The Calais migrant crisis and the UK immigration and asylum system

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Immigration analysis: What are the UK’s obligations towards the Calais migrants? Stewart MacLachlan, senior caseworker at Paragon Law, considers whether the UK’s immigration system is fit to deal with the crisis.

Were any agreements put in place between the French and UK government around immigration when the Channel Tunnel was first opened?

The operation of the Channel Tunnel is subject to a number of laws, although many are in relation to safety, control and responsibility. The Sangatte Protocol 1991 and Additional Protocol to the Sangatte Protocol 2000 are important agreements which set out where immigration checks are carried out on the Eurotunnel and ferries.

There are two terminals for the Channel Tunnel, the Coquelles terminal, near Calais and the Folkstone terminal in the UK. However, border control is carried out prior to departure, rather than around the middle of the tunnel, for obvious reasons, or at point of exit. Therefore, anyone travelling from France to the UK has to clear both French exit checks and UK immigration checks. All controls are carried out before departure and, therefore, passengers travelling from France are able to continue their journey directly onto the motorway in the UK.

Other than in relation to immigration checks, national laws and policies are more relevant to the treatment of migrants than any agreements in place at the time the Channel Tunnel was opened.

The vast majority of migrants who are travelling to the UK from Calais without permission to enter will try to travel through the Channel Tunnel or by ferries, usually concealed in vehicles, and once encountered--either before entry or after entry--will be arrested and dealt with by the relevant authorities.

Very few individuals will actually be encountered during the journey through the Channel Tunnel or on the ferries, although recently a Sudanese national was arrested by the UK authorities close to the exit on the English side, having walked through the Channel Tunnel. How that individual will be dealt with will depend on a number of factors, considered below.

How does the Calais migrant crisis fit in with the recent changes to the UK asylum system?

The UK is a party to the Convention relating to the Status of Refugees (the Refugee Convention), which is the key legal document in defining who is a refugee, their rights and the legal obligations of countries. Those seeking asylum in the UK still need to show that they:

- have a well-founded fear of persecution
- for a Convention reason (race, religion, nationality, particular social group or political opinion) are not able to avail themselves of the protection of their home country
- are unable or unwilling to return to their home country because of their fear

The UK government's own statistics state that there were 25,020 asylum applications in the year ending March 2015, which remains significantly lower than the peak number of applications of 84,132 in 2002. The number of asylum seekers and grant rates vary between nationalities. In 2014, the largest number of applications for asylum came from nationals of Eritrea and grant rates were at 85%.

The UK government recently estimated there were around 3,000 migrants in Calais, which is a small percentage of the total number of migrants entering Europe in 2015, with the top five nationalities being: Syrian, Eritrean, Sudanese, Iranian and Iraqi. A large number of those migrants will likely be fleeing persecution in their home country, whether due to civil war and conflicts (Syria, Iraq) or government persecution (Eritrea, Sudan and Iran) and therefore will likely be seeking asylum.

The introduction of the Immigration Act 2014 has significantly changed certain aspects of immigration law--particularly in relation to in-country immigration control, appeals and removal from the UK.
There has also been movement towards a harsher approach to those without permission to stay in the UK, with proposals for a reduction in financial support and new laws in relation to accommodation. This all links to the harsher tone relating to migrants by the UK government and sections of the media.

This harsher climate and rhetoric will not stop asylum seekers fleeing persecution in their home country and there may be a number of reasons why someone seeks asylum in the UK, whether family and community links in the UK, agents who are arranging the migrant's journey or the reputation of the UK's respect for human rights.

**Could EU discussions around quotas influence the treatment of Calais migrants? Could the French and UK government come to an agreement around the 3,000 migrants?**

There has recently been a number of discussions on quotas in the EU, particularly because of the increase in the number of asylum seekers and other migrants arriving in Europe over the Mediterranean Sea. This issue has received particular attention because of the significant number of deaths on the boat journeys to Europe.

However, EU governments recently failed to reach an agreement on proposals for a quota system in relation to refugees in Europe. It is therefore difficult to see an agreement on quotas in the near future.

The lack of a cohesive asylum system throughout Europe creates problems within individual asylum systems. Although the Refugee Convention does not specify a requirement for claiming asylum in the first country that individual enters, The Dublin Regulations—currently in its third incarnation—set out which EU country is responsible for examining an asylum application and establishes that only one EU country is responsible for examining such an application.

This is particularly relevant where an individual has been detained or fingerprinted in Italy or France, but claims asylum in the UK. The UK may then seek to argue that the individual should be returned to Italy or France, although there are exceptions in certain circumstances, including for children. In addition, in the case of Greece, it has recently been held in the European courts that Greece's asylum system is so problematic that it would breach an individual's human rights.

It is possible that the French and UK government could come to an agreement regarding the migrants currently situated in Calais. The governments previously came to an agreement to resolve a similar issue at the Sangatte refugee camp in 2002, whereby the UK government agreed to take responsibility for approximately 1,200 migrants.

However, given the current media and political climate—including statements made by officials in the UK and France and the current focus on bulking up security at the tunnel entrance—such a deal seems unlikely in the immediate future.

**If a migrant made it through the Channel Tunnel, what would their immigration status be? How would the authorities deal with them?**

If a person arrived in the UK without permission—whether through the Channel Tunnel or through other means—they would be detained by the authorities and interviewed by immigration officers due to having no leave to enter or remain in the UK. If the person's reason for coming to the UK is to study, work or visit, the UK authorities would expect them to return to their home country and make an application to enter the UK before travelling, if making such an application.

If the person fears that they would be harmed in their home country they could make a claim for asylum in the UK. They could also make an in-country application for leave to remain in the UK based on human rights grounds, such as their family life in the UK. While the asylum claim is being considered, they can receive asylum support if necessary, currently set at £36.95 per week for an adult, which is significantly less than mainstream benefits and they would not have a right to work.

Immigration authorities would continue to detain and seek to remove the individual from the UK if that person did not have leave to enter and made no claim for asylum or a human rights application. However, if the individual makes an asylum claim, they would be provided with asylum support and accommodation while their claim was considered, unless the Home Office have good reasons for continuing to detain.

The Home Office may also seek to detain where the individual is from a presumed safe country and has a claim that the Home Office believe to be clearly unfounded. A number of individuals were dealt with under a detained fast track process (DFTP), although the UK courts have recently held the DFTP to be unlawful and it is currently suspended.
As noted above, if an asylum claimant has made a previous claim in another European country and was fingerprinted in the process, the Home Office may also seek to remove them to the European country where they first raised an application.

How an individual is considered and treated in the UK is therefore subject to a number of different factors relating to the individual and their purpose for coming to the UK.

Interviewed by Stephanie Boyer.

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