institutional reform will undoubtedly face significant hurdles. Expanding the Analysis and Insight directorate and building a stronger evidence base on immigration enforcement will involve additional resources and innovative approaches to data-gathering, given the inherent difficulties in surveying the population of undocumented migrants in the UK. The reliance on allegations from members of the public for informing immigration enforcement action could inhibit a robust and data-driven approach.

Moreover, cultural change within the department is likely to take both time and political will. The expert stakeholders we consulted noted that the process of operational and cultural change is one which 'will not happen overnight' and could prove challenging to implement in a department with a large turnover of staff and patchy institutional memory.

Finally, institutional improvements will need to be coupled with policy and legislative reforms in order to achieve real change. As our interim report found, addressing the impacts of the hostile environment cannot simply be confined to improving the operation and administration of the Home Office. Securing meaningful long-term reform will require progress on multiple fronts.

On the basis of our assessment, we consider this policy option to be an important element of any reform package, provided it is complemented with other proposals. We discuss how to implement Home Office reform further in the following chapter.

OPTION 3: INTRODUCING AN 'AMNESTY'

The government could introduce a temporary pathway for people currently living in the UK without immigration status to become regularised without any repercussion from immigration enforcement – modelling the application process on the recent EU settlement scheme.

The hostile environment is primarily targeted at people living in the UK without immigration status. It therefore affects individuals who have resided in the UK for many years but who are unable to regularise their status. This may happen for a range of reasons. Some people seeking refuge, for instance, may have been denied asylum and be deemed 'appeal rights exhausted' – that is, they have no further common legal routes to appeal the decision on their asylum claim. Some people who would otherwise be eligible to apply for a visa may face financial barriers and be unable to afford application or legal fees. Others may be victims of trafficking and exploitation and so face barriers to regularisation – including, for instance, having their passport removed by their employer or facing a prohibitive burden of evidence for available regularisation routes.

Migrants in circumstances such as those described above face significant barriers to accessing work, housing and public services. The hostile environment, as outlined in our interim report, is intentionally designed such that checks, charges and data-sharing in public and private services severely limit the quality of life for people without immigration status in order that they voluntarily leave the country.

The regularisation of immigration status, however, is notoriously complex and protracted. One possible solution therefore for minimising the challenges of the hostile environment – or at least the number of people subject to its adverse effects – is to conduct a mass-regularisation exercise in which those without immigration status are able to apply for leave to remain without the threat of immigration enforcement. An 'amnesty' of this type could be designed so that it benefits large numbers of people who have been resident in the UK for many years without the option to make their stay legal and secure.

Our research with experts and stakeholders identified the following strengths and challenges with this policy option.

Strengths

Some of those we consulted about this policy recognised that it was potentially an option that could be implemented with some immediacy, and that it could feasibly therefore have a direct impact on improving the lives of those eligible and without immigration status. There is also evidence of some appetite for such an intervention in the current political landscape; the prime minister, for instance, has at multiple points throughout his political career supported the idea of an amnesty, on the basis that it is a pragmatic move to reduce the number of people in the UK without an immigration status (Hickman 2019).

Furthermore, there are precedents for such a policy intervention, although they are often not labelled as an 'amnesty' per se. For instance, a report by the Home Affairs Select Committee in 2011 claimed that successive governments had operated a low-profile 'amnesty' programme by granting legal status to around 160,000 asylum seekers in cases where applications had been unresolved for a number of years (Home Affairs Committee 2011). This was framed as an exercise through which the Home Office could eliminate a substantial administrative backlog from their systems (Travis 2011). In times of crisis, there have also been amnesties granted on compassionate grounds, as seen through the amnesty open to survivors of

the Grenfell Tower tragedy in 2017 – many of whom were individuals without an immigration status. Following high-profile criticisms, this amnesty was amended so that survivors were not only offered a 12-month temporary reprieve, but an eventual pathway to settlement (Quinn 2017).

The Home Office also has experience of rolling out similar initiatives on a large scale – with the EU settlement scheme offering either settled status or a route to settlement for EU citizens as a result of the end of freedom of movement. While there are a number of criticisms of the implementation of this scheme (see for example House of Commons Library 2020c), it has successfully provided status to more than 4 million EU citizens. This demonstrates that there are plausible means through which large numbers of migrants could be regularised.

There is also an economic argument for an amnesty, with the opportunity for considerable numbers of people to move out of informal employment and into formal occupations, perhaps better suited to their qualifications. Though the evidence of impacts varies depending on the design of regularisation programmes, there are a number of studies suggesting that they can have important economic benefits: greater numbers of people may be able to work in roles consistent with their qualifications, leading to higher productivity; they may work in more secure, regulated and better paid employment; and they may increase their fiscal contributions through income tax and national insurance payments (Kossoudji 2016, Fanjul and Dempster 2020).

In the context of the pandemic, there has been a renewed emphasis on regularisation pathways, with a number of European countries, including Greece, Italy and Portugal, implementing amnesty programmes in recent months. As well as being driven by the potential benefits outlined above, the role of migrants as 'key workers' in the pandemic response has been recognised as a factor. Some have noted that for individual migrants and for the benefit of wider public health there is a social incentive to offer job security and better access to healthcare for those without immigration status. In addition, regularising the status of those who are already in the country could be important for mitigating against labour shortages in the context of reduced migration flows (Fasani 2020).

Challenges

There are, however, a number of potential challenges in implementing an amnesty for people without immigration status. The OECD (2020) has cited some potential reasons for government opposition to amnesties or regularisation programmes:

- it could encourage more undocumented or irregular migration on the basis that there may be future regularisation programmes
- it may be considered an 'ex post' solution rather than one which deals with the underlying policy issues
- large-scale regularisation programmes would mean that governments would have to implicitly acknowledge that their internal and external immigration controls were ineffective, creating reputational consequences.

Despite the sense that an amnesty could be a potential quick win, our workshop with stakeholders exposed a fair amount of scepticism and criticism levelled at this policy option. They noted that amnesties are highly mutable and can, in the long term, have unintended and unfavourable consequences. Some of those we consulted were concerned that they have tended to go hand in hand with a doubling down on enforcement measures. Others critiqued the policy on the basis that it would not address the underlying problems and discriminatory nature of the hostile environment.

Some experts we spoke to expressed concerns about the associations and implications of the term 'amnesty', which may imply that those who do not have immigration status are being 'forgiven and awarded' their status, rather than exercising a right to seek security. An amnesty also tends to rely on people coming forward to apply for the status being offered, raising the possibility of trust barriers with the Home Office which will result in people being reluctant to formally apply. In some cases, amnesties have offered temporary protection, after which point people are potentially again exposed to immigration enforcement, thereby simply delaying rather than resolving the impacts of the hostile environment.

The often-exclusive nature of an amnesty means that there would also likely be a process of determining who would and would not be eligible to apply. These assessments tend to be made on the basis of considerations such as length of time in the country and character-based assessments. There is a high degree of subjectivity in the design of amnesty programmes, with the likelihood that there are a number of people who will not be eligible and who are pushed further under the radar. In our workshop, there was a feeling among some individuals working with migrant communities that such an exercise could potentially throw up more problems than it would solve.

On the whole, despite the political support referred to in the previous section, the political will and capacity to enact an amnesty may be constrained by the current context. The expenditure associated with an amnesty on a large scale is substantial and may be difficult to justify, and – though there is little evidence to substantiate it – claims that amnesties serve as a pull factor may deter political support. The sudden potential eligibility of significant numbers of migrants for welfare and housing is likely to be politically contentious. On the other hand, there were concerns that an amnesty could be instated with NRPF conditions attached – which would leave some of the challenges facing people without immigration status unresolved.

The impacts of an amnesty are therefore likely to be mixed. Ultimately, the design of any amnesty programme would have to be rigorously assessed to ensure that it supports people to come forward, does not exclude vulnerable groups, and manages the risks of any unintended consequences.

Based on this assessment, we have not included the option of an 'amnesty' as one of our main priorities in our programme of policy reform in the next chapter. However, we recognise it could be a useful option for the government to consider in particular exceptional circumstances – notably, in the context of the current coronavirus pandemic.

OPTION 4: SECURING IMPROVED PATHWAYS TO REGULARISATION

The government could reshape the pathways for people without immigration status to become regularised – focusing efforts on helping the most vulnerable groups to secure immigration status.

Many of the people most adversely affected by the hostile environment are those in particularly vulnerable circumstances – including people with serious physical or mental health challenges, people subject to domestic abuse, and victims of exploitation and modern slavery (Qureshi et al 2020). Indeed, there is evidence that some people lose their status as a result of such circumstances – for example, some may lose their status if they leave abusive partners or exploitative employers, as their status is dependent on spousal or work visas (JCWI 2020).

People in vulnerable circumstances may face greater difficulties as a result of the hostile environment because they tend to be more likely to need state support – whether this is through healthcare, social services, housing, or welfare benefits (Mcilwaine et al 2019; FLEX 2020).

As discussed in Option 3, there are currently a number of options for seeking regularisation, but they tend to be convoluted, lengthy and expensive (see box 3.2 for a brief summary). Moreover, frequent changes to complex immigration rules and the limited availability of legal advice can make it hard for people in vulnerable circumstances to regularise their status (see box 3.3). Without any route to regularisation, people in vulnerable circumstances who do not have a legal immigration status are in most cases subject to hostile environment measures – though there are some exemptions in particular situations (eg in healthcare where certain vulnerable groups are exempt from charging).

There is therefore a case for simplifying current routes and opening up a clear permanent pathway to regularisation for people in vulnerable circumstances. In contrast to Option 3, these routes would not allow for large-scale regularisation of an entire population over a temporary period; instead, they would ease permanent routes for a smaller number of people facing specifically challenging circumstances. This policy option would aim to safeguard those who are most vulnerable to the adverse impacts of the hostile environment.

Our research with experts and stakeholders identified the following strengths and challenges with this policy option.

Strengths

This policy option would provide clear benefits for those who were eligible for the proposed routes to regularisation. By allowing people in vulnerable circumstances to gain an immigration status, this would ensure that they have access to housing, free healthcare, and the right to work. Depending on the status they secure, it could also provide them with access to public funds.

By restructuring the available permanent routes to regularisation, this policy option could also help to achieve the Home Office's broader objective of simplifying the immigration rules (Home Office 2020). As noted by the OECD, it would also have some advantages over a one-off regularisation programme by offering greater legal clarity and stability (OECD 2020).

Finally, this proposal would also help to tackle exploitation and abuse of vulnerable migrants by providing a clear incentive for them to come forward to the UK authorities. Rather than being deterred from coming forward for fear of facing immigration enforcement action and potential removal from the UK, people in vulnerable situations would be supported to enter on a clearly defined pathway to regularisation.

Challenges

There are some practical challenges involved in setting up a new route to regularisation for people in vulnerable circumstances. Any reform proposal of this type would need to address at least three key questions.

1. Who would be eligible for the new route? Applicants would need to meet a set of criteria to be entitled to be regularised. This requires an understanding of how to characterise individuals as 'vulnerable'. There would also need to be clear guidance on the evidence needed to prove eligibility.
2. How would individuals apply to be regularised? The government would need to develop both the application process and any associated fees and administrative requirements.

3. What would be the outcome of a successful application? The immigration status granted to successful applicants would affect their future entitlements. For instance, if they were granted indefinite leave to remain (ILR), successful applicants would have permanent residency and access to public funds; while those with limited leave to remain would typically be restricted from accessing public funds until they were able to apply for ILR in future.

More broadly, there are also concerns over securing political buy-in for this policy option. Critics may argue that creating more straightforward pathways to regularisation could promote a 'pull effect' for people to migrate to the UK without legal permission. The viability of this policy option could depend on the precise eligibility requirements and the robustness of the process for evidencing vulnerability, in order to ensure the pathway to regularisation works as it is intended.

Based on our assessment, we consider that reforms to routes to regularisation should be incorporated into a future policy programme for tackling the adverse impacts of the hostile environment. These reforms should include both improvements to current routes to regularisation, as well as new routes for those facing particularly vulnerable circumstances.

BOX 3.2: CURRENT ROUTES TO REGULARISATION

There are currently a number of available routes for people without immigration status to regularise but they tend to be limited, complex and costly. Some of the principal routes are set out below (based on Finch 2013).

1. Citizenship

Some people without immigration status may be able to secure British citizenship as a way of regularising their status. For instance, under section 1(4) of the British Nationality Act 1981, anyone who was born in the UK in 1983 or later and who has lived the first ten years of their life in the UK may register as a British citizen.

2. Leave to remain on the basis of private life

In accordance with the immigration rules (Home Office 2019), an individual without immigration status may be eligible for this route if they meet the suitability criteria and if:

- they have lived in the UK continuously for at least 20 years
- they are aged between 18 and 24 and have lived in the UK continuously for at least half their life
- they are an adult who has lived in the UK for less than 20 years and has no social, cultural, family or other ties with the country where they would be returned; or
- they are a child who has lived in the UK continuously for at least seven years and it would be unreasonable for them to leave.

The application fee for this route is typically £1,033 (although for people who are destitute there is the option to apply for a fee waiver). The route provides for limited leave to remain for 30 months. It can be renewed until the applicant has had limited leave to remain for 10 years, at which point they can apply for indefinite leave to remain.

3. Leave to remain as a parent/partner

An individual without immigration status may be eligible for this route if:

- they are the parent of a child who has British citizenship or has lived in the UK continuously for at least seven years, they have a genuine and subsisting relationship with the child, and it would be unreasonable to expect the child to leave the UK
- they are the partner of someone who has British citizenship, is settled in the UK, or who has refugee status or humanitarian protection, they have a genuine and subsisting relationship with the partner, and there are insurmountable obstacles to family life continuing if they are outside the UK.

4. EU-based routes

Despite the UK's departure from the EU, there still may be ways for individuals without immigration status to use routes based on EU law to become regularised. For instance, family members of EU citizens who were living in the UK before the end of the transition period can apply to the EU settlement scheme.

5. Refugee status or humanitarian protection

People without immigration status can also be entitled to international protection under the Refugee Convention or may be entitled to humanitarian protection because they face a serious risk of harm if they are removed from the UK (eg as a result of armed conflict).

6. Protection as a victim of human trafficking

Under the Convention on Action Against Trafficking in Human Beings,[1] the UK is required to provide a period of recovery and reflection where there are reasonable grounds to believe that an individual is a victim of trafficking. This works through the national referral mechanism (NRM). Individuals who are referred to the NRM and who receive a positive reasonable grounds decision (that is, there are reasonable grounds to believe they are a victim of human trafficking or modern slavery) are granted a 45-day recovery and reflection period. After this period, if they receive a positive conclusive grounds decision (that is, there is sufficient information to decide, on the balance of probabilities, that they are a victim of human trafficking or modern slavery), then they have a minimum of 45 days 'move-on' support.

Individuals with a positive conclusive grounds decision may receive a discretionary period of leave of one year. This is granted if either they are co-operating in a police investigation, they are pursuing compensation from their perpetrators, or if the leave is necessary due to personal circumstances such as pregnancy or illness (Soroya 2020).

7. ECHR obligations

There are additional provisions for granting leave to people without immigration status where the UK must meet its obligations under the European Convention on Human Rights (ECHR) – in particular, article 8 on the right to private and family life. This allows for a grant of leave where refusal could result in a breach of fundamental rights.

1 See https://www.coe.int/en/web/anti-human-trafficking/about-the-convention

BOX 3.3: ACCESS TO LEGAL AID

Legal aid helps people who cannot afford legal representation to be able to access justice. Legal aid is available for asylum claims but in general is no longer available in England and Wales for advice or representation in non-asylum immigration matters (Right to Remain 2020). This means, for instance, that migrants can for the most part no longer receive assistance for:

- family migration cases
- challenging deportation (unless it is an asylum case or a case based on article 3 of the ECHR (prohibition of torture))
- cases based on article 8 (the right to family and private life).

(There are, however, some exceptions to this general rule. For instance, under certain circumstances individuals can apply for exceptional case funding if it is necessary to prevent their human rights being breached. Legal aid is also available for judicial review cases.)

Our research with experts and stakeholders reported that diminishing access to legal aid provision in the immigration system was a significant obstacle for people without immigration status. Since the introduction of the Legal Aid Sentencing and Punishment of Offenders (LASPO) Act 2012, the number of legal aid providers able to take on non-asylum immigration cases has decreased by one-third, and not all registered providers have the resources or capacity to take on new clients (Grant 2020).

The restrictions on the eligibility of legal aid has meant that legally aided asylum and immigration work has become increasingly financially unviable in recent years. This has resulted in situations where individuals are sometimes forced to represent themselves and navigate complex immigration rules, reducing their chances of successfully attaining status and so increasing the risk of being subjected to the deterrent measures of the hostile environment (Refugee Action 2018; Culbert 2018). Reforms to the system of legal aid would therefore be an important complement to the proposals on regularisation considered in this section.

OPTION 5: PROVIDING ACCESS TO SAFE SERVICES

The government could create a 'firewall' to ensure that migrants can come forward and make use of public services – including the NHS, social services and policing – without the fear of their information being passed on to Immigration Enforcement.

As outlined in our interim report, a core element of the hostile environment has been the implementation of data-sharing practices in public services. We highlighted several concerns related to the effects of sharing personal data between public services and the Home Office for the purposes of immigration enforcement.

Crucially, our report found that the practice of data-sharing deters migrants from accessing public services due to fears over possible detention and administrative removal. This has implications for those individuals that are deterred, as well as being detrimental for broader public health and the prevention and tackling of crime. We stressed in our earlier report that addressing the impacts of the hostile environment

would require fundamental reform, as the deterrent effect is inherently bound up in the design of the current system.

While Option 1 seeks to repeal the formative elements of the hostile environment that mandate checks and charges, this option looks to introduce new legislation that acts as a counterweight to current immigration enforcement policy and practice by promoting 'safe services' for migrants without a secure immigration status. The legislative implementation of a 'firewall' (see box 3.3) would emphasise and safeguard the rights of all those who access public services by preventing the sharing of data on immigration status with the Home Office. This option is particularly related to policies and practices in healthcare, social services and policing, although it may extend beyond these domains.

Our research with experts and stakeholders identified the following strengths and challenges with this policy option.

Strengths

The vast majority of experts that we consulted in our workshop were very supportive of this proposed policy option, viewing it as the 'root and branch' change that was needed to redress the harmful effects of the hostile environment. They noted that there has already been a considerable amount of work done – in the international context and by different professional groups – to implement firewall principles and practices, meaning that there is a rich body of evidence and innovative policy and practice to draw upon.[2]

Scaling up firewall protections so that they are backed by national legislation would ensure that the basic principles of 'safe services' are consistently applied across the UK, across professional sectors and for all people living in the UK regardless of immigration status. While campaigns at sector level may offer some protections against the effects of the hostile environment, these protections are limited and subject to the discretion of individual professionals. In addition, without statutory protections frontline professionals are liable to unintentionally share data with the Home Office – for instance, through 'chain referrals', when an agency does not share information with the Home Office directly but refers on to an organisation that then does report an individual to the Home Office (FLEX 2020). This policy option would help to ensure that any firewall mechanisms are consistently applied and that there is joined up working across sectors and jurisdictions.

A firewall would help professionals to focus on the core functions of their jobs – keeping people safe, and providing care, treatment and education to those in need. It would also help to uphold core professional values such as confidentiality and safeguard against the ethical tensions related to making immigration checks on individuals. A renewed emphasis on the primary function of public services should also minimise the erroneous effects of the hostile environment, in which lawful but undocumented migrants are reported to the Home Office.

At the same time, removing the reliance on informal policies and professional discretion, and formalising in statute the premise of safety (or 'sanctuary' as it is commonly referred to) in service provision, would be a significant step towards rebuilding trust with marginalised migrant communities.

Moreover, a firewall would help to safeguard broader social and public goals. With safe reporting mechanisms, for instance, victims and witnesses of crime

2 See, for example, the project ''Safe reporting' of crime for victims and witnesses with irregular migration status in the US and Europe' led by the Centre on Migration, Policy and Society (COMPAS): https://www.compas.ox.ac.uk/project/safe-reporting-of-crime-for-victims-and-witnesses-with-irregular-migration-status-in-the-usa-and-europe/

could come forward – enabling the police to tackle crime more effectively. And in the context of Covid-19, this policy option could have a positive effect on containing the pandemic and protecting public health.

Challenges

It was recognised in our workshop that there are likely to be political and logistical challenges in attempting to make public services safe for migrants without legal status. Alongside a legislative shift, it would be important to ensure that there is a comprehensive information-sharing and communications strategy which clarifies the legal duties and responsibilities of professionals in relation to data-sharing.

There are likely to be barriers to developing 'safe services' due to conflicting views within some public sector institutions about the most effective ways to deliver their work. Some police forces, for instance, may argue that they need to collaborate closely with Immigration Enforcement in order to tackle certain crimes. In some circumstances, services may need to share data to protect and promote the safety of migrants. Firewall protections would therefore need to distinguish between different purposes for data-sharing, to ensure clear boundaries and guidance for when data-sharing was allowed, and to protect against that data being used for immigration enforcement purposes. The development of 'safe services' and firewall protections would therefore require close engagement across the public sector to ensure that new measures were being introduced with broad support from frontline professionals.

For migrants without legal status, it is likely that there would be residual mistrust towards institutions and agencies that have previously played a part in the functioning of the hostile environment. Resources would be needed to rebuild trust and communicate the new policy – for instance, through communications in multiple languages to advise people of the regulations, and through outreach work to engage with marginalised communities.

Alternative reporting mechanisms for people looking to report crimes could also be developed to reassure migrant communities of their safety. However, these would need to learn the lessons of similar initiatives – such as the third-party hate crime reporting centres. These were a key legacy of the Stephen Lawrence inquiry, offering victims of hate crime the opportunity to report at locations other than police stations, such as in community and faith-based spaces. However, their efficacy is thought to have been limited, largely due to low public awareness and limited resources invested in their provision (Wong et al 2019).

It is also important to recognise that this policy option alone would not address all adverse elements of the hostile environment. Therefore, even if migrants without a secure immigration status could be assured that they could access services without their data being shared with the Home Office, they may still face barriers through checks and charges. For this reason, this policy would need to be complemented by reforms to wider aspects of the hostile environment.

On the basis of our assessment, we consider that 'safe services' should be a critical element of our proposed reform programme for addressing the adverse impacts of the hostile environment. We discuss the role of 'safe services' in our reform programme further in the following chapter.

BOX 3.4: 'FIREWALLS'

The term 'firewall' is employed by many campaigners, academics and charitable organisations to describe a system of delinking immigration enforcement from the provision of essential public services, such as healthcare, education, policing, housing and social services. For a firewall to be most practical and effective it should be reciprocal, in that public services should be forbidden from sharing the personal data of migrants accessing their service and, equally, immigration enforcement agencies should not request information from public services (Hermansson et al 2020). The European Commission against Racism and Intolerance (2016) states that a firewall is designed to:

> **"prevent, both in law and practice, state and private sector actors from effectively denying human rights to irregularly present migrants by clearly prohibiting the sharing of the personal data of, or other information about, migrants suspected of irregular presence or work with the immigration authorities for purposes of immigration control and enforcement."**

There are different scales at which firewall principles and practices may be implemented, including individual professional discretion, informal policies and agreements, formal policies and agreements, and firewalls that are legislated under national and international law (Hermansson et al 2020). Globally and in the UK, there are a number of firewall initiatives that have been developed at national and subnational levels and by different sectors to protect the basic rights of people without immigration status when accessing essential services. In the US, where there is greater autonomy at the subnational level, a number of counties and 'sanctuary cities' enforce firewall policies and practices that limit the cooperation of local law enforcement agencies with federal immigration authorities (Delvino 2019). In the Netherlands, a policy trialled in an Amsterdam borough, whereby the victims and witnesses of crime could report to the police without fear of immigration enforcement, has been rolled out to the whole of the country (Morris 2020a).

In the UK, various sectors and professional groups are campaigning for legislative firewalls or establishing informal firewall practices within their sector. For instance, Step Up Migrant Women and a number of organisations working with migrant domestic abuse survivors have called for a firewall in the Domestic Abuse bill so that survivors can safely report abuse to the police and other public services 'with confidence that they will be treated as victims and without fear of immigration enforcement' (EVAW 2020). In healthcare, Doctors of the World (2020) have developed the 'safe surgeries' initiative with the aim of addressing barriers to primary care faced by migrants, which includes promoting inclusive practices, such as not insisting on documentation to register at a GP and protecting patient information and confidentiality.

OPTION 6: INTRODUCING ID CARDS

To help avoid a repeat of the Windrush scandal, the government could require all people living in the UK to have an ID card (either physical or digital) in order to conduct immigration checks and charges.

Over the past two decades, ID cards – or identity documents – have regularly been proposed as a means of improving the UK's system of immigration enforcement. In the 2000s, the Labour government planned to roll out ID cards or 'entitlement cards' as a means of preventing illegal working, addressing identity fraud, and combatting terrorism. In 2008, it introduced biometric residence permits for non-EU nationals, which could be used as proof of right to work and to access public services and benefits. In 2010 the Coalition government reversed efforts to expand ID cards to the whole population amid concerns over civil liberties and costs (BBC News 2010). But in the aftermath of the Windrush scandal, the idea has re-emerged, with some researchers arguing that the introduction of ID cards would have prevented or mitigated the scale of the injustice (Goodhart and Norrie 2018).

Our research with experts and stakeholders identified the following strengths and challenges with this policy option.

Strengths

Some of the experts we consulted argued that ID cards would help to improve the operation of 'right to work' checks and other elements of immigration enforcement. They claimed that, were everyone to hold some form of identity documentation (either physically or virtually), then there would be far more clarity over any individual's status and entitlements and less room for administrative error. For people currently in the UK without an immigration status, they proposed a one-off 'amnesty' to ensure they would have the opportunity to apply for an ID card too (see Option 3 for further details). This would enable people without a status to become regularised and access basic services.

Another benefit of ID cards, according to some experts we spoke to, is that they could shift the hostile environment away from an approach targeted at migrants and towards a more general identity-based system. An approach to immigration enforcement based on ID cards would involve requiring landlords and employers to conduct 'right to rent' and 'right to work' checks by inspecting and verifying an individual's identity documents. Fines would be levied on employers and landlords who do not make the appropriate identity checks. According to some experts, this could help to reduce discrimination by placing the same responsibilities on employers and landlords regardless of whether the individual whose documents are being checked is in the UK without permission or not (rather than only targeting those who hire or rent to people without permission). This could arguably help to 'detoxify' elements of the hostile environment.

Some of the people we spoke to with lived experience of the hostile environment were also relatively relaxed about the idea of ID cards. For them, ID cards were a common feature of other countries which they were comfortable with; for some, then, ID cards would simply bring the UK into line with international norms.

Challenges

Alongside these positive arguments, however, the idea of ID cards was heavily critiqued by the majority of experts and stakeholders with whom we spoke. Some of the arguments related to broad concerns over civil liberties and costs; there were concerns, for instance, that the use of digital ID cards could help the government to build a comprehensive database with personal information on all

UK residents, which was considered to be a breach of the right to data privacy and fundamental freedoms.

Participants at our workshop also spoke of specific risks for migrants. Far from helping to limit the effects of the hostile environment, there was a concern from experts we spoke to that ID cards could exacerbate its effects by automating hostile environment checks and charges. Individuals who were not able to apply for an ID card or who were unwilling to apply due to fear or distrust (or any costs involved) would face more entrenched exclusion from accessing work, housing and public services.

Moreover, it is not clear whether the arguments in favour of ID cards stand up to scrutiny. The introduction of ID cards would be unlikely to prevent another Windrush scandal, for the simple reason that the process of registering residents would inevitably exclude parts of the population. While an 'amnesty' would help people without immigration status to register, it would not necessarily capture everyone in the population. This is clear from the current rollout of the EU settlement scheme, intended to register all EU citizens living in the UK as a result of the end of the free movement of people. While more than 4 million EU citizens have successfully applied under the scheme, it is widely expected that many others will fall through the cracks (Sumption and Fernández-Reino 2020). There is therefore a risk that rolling out an ID system could leave the most vulnerable further excluded from basic services and essentials.

Moreover, while an ID system might reduce the risk of discrimination in the implementation of checks and charges, there are other means of achieving similar ends that do not involve the comprehensive rollout of ID cards to the entire population (see box 3.1).

Ultimately, the challenge for this option is that the costs and risks involved with implementing such a large-scale project could outweigh any of the limited benefits of redesigning the hostile environment around an identity-based model. Based on this assessment, we have therefore not included this policy option in the programme of policy reform outlined in the following chapter.

TABLE 3.1

Summary: Policy options for addressing the adverse impacts of the hostile environment

Policy option	How does it address adverse impacts of hostile environment?	Strengths	Challenges
Policy option 1: Repealing the hostile environment 	Directly removes checks and charges	Directly tackles discrimination caused by legislation Shifts burden of immigration enforcement away from citizens	Difficult to determine precise scope of the hostile environment and balance of repeal/reform Without formal guidance in place checks may continue informally
Policy option 2: Reforming the Home Office 	Improves policy and operational decision-making in the Home Office	More evidence-based and inclusive decision-making Safeguards against discrimination in policy and operational decisions	Cultural change will take time and political will
Policy option 3: Introducing an 'amnesty' 	A mass-regularisation programme would protect those eligible from the adverse effects of the hostile environment	Prior evidence that amnesties can work and government can handle administration (eg EU settlement scheme) Additional economic and fiscal benefits	Risks of unintended consequences (eg could be coupled with increase in enforcement measures) Vulnerable groups could be excluded from applying
Policy option 4: Securing simpler pathways to regularisation 	A new permanent pathway to regularise people in vulnerable groups could ensure those most in need of support do not face barriers due to their status	Would offer greater legal clarity and stability compared to an 'amnesty' Migrants subject to exploitation would be encouraged to come forward to UK authorities.	Design challenges (eg design of eligibility criteria and application process) Critics may argue a simpler pathway could promote a 'pull effect'
Policy option 5: Providing access to safe services 	Would ensure that migrants can access public services without fear of their data being shared with the Home Office	Statutory firewalls would ensure consistent practice and allow professionals to focus on keeping people safe and providing care Would protect public health and safety	Logistical challenges with creating a firewall Would need to build support for the policy among professionals and build trust with migrants
Policy option 6: Introducing ID cards 	Arguably, ID cards could help to protect people from being erroneously caught up in immigration enforcement measures	Could leave less room for administrative error (though this is contested) Could help to reduce discriminatory practices	Concerns over costs and civil liberties Likely to exacerbate impacts of the hostile environment by automating checks

4.
A PROGRAMME FOR POLICY REFORM

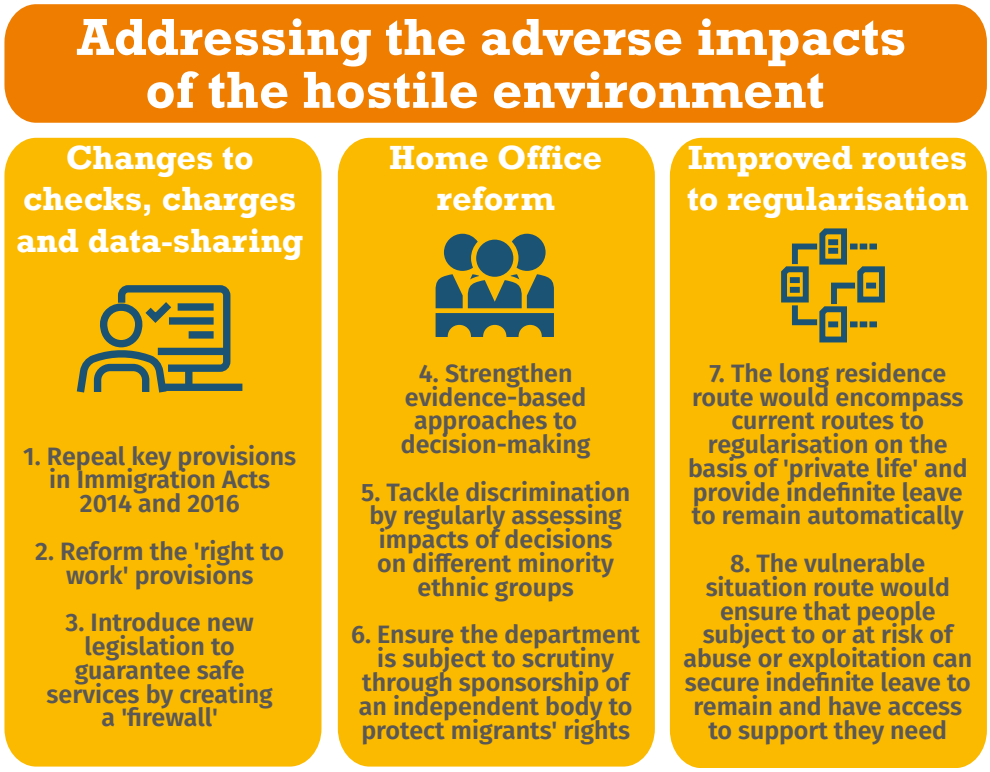
In this chapter we draw on our assessment of the six different options outlined in chapter 3 and bring together a programme for policy reform, aimed at transforming the government's approach to immigration enforcement and addressing the adverse impacts of the hostile environment.

Our policy programme involves three mutually reinforcing components.

1. **We propose a legislative package aimed at repealing and reforming key elements of the hostile environment and introducing new rules to guarantee safe services for all UK residents.**
2. **Building on the recommendations of the Windrush Lessons Learned review and the Home Office's new comprehensive improvement plan, we advocate for further reform to the Home Office to instil an evidence-based and non-discriminatory approach into all operational and policymaking decisions.**
3. **We recommend reshaping the current routes to regularisation, including developing a new route for people living in the UK without immigration status in particularly vulnerable circumstances.**

These three components will require both short-term and long-term reforms in order to comprehensively move on from the government's 'hostile environment' approach to immigration enforcement. Together, these changes aim to address the most damaging impacts of the hostile environment, while also allowing the Home Office to improve its own functioning and helping to protect public health and safety for all those living within the UK. Our approach is summarised in figure 4.1 and each component is discussed in greater depth below.

FIGURE 4.1: IPPR'S PROGRAMME FOR POLICY REFORM



Source: IPPR analysis

CHANGES TO CHECKS, CHARGES AND DATA-SHARING

At its heart, the hostile environment is underpinned by the checks, charges and data-sharing measures carried out by employers, landlords, and frontline workers. Responding to these measures is therefore one of the most critical ways to address and mitigate the adverse impacts of the hostile environment.

This will involve a combination of **repealing existing provisions** introduced as part of the hostile environment, **reforming other provisions**, and **introducing new provisions** to limit or prevent existing practices. The balance of repealing, reforming and introducing provisions will in part depend on the political scope for change and the government's other priorities for immigration policy. We outline below a legislative package containing the minimum steps we judge necessary for tackling the most damaging elements of the hostile environment.

- The legislative package should **repeal** key provisions in the Immigration Acts 2014 and 2016, including the 'right to rent' checks for landlords and the restrictions on people without immigration status from accessing bank accounts and obtaining driving licences (ie the relevant sections in part 3 of the Immigration Act 2014 and part 2 of the Immigration Act 2016).
- The legislative package should **reform** the 'right to work' provisions by removing the criminal offence of illegal working and by shifting the burden of making 'right to work' checks on to HMRC rather than employers, through linking checks to national insurance numbers (see box 3.1).

- The legislative package should **introduce** new legislation to guarantee safe services for migrants by creating a 'firewall' to prevent police forces, social services and NHS trusts from sharing data on an individual's immigration status with the Home Office , where that data would be used for the purposes of immigration enforcement.

The package would also involve reforms to the government's system of healthcare charging. IPPR is currently developing research on policy alternatives for the NHS charging regime and will shortly be setting out new proposals for reform of this element of the hostile environment.

These legislative changes would help to deliver a major transformation of the government's approach to immigration enforcement. They would repeal policies that have been evidenced as discriminatory, such as 'right to rent'. They would significantly reduce the role of employers, landlords and frontline workers in administering immigration checks. And by ending data-sharing with the Home Office for the purposes of immigration enforcement, they would help to prevent migrants from being deterred from coming forward to the police, social services and the NHS.

HOME OFFICE REFORM

The Windrush Lessons Learned review urged the Home Office to make a series of reforms to ensure there is never a repeat of the Windrush scandal. The Home Office has committed to implement all of the recommendations in the review and has set out a comprehensive improvement plan which aims to develop a more compassionate and 'people first' approach to decision-making (Home Office 2020).

These improvements are vital in order to learn the lessons from Windrush, but we also propose further changes, drawing on the discussion of Option 2 in the previous chapter. We recommend instilling three principles into the core of the Home Office approach to immigration enforcement: making decisions scrupulously based on evidence; rooting out discrimination; and being subject to scrutiny from those with direct experience of the immigration system. In practice, this means advancing the following reforms.

- The Home Office should **strengthen its evidence-based approach** to decision-making by providing additional resources to the Analysis and Insight directorate, in order to commission regular surveys and interviews to understand the impacts of policies on affected groups.
- The Home Office should **tackle discrimination** by regularly assessing the impacts of its policy and operational decision-making, and – where biased or discriminatory patterns are identified – developing an action plan to urgently review and adapt its approach. If after a set period no progress is made according to the action plan, then the relevant policies and practices should be suspended until the home secretary has confidence that they can be modified to address discrimination.
- The Home Office should ensure it is **subject to scrutiny** by sponsoring a non-departmental independent body to advocate for and safeguard migrants' rights. This body should be led by people with direct experience of the immigration system. It should include a complaints function to allow for individuals affected by immigration enforcement policies to raise concerns about immigration issues. Where there is sufficient evidence that a policy or practice is discriminatory or defective, it should have the power to investigate and make recommendations to the home secretary, and the home secretary should be required to respond.

These reforms would help to limit the discriminatory consequences of government policies and would allow for stronger independent scrutiny of immigration enforcement efforts. For instance, as we highlighted in the interim report, the Home Office's enforcement of 'right to work' checks are currently disproportionately focused on South Asian and Chinese restaurants and takeaways; by adopting our proposed measures, the Home Office would be expected to review its approach and, if patterns of discrimination were confirmed, to adapt its enforcement of 'right to work' so that it no longer targeted specific ethnic minority groups. This could be monitored closely through data on ICE team deployments and illegal working penalties. Were no progress to be made, then the Home Office would be expected to suspend the issuing of civil penalties until it could demonstrate that its new approach to enforcement was not discriminatory.

These reforms would also help the Home Office to enhance its own reputation and to develop a stronger evidence base on the effects of its policies. In turn, this would allow the department to improve its functioning, to focus its efforts on genuine harm, and to develop better approaches to policy- and decision-making.

IMPROVED ROUTES TO REGULARISATION

The third pillar of our reform programme focuses on routes to regularisation. As we found in our interim report, the hostile environment has meant that many people without immigration status have fallen into destitution because they have been unable to access employment, housing, and public funds and services. For people in highly vulnerable circumstances, including those facing exploitation or domestic violence, the hostile environment has often made it harder to access support and deterred them from coming forward to the authorities. The system currently includes routes available for people in the UK without legal permission to regularise their status and thereby escape the effects of the hostile environment (see box 3.2). However, these routes are often convoluted, expensive and difficult to access. For people in the most vulnerable circumstances, this leaves them in a state of limbo – that is, in particular need of support yet unable to access it.

We therefore propose reshaping the existing routes to regularisation and providing clear pathways for people in vulnerable circumstances to gain an immigration status and access to support. In particular, we recommend that the Home Office should develop two clear pathways to regularisation.

- The **long residence** route, which would encompass the current routes for regularisation on the basis of 'private life'. This route should automatically provide for indefinite leave to remain, rather than limited leave to remain as it does now. This would simplify the system for people without immigration status and would remove the need for repeated applications and fees under the '10-year route'.
- The **vulnerable situation** route, which would provide indefinite leave to remain for people in particularly vulnerable situations, including people subject to or at risk of abuse or exploitation and people with serious physical or mental health issues. Eligibility would be designed to include victims of trafficking and modern slavery and victims of domestic violence. This would ensure that people in certain vulnerable circumstances would be able to access the support they need.

Alongside these proposals, we also suggest that the government considers the possibility of emergency measures in the context of the current pandemic, following the example of other European countries (PICUM 2020). This could include a one-off, temporary regularisation programme (or 'amnesty') if there is sufficient evidence that this could help to prevent the transmission of Covid-19.

Additionally, in line with our previous recommendations during the pandemic, we recommend suspending current NRPF rules to ensure individuals have the financial support to be able to follow social distancing and self-isolation rules without risking their livelihoods (Morris 2020b, Patel et al 2020).

In general, however, we favour longer-term pathways to regularisation, on the basis that a more sustainable solution for addressing the adverse impacts of the hostile environment is preferable to ad hoc regularisation programmes.

The proposals in this final pillar would help to improve the available routes to regularisation for people without immigration status, supporting those who meet the relevant eligibility criteria to access employment, housing and public services – either because they are long-term residents in the UK or because they face particularly vulnerable circumstances. By creating a new 'vulnerable situation' route to regularisation, they would encourage those experiencing abuse or exploitation to come forward to the UK authorities, because rather than facing the risk of detention and removal they would instead have the opportunity to apply to regularise themselves. Our reforms to regularisation would therefore support the Home Office's ambitions to tackle modern slavery, exploitation and domestic violence and to protect the most vulnerable.

5. CONCLUSION

This report has assessed the options for reforming the government's approach to immigration enforcement and tackling the most adverse effects of the hostile environment. Drawing on the analysis in our interim report and our assessment of a series of different approaches for changing the current system, we have set out a programme of wide-ranging policy reform.

Our programme of reform involves three primary pillars that together aim to tackle the adverse effects of the hostile environment. The first pillar aims to change the rules on checks, charges and data-sharing to minimise the role of employers, landlords and frontline workers in administering immigration rules. The second pillar aims to reform the Home Office to instil an evidence-based and non-discriminatory approach into operational and policy decision-making. And the third pillar aims to restructure routes to regularisation to ensure that those most in need of support are able to gain a secure immigration status.

We recognise that many of these proposals are ambitious and it will take time to build support and consensus in such a politically contested area – changes to Home Office policies, practices and culture will not happen overnight. However, the Home Office's comprehensive improvement plan in light of the Windrush scandal provides an important opportunity for reviewing their approach to immigration enforcement and pursuing long-term reform.

We also recognise that there are a number of issues within the wider immigration system which interact with the hostile environment but which we have not been able to address in detail here. These include (but are not limited to): application fees, removals and deportation practices, and the asylum support system. Creating a just and fair immigration system in its entirety will mean addressing these policy challenges alongside the reforms set out here.

In our view, the reform programme outlined in this report would have wide-ranging benefits for migrants, the Home Office and the wider public. Minimising the role of employers, landlords and frontline workers in administering immigration checks and data-sharing would help to both reduce the risks of racial discrimination and relieve the burden of immigration control from ordinary citizens. It would also support public health and safety by allowing people without a secure immigration status to seek medical treatment and report crimes without fear of their data being passed on to Immigration Enforcement. Reforming the Home Office would ensure that the department takes into consideration the impacts of its practices on migrants affected by the hostile environment and would enhance its evidence base and the quality of its decision-making. Finally, improved routes to regularisation would simplify current pathways to settlement, protect people in vulnerable circumstances from abuse and destitution, and support the Home Office's wider agenda to tackle exploitation, modern slavery and domestic violence.

As we argued in our interim report, the government's hostile environment approach is currently not working – for neither migrants, the Home Office, nor the wider public. The reform programme we outline here aims to learn the lessons of Windrush to build a new system which tackles racism, improves the functioning of the Home Office, and protects the health and safety of all residents in the UK.

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ANNEX A: METHODOLOGY

This report predominantly utilises qualitative research methods. Our analysis is built upon findings from the interim report for this project, *Access denied: The human impact of the hostile environment*. The stakeholder interviews conducted for the interim report informed the basis of the six policy options explored here.

In addition, a policy workshop was hosted by IPPR in October 2020 that brought together 30 participants. Participants represented migrants' rights organisations, think tanks, and the legal and policy profession, all of whom had professional knowledge or had direct experience of the hostile environment. The workshop was designed to encourage debate and weigh the benefits and challenges of each policy option presented in this paper. The half-day workshop was hosted virtually, using Zoom, and six 'breakout rooms' were created for participants to debate each of the policy ideas.

The research was further supplemented with follow-up Zoom calls scheduled with stakeholders who either could not attend the workshop or who wished to have a more detailed discussion on the six policy options. Secondary data has been obtained from a range of sources, including government reports, academic literature and international case studies.

ANNEX B: GLOSSARY

In this report, we make use of a number of terms to describe the hostile environment and its impacts. Many of these terms are ambiguous or contested. This glossary provides some clear definitions for the key terms in this report as well as explanations for why we have chosen particular terms over others.

First, we use the term **'people without immigration status'** to describe people staying in the UK without legal permission. We use this term over its alternatives – such as 'irregular' or 'illegal' migrants – because we think it most effectively captures the group of people who are the key focus of this report. We recognise that there is a spectrum of different ways to breach immigration law – for instance, some people might breach the law by working without permission, even if they have the right to stay in the UK. For our purposes, however, we focus on the narrower group who have no permission to stay in the UK.

We distinguish between the term **'people without immigration status'** and the term **'undocumented migrants'**, which we use to refer to people who do not have the documentation to prove an immigration status. While undocumented migrants might often be confused with those who have no immigration status, people without documentation may have permission to stay in the UK but simply lack the right documentation.

For the remainder of the glossary, we list our terms in alphabetical order.

Amnesty: a programme whereby a group of people living in a country without legal permission are granted the opportunity (typically time-limited) to apply to automatically gain a legal immigration status.

Charging Regulations: the National Health Service (Charges to Overseas Visitors) Regulations 2015 and subsequent amendments to these regulations. These regulations reformed the system for charging overseas visitors for NHS care, including increasing the charge for patients to 150 per cent of the NHS tariff and introducing upfront charging for treatment which is not urgent or immediately necessary.

Compliant environment: another term for the 'hostile environment' currently used by the Home Office.

EU settlement scheme: a scheme available to EU, EEA and Swiss citizens living in the UK before the end of the transition period (and their family members) to be able to protect their residency rights after the UK ends the free movement of people.

Firewall: a system of delinking immigration enforcement from the provision of essential public services, such as healthcare, education, policing, housing and social services, by preventing the sharing of personal information on individual immigration statuses between these services and the immigration authorities.

Hostile environment: a series of government measures which are designed to make it more difficult for those without immigration status to access employment, housing and basic services. These measures are largely aimed at requiring employers, landlords and frontline public service

workers to implement checks and controls in order to charge or bar access for people without immigration status and to share personal data with Immigration Enforcement.

Immigration Act 2014: the act of parliament that introduced a number of the most significant hostile environment measures, including 'right to rent' checks and restrictions on bank accounts and drivers' licences.

Immigration Act 2016: the act of parliament that introduced further elements of the hostile environment, including the new criminal offence of illegal working for employees.

Immigration, Asylum and Nationality Act 2006: an act of parliament which introduced a number of reforms to the immigration system, including civil penalties for employers who employ people without a right to work in the UK.

Immigration compliance and enforcement (ICE) teams: regional teams within immigration enforcement that work with the police and others to enforce immigration rules on the ground.

Immigration Enforcement (IE): the division of the Home Office responsible for enforcing immigration rules, including preventing abuse, tracking offenders, and increasing compliance.

Independent chief inspector of borders and immigration (ICIBI): the independent inspector appointed by the government to monitor and report on the effectiveness of the Home Office's immigration, asylum, nationality and customs functions.

Insecure immigration status: an immigration status which puts an individual at risk of losing their permission to stay in the UK due to its temporary or limited nature.

Leave to remain: legal permission to stay in the UK. 'Limited leave to remain' is time-limited, while 'indefinite leave to remain' is permanent.

Modern slavery: the illegal exploitation of others for personal or commercial gain. This can include a range of crimes, such as trafficking, sexual exploitation and forced labour.

No recourse to public funds (NRPF): the condition attached to certain visa types which prevents migrants from accessing a range of benefits, including universal credit.

People without immigration status: people staying in the UK without legal permission.

Regularisation: the process by which an individual residing in a country without legal permission is granted a legal immigration status.

Right to rent: the requirement for landlords to check whether their prospective tenants have legal permission to rent property in the UK.

Right to work: the requirement for employers to check whether their prospective employees have legal permission to work in the UK.

Undocumented migrants: migrants who do not have the documentation to demonstrate a valid immigration status.

Voluntary return: the non-enforced departure of an individual without immigration status from the UK.

Windrush generation: the generation of people who came to the UK after the second world war from Commonwealth countries, particularly the Caribbean.

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