

Asylum Information Database

# National Country Report

## *The United Kingdom*



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## The AIDA project

The AIDA project is jointly coordinated by the European Council on Refugees and Exiles (ECRE), Forum Réfugiés-Cosi, Irish Refugee Council and the Hungarian Helsinki Committee. It aims to provide up-to date information on asylum practice in 14 EU Member States (AT, BE, BG, DE, FR, GR, HU, IE, IT, MT, NL, PL, SE, UK) which is easily accessible to the media, researchers, advocates, legal practitioners and the general public the project's website [www.asylumineurope.org](http://www.asylumineurope.org). Furthermore the project seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.



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## Statistics

**Table 1: Applications and granting of protection status at first instance in 2013**

	Total applicants in 2013	Refugee status	Subsidiary protection	Humanitarian Protection	Rejections (in-merit and admissibility)	Otherwise closed / discontd	Refugee rate	Subs.Pr. rate	Hum. Pr. rate	Rejection rate
	A	B	C	D	E	F	B/(B+C+D+E) %	C/(B+C+D+E) %	D/(B+C+D+E) %	E/(B+C+D+E) %
<b>Total numbers</b>	30,090	7,475	70	960	13,965	2.552	33%	0,3%	4%	62%
<b>Breakdown by countries of origin of the total numbers</b>										
<b>Top 10</b>										
<b>Pakistan</b>	4.645	905	5	55	2,640	428	25%	0.1%	1.5%	73%
<b>Iran</b>	3.055	1.255	10	45	1.40	88	53%	0.4%	2%	44%
<b>Sri Lanka</b>	2.280	310	0	25	1.295	50	19%	0%	1.5%	79%
<b>Syria</b>	2,040	1,440	10	5	235	57	85%	0.6%	0.3%	14%
<b>Eritrea</b>	1.435	810	0	5	15	22	81%	0%	0.5%	18%
<b>Albania</b>	1.615	95	0	170	680	163	10%	0%	18%	72%
<b>Afghanistan</b>	1.550	295	10	135	745	149	25%	0.8%	11%	63%
<b>Nigeria</b>	1.405	80	5	75	970	108	7%	0.4%	6%	85%
<b>Bangladesh</b>	1.270	30	0	25	775	249	4%	0%	3%	93%
<b>India</b>	1145	5	5	5	660	341	0.7%	0.7%	0.7%	98%
<b>Others<sup>1</sup></b>										
<b>Serbia</b>	5	0	0	0	5	0	0%	0%	0%	100%
<b>Kosovo</b>	40	0	0	5	15	5	0%	0%	25%	75%

Source: Eurostat

<sup>1</sup> Other main countries of origin of asylum seekers in the EU.

**Table 2: Gender/age breakdown of the total numbers of applicants in 2013**

	Number <sup>2</sup>	Percentage of the total number of applicants
<b>Total number of applicants</b>	30,090	
<b>Men including boys under 18</b>	20,320	67%
<b>Women including girls under 18</b>	9,740	33%
<b>Unaccompanied children</b>	1,175	4%

Source: Eurostat

**Table 3: Comparison between first instance and appeal decision rates in 2013**

	First instance		Appeal	
	Number	Percentage	Number	Percentage
<b>Total number of decisions</b>	<b>22,470</b>		<b>8,293</b>	
<b>Positive decisions</b>				
<i>Total</i>	<b>8,505</b>	38%	<b>2,079</b>	25%
<i>Refugee Status</i>	<b>7,475</b>	88%	-	-
<i>Subsidiary protection</i>	<b>70</b>	0.8%	-	-
<i>Hum/comp protection</i>	<b>960</b>	11%	-	-
<b>Negative decision</b>	<b>13,965</b>	62%	5,645	68%

Source: Eurostat and UK Home Office

**Table 4: Applications processed under an accelerated procedure in 2012**

	Number	Percentage
<b>Total number of applicants</b>	<b>28,260</b>	
<b>Number of applications treated under an accelerated procedure at first instance</b>	2,482 in detained fast track. 2,278 in non suspensive appeal procedure Total: 4,760 <sup>3</sup>	17%

Source: UK Home Office

**Table 5: Subsequent applications submitted in 2012**

	Number of subsequent applications submitted
<b>Total number</b>	809
<b>Top 5 countries of origin</b>	
<b>Afghanistan</b>	101
<b>Iran</b>	96
<b>Pakistan</b>	71
<b>Zimbabwe</b>	53
<b>China</b>	49

Source: Eurostat

<sup>2</sup> The gender of 30 applicants is unknown.

<sup>3</sup> Figures are given for 2012, since the DFT figures are published later and so a full account cannot be given yet of 2013.

## Overview of the legal framework

### ***Main legislative acts relevant to asylum procedures, reception conditions and detention***

<b>Title in English</b>	<b>Abbreviation</b>	<b>Weblink</b>
Immigration Act 1971	IA 1971	<a href="http://www.legislation.gov.uk/ukpga/1971/77/contents">http://www.legislation.gov.uk/ukpga/1971/77/contents</a>
Immigration and Asylum Act 1999	IAA 1999	<a href="http://www.legislation.gov.uk/ukpga/1999/33/contents">http://www.legislation.gov.uk/ukpga/1999/33/contents</a>
Nationality Immigration and Asylum Act 2002	NIAA 2002	<a href="http://www.legislation.gov.uk/ukpga/2002/41/contents">http://www.legislation.gov.uk/ukpga/2002/41/contents</a>
Asylum and Immigration (Treatment of Claimants etc) Act 2004	AITOCA 2004	<a href="http://www.legislation.gov.uk/ukpga/2004/19/contents">http://www.legislation.gov.uk/ukpga/2004/19/contents</a>
Borders Citizenship and Immigration Act 2009	BCIA 2009	<a href="http://www.legislation.gov.uk/ukpga/2009/11/contents">http://www.legislation.gov.uk/ukpga/2009/11/contents</a>

### ***Main implementing decrees and administrative guidelines and regulations relevant to asylum procedures, reception conditions and detention.***

<b>Title in English</b>	<b>Abbreviation</b>	<b>Weblink</b>
Statement of Changes in Immigration Rules HC 395 Part 11	Immigration rules	<a href="https://www.gov.uk/government/publications/immigration-rules-part-11">https://www.gov.uk/government/publications/immigration-rules-part-11</a>
Statement of Changes in Immigration Rules HC 395 Part 11B	Immigration rules	<a href="https://www.gov.uk/government/publications/immigration-rules-part-11b">https://www.gov.uk/government/publications/immigration-rules-part-11b</a>
Statement of Changes in Immigration Rules HC 395 Part 12	Immigration rules	<a href="https://www.gov.uk/government/publications/immigration-rules-part-12">https://www.gov.uk/government/publications/immigration-rules-part-12</a>
The Asylum Seekers (Reception Conditions) Regulations 2005 SI 7	Reception Conditions Regs	<a href="http://www.legislation.gov.uk/uksi/2005/7/contents/made">http://www.legislation.gov.uk/uksi/2005/7/contents/made</a>
Asylum Support Regulations 2000 SI 704	Asylum Support Regs 2000	<a href="http://www.legislation.gov.uk/uksi/2000/704/contents/made">http://www.legislation.gov.uk/uksi/2000/704/contents/made</a>
Asylum Support (Amendment) Regulations 2005 SI 11	Asylum Support Regs 2005	<a href="http://www.legislation.gov.uk/uksi/2005/11/made">http://www.legislation.gov.uk/uksi/2005/11/made</a>
The Detention Centre Rules 2001 SI 238	Detention Centre Rules	<a href="http://www.legislation.gov.uk/uksi/2001/238/contents/made">http://www.legislation.gov.uk/uksi/2001/238/contents/made</a>
Detention Service Orders	DSOs	<a href="http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/detention-services-orders/">http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/detention-services-orders/</a>
The Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005 No. 560	Fast Track Procedure Rules	<a href="http://www.legislation.gov.uk/uksi/2005/560/made">http://www.legislation.gov.uk/uksi/2005/560/made</a>
Asylum Process Guidance	APG	<a href="https://www.gov.uk/government/collections/asylum-process-guidance">https://www.gov.uk/government/collections/asylum-process-guidance</a>
The Asylum and Immigration Tribunal (Procedure) Rules 2005 (S.I. 2005 No.230 (L.1)) Consolidated as at 19 December 2011	Procedure Rules	<a href="http://www.justice.gov.uk/downloads/tribunals/general/consolidated-ait-rules-191211.pdf">http://www.justice.gov.uk/downloads/tribunals/general/consolidated-ait-rules-191211.pdf</a>



## Overview of the of the main changes since the previous report update

***The previous report update was published in October 2013.***

- The sections of the Home Office which deal with asylum applicants are undergoing an ongoing organisational change. This has not to date resulted in major changes in law or the structure of the asylum process affecting applicants, though some changes in administrative practice have been observed and are noted in this report.
- On 19<sup>th</sup> February 2014 the Supreme Court held in *EM (Eritrea)* [2014] UKSC 12 that where an asylum applicant claimed that it would breach their rights under Article 3 ECHR for them to be removed to another EU country pursuant to the Dublin regulation, it was not necessary for them to prove that there was a systemic deficiency in the asylum system in the destination country in order to establish a real risk of a breach of Article 3.
- From 1<sup>st</sup> April 2014 initial advice on the asylum process is provided through one organisation operating in the initial accommodation centres and through an online and telephone service. Asylum support applications (s.95) are also now made through this system.
- From 1<sup>st</sup> April 2014 applications for support for refused asylum seekers (s.4) must be made through the online and telephone service, except for vulnerable applicants who can have a face to face appointment at the initial accommodation centres
- The High Court held that the decision not to review the rate of asylum support paid to destitute asylum seekers was unlawful (*R (on the application of Refugee Action) v SSHD* [2014] EWHC 1033 (Admin))
- Following the abolition of legal aid for human rights claims on April 1<sup>st</sup> 2013, there have been further cuts in legal aid affecting asylum seekers:
  - Reducing the rate paid for representation immigration and asylum Upper Tribunal cases<sup>4</sup>
  - Removing legal aid for borderline cases in the courts<sup>5</sup>
  - Removing legal aid for applications for permission to apply for judicial review<sup>6</sup>

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<sup>4</sup> The Civil Legal Aid (Remuneration) ([Amendment](#)) Regulations 2013 No. 2877.

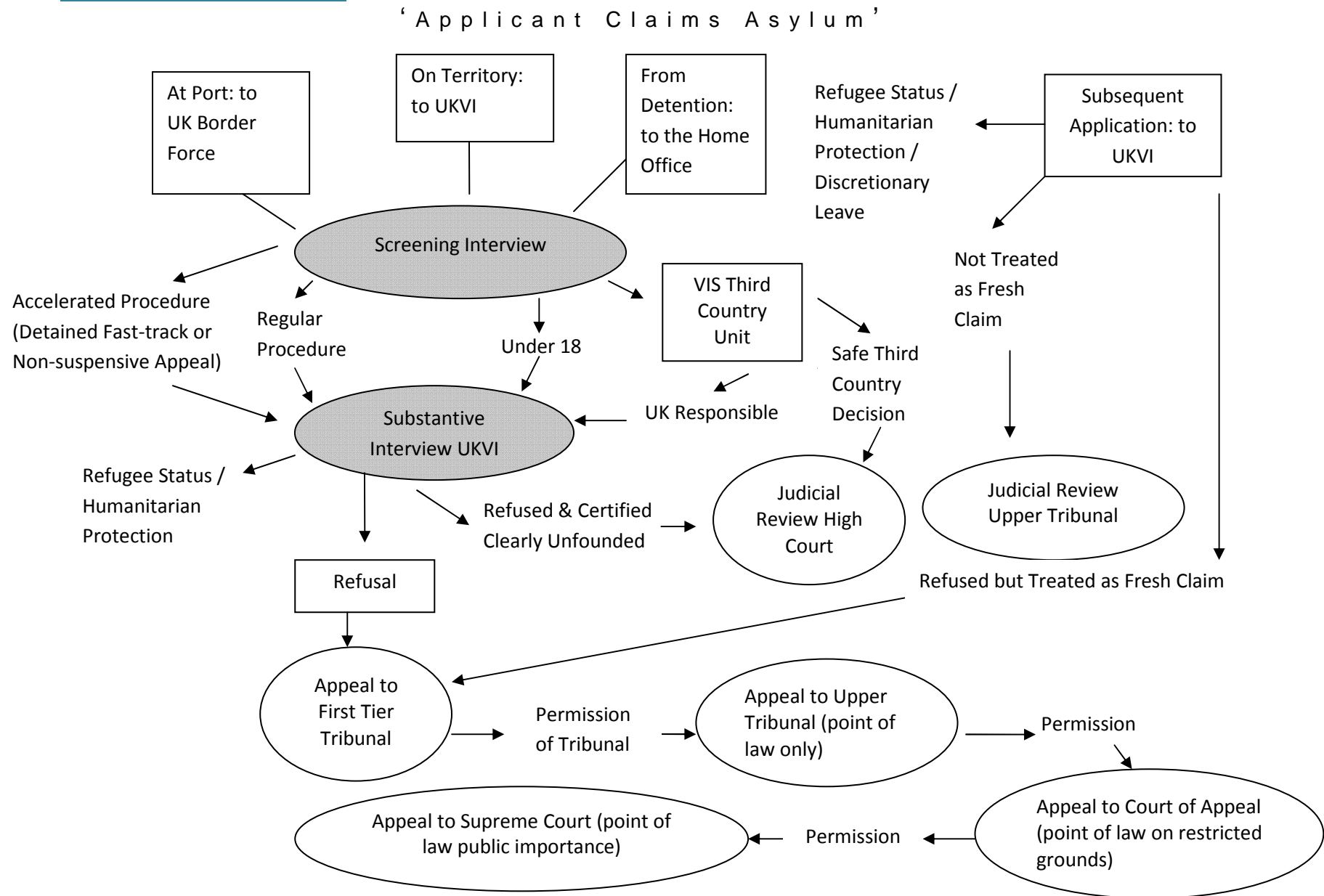
<sup>5</sup> The Civil Legal Aid (Merits Criteria) ([Amendment](#)) Regulations 2014 No. 131.

<sup>6</sup> The Civil Legal Aid (Remuneration) ([Amendment](#)) (No. 3) Regulations 2014 No. 607.

# Asylum Procedure

## A. General

### 1. Flow Chart of the Procedure



## 2. Types of procedures

### Indicators:

Which types of procedures exist in your country?

- regular procedure:                   yes                    no
- border procedure:                   yes                    no
- admissibility procedure:           yes                    no
- accelerated procedure:           yes                    no
- Accelerated examination (“fast-tracking” certain case caseloads as part of regular procedure):  
  yes                    no
- Prioritised examination (application likely to be well-founded or vulnerable applicant as part of regular procedure):           yes                    no
- Dublin Procedure                    yes                    no

Are any of the procedures that are foreseen in national legislation, not being applied in practice? If so, which one(s)? All are applied.

## 3. List of Authorities that intervene in each stage of the procedure (including Dublin)

Stage of the procedure	Competent authority
Application at the border	UK Border Force
Application on the territory	Home Office Visas and Immigration Section
Dublin (responsibility assessment)	Home Office Visas and Immigration Section
Refugee status determination	Home Office Visas and Immigration Section
Appeal procedures : -First appeal -second (onward) appeal	First Tier Tribunal, Immigration and Asylum Chamber Upper Tribunal, Immigration and Asylum Chamber
Subsequent application (admissibility)	Home Office Visas and Immigration Section

## 4. Number of staff and nature of the first instance authority (responsible for taking the decision on the asylum application at the first instance)

Name in English	Number of staff (specify the number of people involved in making decisions on claims if available)	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the first instance authority? Y/N
Home Office Visas and Immigration Section, Asylum Casework Directorate	Between 1000 and 1500 in asylum decision-making	Home Office	No

## 5. Short overview of the asylum procedure

Responsibility for the asylum process rests with the Secretary of State for the Home Office, who is a government minister (the Home Secretary). Within the Home Office asylum decision-making is allocated to the Visas and Immigration Section and within this to the Asylum Casework Directorate. The Home Office is responsible for all aspects of immigration and asylum: entry, in-country applications for leave to remain, monitoring compliance with immigration conditions, and enforcement including detention and removal.

A first application for asylum in the UK can be made either on arrival at the border, or at the Asylum Screening Unit (ASU) in Croydon (South of London), or, where a person is already detained, it may be made from the detention centre.

In all cases the application is first screened, which involves an interview in which biometric data is taken, health and family information, details of the route of travel, and the broad outline of the reasons for claiming asylum. On the basis of the screening interview the National Asylum Intake Unit of the Home Office decides which route the application will follow. The alternatives are: unaccompanied children – referred to a local authority; accelerated procedure (detained fast track or clearly unfounded with non-suspensive appeal); safe third country procedure or dispersal to be dealt with by a regional office, which is the regular procedure. In all cases the procedure deals with both refugee status and subsidiary protection. An expedited route for claims likely to succeed is being considered by the Home Office.

Potential safe third country cases are referred to the third country unit of the Home Office, which decides whether to issue a certificate initiating a return to a safe third country, including to another EU Member State in the context of the Dublin Regulation. In this case the claim is not substantively considered in the UK. This decision can only be challenged by judicial review, an application made with permission to the High Court with permission of that court. Judicial review proceedings do not consider the merits of a decision, but only whether the decision maker has approached the matter in the correct way.

Where applications are certified as clearly unfounded this may be on an individual basis, but is more often on the basis that the applicant is from a country designated in law as safe. In these cases there is no appeal against refusal from inside the UK.

Asylum seekers are routed into the Detained Fast Track (DFT) if it is thought that the case can be decided quickly. In this case the asylum seeker is detained for the whole decision process including appeal. The target time for this whole process is 15 calendar days, including the first appeal.

In the regular procedure, decisions are made by a regional office of the Home Office. There is no time limit for making a first decision, though it is policy to make the decision within 6 months. Reasoned decisions are normally sent by post, although they may be delivered to the asylum seeker in person when they attend the Home Office reporting centre. Appeal is to the First Tier Tribunal (Immigration and Asylum Chamber), an independent judicial body which is part of the unified tribunal structure in the Ministry of Justice. The appeal is suspensive and must be lodged within 10 working days of service of the refusal, or five working days if the appellant is in detention. The tribunal proceedings are broadly adversarial, with the Home Office represented by a presenting officer.

A further appeal on a point of law may be made to the Upper Tribunal with permission of the First Tier Tribunal, or, if refused, of the Upper Tribunal. Application for permission to appeal must be made within five working days of deemed receipt of the First Tier Tribunal decision. Asylum appeals before the First Tier and Upper Tribunals are heard by a specialist Immigration and Asylum Chamber.

Appeal from the Upper Tribunal to the Court of Appeal on a point of law may only be made with permission of the Upper Tribunal or the Court of Appeal. A final appeal to the Supreme Court may only be made on a point of law of public importance, certified by the Court of Appeal or Supreme Court. The Court of Appeal and Supreme Court are superior courts with a general jurisdiction.

The day to day operation of immigration and asylum decision-making is governed by immigration rules and guidance. Immigration rules are made by the Home Secretary and are approved by Parliament in a procedure that does not involve scrutiny. In relation to asylum most of the rules are concerned with the process rather than the substance of the decision, but they do include for instance factors relevant to credibility. A breach of the rules is grounds for an appeal, although this is rarely relevant in asylum cases.

The Home Office also issues detailed practical guidance for asylum decision-making. Guidance deals with a wide range of issues including how to conduct interviews, how to apply some legal rules, country of origin information, and detailed procedural and administrative matters. The main source of guidance about dealing with asylum applications is asylum process guidance (APG). Guidance is not directly binding, but should be followed, and failure to do so can be grounds for an application for judicial review.

The immigration rules and guidance are available on the government website, [www.gov.uk](http://www.gov.uk), including information about countries of origin used in asylum decision-making.

At the end of March 2013 the UK Border Agency (UKBA) was abolished and split into a Visas and Immigration Section (UKVI) and an Immigration Enforcement Section – both of which report directly to the Home Secretary from within the Home Office.

In addition, a new Asylum Operating Model was proposed to replace the New Asylum Model as part of a major Home Office re-structuring exercise with effect from 01 April 2013. However, the Asylum Operating Model is not being pursued as such, but instead an organisational change process has been instituted which is intended to be ongoing, rather than a single restructuring exercise.

At the time of writing the second AIDA update (March-April 2014), there is no major change in the way that asylum applicants make their claims. Within UKVI, one direction of change is towards more detailed screening as part of new triage and workflow arrangements, and another is an emphasis on speed of decision-making. Regional offices continue to process claims in the regular procedure, but there is now more centralised management, and a move towards regional specialisms rather than simply parallel offices run differently. The significance and content of these specialisms has not yet been made publicly available. The previous routes other than regular procedure are retained, but under consideration is the creation of a new Non-Detained Fast Track (Probable Protection) workstream, i.e. a form of manifestly well-founded procedure.

## B. Procedures

### 1. Registration of the Asylum Application

#### Indicators :

- Are specific time limits laid down in law for asylum seekers to lodge their application?  
 Yes       No
- Are there any reports (NGO reports, media, testimonies, etc) of people refused entry at the border and returned without examination of their protection needs?       Yes    No

The Secretary of State for the Home Department is responsible in law<sup>7</sup> for registering asylum applications. This responsibility is carried out by civil servants in the UK Visas and Immigration Section of the Home Office. If a person claims asylum on entry to the UK, immigration officers at the port have no power to take a decision on the claim, and must refer it to UK Visas and Immigration (UKVI).<sup>8</sup>

Where a couple or family claim asylum, the children normally apply as dependants on the claim of one of their parents. Also one partner may apply as the dependant of the other. This means that the outcome of their claim will depend upon that of the main applicant. It is policy to inform women separately that they may claim separately from their partner.<sup>9</sup> However, there are concerns that this question may not always be asked in a confidential setting, and that the woman may not be aware of all the implications.

There is no specific time limit for asylum seekers to lodge their application. A claim may be refused if the applicant 'fails, without reasonable explanation, to make a prompt and full disclosure of material facts'.<sup>10</sup> However, 'applications for asylum shall be neither rejected nor excluded from examination on the sole ground that they have not been made as soon as possible'.<sup>11</sup> In practice, where someone is present in the UK in another capacity, e.g. as a student or worker, and then claims asylum after some years, whether or not they have overstayed their immigration leave, this may be treated as evidence that they are not in fear. Financial support and accommodation can be refused if the person did not claim 'as soon as reasonably practicable',<sup>12</sup> but not if this would entail a breach of human rights (see section on Reception Conditions).<sup>13</sup>

First applications made from inside the UK must be registered by appointment at the Asylum Screening Unit (ASU) in Croydon in the South East of England unless the asylum seeker is in detention. This includes all applications not made at the port of entry, even if only hours after arrival, if the asylum seeker has left the port. Around 88% of asylum applications in the UK are not registered at the port of entry. These 'in country' applications are made at the ASU or from detention, or in exceptional cases an applicant who is destitute and whose condition is such that they cannot reasonably be expected to travel to the ASU may be permitted to register their claim at a Local Enforcement Office. Child unaccompanied asylum seekers are not expected to travel to the ASU if distance is an obstacle,<sup>14</sup> and nor are families with children in Scotland, who may register their claim at a local office. Applicants with a disability or severe illness and who are physically unable to travel or who are imprisoned can request

<sup>7</sup> S.113 Nationality Immigration and Asylum Act 2002.

<sup>8</sup> Immigration rules para 328.

<sup>9</sup> Home Office *Asylum Policy Instruction, Gender issues in the asylum claim* Para 7.1.

<sup>10</sup> Immigration rules para 339M.

<sup>11</sup> Immigration rules para 339MA.

<sup>12</sup> NIAA 2002 s.55.

<sup>13</sup> *Limbuela v SSHD* [2005] UKHL 66.

<sup>14</sup> The Home Office *Asylum Process Guidance, Registering an asylum application in the UK* para 7.1.

that their asylum application be registered in writing.<sup>15</sup> In practice, this is only permitted exceptionally. There is no government funding for fares to the ASU. In the absence of this, over a three year period, a charity in Scotland provided 257 grants from its own funds to pay for an overnight bus to enable people to claim asylum.<sup>16</sup> Particularly where asylum seekers are newly arrived in the UK, and may be confused, disoriented and understanding little English, making this journey successfully is very problematic.

Applicants are required to telephone the ASU before they can apply in person. They must receive a call back from the ASU, which is a telephone interview giving personal details but not details of their asylum claim. They are then given an appointment to attend and register their claim. In the meantime they are unable to access financial support or government-provided accommodation. In exceptional circumstances – destitution or extreme vulnerability – the Home Office can accept walk-in applications or offer a same - or next-day appointment. In practice, it is hard to prove that the applicant is destitute or sufficiently vulnerable and some applicants are still turned away and required to wait.<sup>17</sup>

There is no rule laying down a maximum period within which an asylum claim must be registered, after the authority has first been notified of the claim. Practice is variable, with call-backs for the telephone interview sometimes being received within hours, sometimes not happening at all because the person's details have been lost. Appointments for the screening interview are usually fixed within one or two weeks after the telephone interview, but there are also reports of very substantial delays.<sup>18</sup>

The policy is to treat unaccompanied children differently.<sup>19</sup> Once they are in contact with a local authority, with their social worker or legal representative they may fill in a questionnaire prior to screening, and are cared for by the local authority. However, in practice unaccompanied minors may be interviewed on arrival – a 'welfare interview' takes place followed (perhaps immediately) by an 'initial examination interview' - and social workers may be called 'well into the interviewing process'.<sup>20</sup> The screening interview should only be conducted in the presence of an independent adult, but the referenced study found that the screening interview sometimes began within minutes of social services being informed, thus effectively preventing their attendance. There are also examples of children being asked about their asylum claim during the screening interview, which is contrary to Home Office guidance.<sup>21</sup> Conversely, after a report by the Children's Commissioner, the Home Office introduced a practice of allowing a few days for a child to recover from a harrowing journey before the screening interview. This was seen as good practice and was reported to give better results from a screening interview. However, this practice began to be distorted, and for instance staff shortages were said to result in longer delays of up to 30 days before screening. Then the advantage was lost, and the risk of absconding increased.<sup>22</sup>

Instances still occur when appointment times are not kept by the Home Office, and asylum seekers, including those with small children may be kept waiting many hours or even sent away. A person who claims asylum on being arrested or detained or during detention is not taken to the ASU but may be

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<sup>15</sup> The Home Office, *Asylum process guidance Postal claims* 3.4 and 4.1.

<sup>16</sup> Morag Gillespie, *Trapped: Destitution and Asylum in Scotland*, Scottish Poverty Information Unit, Institute for Society and Social Justice Research, Glasgow Caledonian University, 2012.

<sup>17</sup> Christel Querton, *I feel like as a woman I'm not welcome: a gender analysis of UK law, policy and practice*, Asylum Aid 2012.

<sup>18</sup> House of Commons Home Affairs Select Committee *Asylum: Seventh Report of Session 2013-14* HC 71

<sup>19</sup> The process is described in text and a chart in Office of the Children's Commissioner '[What's going to happen tomorrow? Unaccompanied children refused asylum](#)', April 2014.

<sup>20</sup> Adrian Matthews, [Landing in Dover: The Immigration process undergone by unaccompanied children arriving in Kent](#), 2012, Children's Commissioner.

<sup>21</sup> Independent Chief Inspector of Borders and Immigration, *An Inspection into the handling of Asylum Applications made by Unaccompanied Children* 2013, <http://icinspector.independent.gov.uk/wp-content/uploads/2013/10/An-Inspection-into-the-Handling-of-Asylum-Applications-Made-by-Unaccompanied-Children-FINAL.pdf>

<sup>22</sup> Independent Chief Inspector of Borders and Immigration, [An Inspection into the handling of Asylum Applications made by Unaccompanied Children](#), 2013.

screened in detention or at a regional office or even in a police station. The screening interview in such a case is carried out by an immigration official, not a police officer, but information disclosed during a police interview under caution may be disclosed to the asylum authorities.

At the screening interview, fingerprints are taken for comparison with databases including Eurodac, and the route of travel is inquired into. The asylum seeker is asked basic details of their claim. During 2012 the Home Office changed the physical arrangements at the Asylum Screening Unit, including making available private areas for the screening interview. The lack of private space was one of the factors for which screening interviews have been criticised as not suited to identifying sensitive issues such as the fact that the asylum seeker had been tortured or raped since they could be overheard by others waiting.<sup>23</sup> Although details of the asylum claim should not be required at this stage, the decision as to which kind of procedure the application will be routed through, including whether the case will be decided in an accelerated procedure, is taken on the basis of the screening interview. It remains to be seen whether this change in screening arrangements will result in earlier disclosure of sensitive issues, readier identification of vulnerable individuals and fewer people being inappropriately routed into the detained fast track. The lack of childcare provision at the ASU remains an obstacle to disclosure of sensitive information such as an experience of torture or rape since children are in the same room as the parent while information on the basis of the claim is taken.

Improvements made in the screening process at the ASU have not yet been applied in the other locations where screening can take place (ports, police stations, local immigration offices, detention centres and prisons).<sup>24</sup>

There is no provision for legal assistance at the screening interview except for unaccompanied children and those with mental illness. Applicants who have applied from within the UK may have had legal advice prior to screening, but those applying at port will not have had that opportunity. From 1<sup>st</sup> April 2014 the Screening Unit will have access to an online appointments system for legal representatives (the Voluntary Appointments System) and this will give an opportunity for an appointment to be made with a legal representative in the region to which the asylum seeker is going to be sent for initial accommodation (see section on Reception Conditions).

The present review and changes in asylum procedure make the screening stage even more critical, since a preliminary assessment of the merits will determine whether the case is expedited, and also define it as likely or not to succeed from the very outset. Grave concerns were voiced about the first versions of this proposal, (the 'Asylum Operating Model').<sup>25</sup> Possible instances of people being refused entry and removed before they have had a chance to make an asylum application ('push-backs') were suggested by the disclosure of the 'Gentleman's Agreement' discussed on p.30. This provides that France must accept back people intercepted on landing in the UK who are considered to have made an illegal entry and who have travelled from France do not say that they wish to claim asylum, provided the return can be effected within 24 hours. The refusal of entry is not formally recorded. If an asylum claim is made, it ought to be dealt with in the UK, but the informality of this process necessarily entails a risk that an asylum claim is not noted or recognised as such.

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<sup>23</sup> Independent Chief Inspector of Borders and Immigration, [Asylum: A Thematic Inspection of the Detained Fast Track](#), ICIBI, 2012.

<sup>24</sup> Independent Chief Inspector of Borders and Immigration, [Asylum: A Thematic Inspection of the Detained Fast Track](#), ICIBI, 2012.

<sup>25</sup> House of Commons Home Affairs Committee, [Asylum, Seventh Report of Session 2013-14](#). HC71.



## 2. Regular procedure

### General (scope, time limits)

#### Indicators:

- Time limit set in law for the determining authority to make a decision on the asylum application at first instance (in months): N/A
- Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing?  Yes  No
- As of 31<sup>st</sup> December 2012, the number of cases for which no final decision (including at first appeal) was taken one year after the asylum application was registered: **not available**

The Home Office has responsibility for all aspects of immigration, and responsibility for border control lies with the UK Border Force, an executive agency of the Home Office which combines immigration, policing and customs functions. The role of asylum caseworker within the Home Office is a specialised one. Although asylum caseworkers are mainly located in Local Immigration Teams which have a broad immigration remit, they do only asylum and not immigration work. Subjects covered by the publicly available guidance for case workers include making an asylum decision. Guidance on gender issues in the asylum claim<sup>26</sup> sets out good practice in recognising gender-specific forms of persecution and the difficulties that women may face in accessing protection. The guidance recognises that discrimination may amount to persecution in countries where serious legal, cultural or social restrictions are placed upon women, and the need to be rigorous in understanding country of origin information when deciding women's claims.

There is no established system in the UK for prioritising the cases of people who are particularly vulnerable or whose case appears at first sight well-founded, although a new route for manifestly well-founded claims is under consideration,<sup>27</sup> and making decisions quickly is a priority in the current review of asylum decision-making.<sup>28</sup> The only system for expediting decisions is the Detained Fast Track, discussed below as an accelerated procedure, and this generally results in refusal.

There is no enforceable time limit for deciding asylum applications, but the immigration rules say that the decision must be taken 'as soon as possible'.<sup>29</sup> If a decision is not taken within six months, the caseworker should inform the applicant of the delay, or, if requested, make an estimate of the time that the decision will take. In practice, figures for cases concluded in 2012/13 showed 56% of men's claims and 51% of women's decided within 30 calendar days and 49% of men's claims and 45% of women's decided within six months.<sup>30</sup> Caseworkers are instructed to prioritise new cases, and if they are not concluded within 30 days, realistic estimates of time beyond six months are not usually given, and the case is likely to take very much longer. Only 61% of men's claims and 58% of women's are concluded within one year. 74% of cases are concluded within 36 months. It has been said to be 'not unusual' for an asylum case to take 3 years to complete.<sup>31</sup> No legal remedy for this level of delay has yet been established. 'Concluded' in all these cases means either status granted or the person has left the UK. 'Cases not concluded' therefore include people where a final negative decision has been made, but the person has not left the UK. At the end of 2013 there were 17,180 applicants, including dependants, who had applied since April 2006, and had not received an initial decision, 21% more than at the end of

<sup>26</sup> The Home Office [Asylum Policy Instruction: Gender Issues in the Asylum Claim](#), Section 2.

<sup>27</sup> This appeared in the Asylum Operating Model document, and according to internal Home Office documentation seen by the researcher is still under consideration.

<sup>28</sup> This appeared to be the overriding consideration in the short-lived Asylum Operating Model. See House of Commons Home Affairs Committee, *Asylum, Seventh Report of Session 2013-14*. HC71 para 35.

<sup>29</sup> [Immigration rules](#) para 333A.

<sup>30</sup> See [Asylum performance framework](#).

<sup>31</sup> Chief Executive of the UK Border Agency, the former agency of the Home Office which dealt with asylum cases until April 2013, Rob Whiteman, uncorrected evidence to Home Affairs Select Committee, *The Work of the UK Border Agency*, HC 792 Home Affairs Select Committee, 18 December 2012.

2012. 8,481 of these had been waiting more than six months.<sup>32</sup> There is a different standard for the claims of unaccompanied children. Although the Independent Chief Inspector in 2013 found different local offices had different standards, target times were in the region of 60 to 90 days.<sup>33</sup>

During 2013 and early 2014, a new source of delay is developing as the time spent waiting after screening for a substantive interview has increased significantly so that some asylum seekers have waited many months, some even a year, for their initial interview. Those waiting these extended times are in a minority. These delays seem to have coincided with a practice introduced in 2013 of sending asylum seekers to dispersed accommodation, i.e. away from initial accommodation centres (see section on Reception Conditions) before their initial substantive interview.<sup>34</sup>

It is not possible to say how many applicants have been waiting for an initial decision for over a year, because the published figures are of decisions outstanding at six months. The figures for decisions outstanding after a year relate to the year's cohort, not the cumulative total, of decisions outstanding. The figure for those who have applied since April 2006 and not received a first decision includes those who have been waiting over six months but less than a year. In addition there may still be some cases in the backlog (legacy) system described below which have not received an initial decision, but the total of these is unknown.

In 2006, the then Home Secretary made a commitment that the Home Office would deal with a backlog of 450,000 unresolved asylum cases by July 2011. Approximately 29,986 of these cases remained outstanding at the end of September 2013.<sup>35</sup> In response to recommendations from the Independent Chief Inspector of Borders and Immigration, the Home Office has developed more precise outcomes for cases in this system so it will be apparent whether a case has been 'concluded' because for instance the applicant cannot be found, or cannot be removed, or is to be granted leave to remain.<sup>36</sup> This inspection found that decisions on live cases were now being made on the correct basis but that one in five asylum cases closed by the OLCU had been closed incorrectly or for the wrong reason. The Home Affairs Select Committee found that delay in decision-making was once again on the increase, with the risk of a further backlog being generated. The Committee warned the government of the human cost of delay and the need to remedy it, and delays remained a concern in the Committee's latest report, published in March 2014.<sup>37</sup> The human cost is intensified by the fact that many people in the 'legacy' system are destitute, as described in the section on Reception Conditions.

## Appeal

### Indicators:

- Does the law provide for an appeal against the first instance decision in the regular procedure:
  - Yes       No
  - o if yes, is the appeal       judicial       administrative
  - o If yes, is it suspensive       Yes       No
- Average processing time for the appeal body to make a decision: 17 weeks

<sup>32</sup> Home Office Research and Statistics Directorate, [Immigration statistics, October to December 2013](#), December 2013.

<sup>33</sup> Independent Chief Inspector of Borders and Immigration [An Inspection into the handling of Asylum Applications by Unaccompanied Children](#), June 2013.

<sup>34</sup> Source: conversations with asylum seekers and NGOs; legal representatives' discussion forums

<sup>35</sup> House of Commons Home Affairs Committee, *The Work of the Immigration Directorates April to September Fifteenth Report of Session 2013-14*. HC820

<sup>36</sup> Independent Chief Inspector of Borders and Immigration, [An investigation into the progress made on legacy and asylum migration case](#), June 2013.

<sup>37</sup> House of Commons Home Affairs Committee, *Asylum, Seventh Report of Session 2013-14*. HC71 and *The Work of the Immigration Directorates April to September Fifteenth Report of Session 2013-14*. HC820.

There is a right to appeal from an initial asylum decision under the regular procedure. Appeals are made to the Immigration and Asylum Chamber of the First Tier Tribunal on both facts and law. This is a judicial body, composed of immigration judges and sometimes non-legal members. The Tribunal can assess and make findings of fact on the basis of the evidence presented including evidence which was not before the Home Office decision-maker. The time limit for appealing is 10 working days from the date of service of the Home Office decision, and 5 working days if the person is in detention.<sup>38</sup> Lodging an appeal suspends removal from the UK.

Given the limited availability of publicly funded representation in practice these time limits are short and asylum seekers may resort to sending in the appeal forms without legal representation. The blank appeal forms which also inform asylum seekers about their right to appeal are sent by the Home Office with the refusal letter, however, administrative mistakes made by an unrepresented asylum seeker in lodging an appeal can result in the appeal not being accepted by the Tribunal office.<sup>39</sup>

A fee of £140 (€165) is required for an oral hearing of an asylum appeal in the regular procedure, (not if the case is in the Detained Fast Track). Applicants need not pay if they are receiving asylum support (section 95 - see section on Reception Conditions) or if they have public funding to be represented.<sup>40</sup> It is also possible to apply to have the fee waived, and destitute asylum seekers without asylum support would qualify for this, but may not have the advice or information to make the application. In practice most asylum seekers are not liable to pay the fee because most are receiving asylum support.

The complexity of the law and procedure and the barrier of language make it extremely difficult for an asylum seeker to represent themselves. Tribunal rules requires all evidence to be translated where relevant and sent to all parties in advance of the hearing. It is difficult for an unrepresented asylum seeker to know what is required, or to get access to resources and advice to prepare papers for a hearing.

The average time to complete an asylum appeal, from the appeal being lodged to the applicant being notified of the outcome, is 17 weeks.<sup>41</sup>

Asylum seekers give evidence in person at the appeal hearing, and the Tribunal provides interpreters. This service was contracted out in February 2012 since when there have been 1190 formal complaints about the interpreter service out of 22,835 occasions when interpreters were engaged.<sup>42</sup> Hearings are public. Decisions are in theory public documents, but decisions of the First Tier Tribunal are not published.

There is an onward appeal to the Upper Tribunal on a point of law. This is with permission of the First Tier Tribunal. Application must be made within 5 working days of receiving the refusal. If the First Tier Tribunal refuses permission, an application for permission may be made to the Upper Tribunal. If this is refused, there is no appeal, but application may be made to the High Court, or in Scotland the Court of Session, for permission to apply for judicial review within a specially shortened time limit of 16 calendar days (as compared with three months for a usual judicial review application). Permission will only be granted on grounds:

- a. that there is an arguable case, which has a reasonable prospect of success, that both the decision of the Upper Tribunal refusing permission to appeal and the decision of the First Tier Tribunal against which permission to appeal was sought are wrong in law; and

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<sup>38</sup> Procedure Rules rule 7.

<sup>39</sup> Procedure Rules rule 9.

<sup>40</sup> HM Courts and Tribunals Service, [Immigration and Appeals Tribunal Fees Guidance](#).

<sup>41</sup> Ministry of Justice, [Tribunals Statistics](#), Quarterly, Q2 2012.

<sup>42</sup> UK Government, [Tables containing numbers and rates of completed language service requests by outcome, split by requester type and month](#), 30 January 2012 to 31 January 2013.

- b. that either
  - i. the claim raises an important point of principle or practice; or
  - ii. there is some other compelling reason to hear it.<sup>43</sup>

Lodging an appeal or an application for permission to appeal against an asylum refusal suspends removal from the UK.

If permission is granted to appeal to the Upper Tribunal, the Upper Tribunal's decision may be appealed again with permission on the same limited grounds on a point of law only to the Court of Appeal. In rare cases permission may be given for a final appeal to the Supreme Court where the Court of Appeal or Supreme Court certify that the case concerns a question of law of public importance.

Although the asylum decision is appealable in the regular procedure, there are many decisions affecting asylum seekers against which there is no right of appeal: e.g. a decision to detain, or giving directions for removal, or the refusal to treat further submissions as a fresh claim (subsequent asylum application), or a decision to remove to a safe third country. Where there is no right to appeal the only recourse is to judicial review. This is a procedure which does not examine the merits of the complaint, but only whether the decision maker has acted correctly, for instance by taking into account relevant considerations and not being influenced by irrelevant considerations. Judicial review is only available with the permission of the reviewing court. Judicial review was the preserve of the High Court until October 2011, since when categories of immigration and asylum judicial reviews have been gradually being transferred to the Upper Tribunal, and most are now in the Tribunal's jurisdiction.<sup>44</sup> Opponents of these transfers argue that the High Court is more independent and experienced in the public law principles which underpin judicial review. Those in favour of the transfer argue that immigration and asylum cases are best decided by those with specialist expertise.

### Personal Interview

#### Indicators:

- Is a personal interview of the asylum seeker conducted in most cases in practice in the regular procedure?  Yes  No
  - o If so, are interpreters available in practice, for interviews?  Yes  No
- In the regular procedure, is the interview conducted by the authority responsible for taking the decision?  Yes  No
- Are interviews ever conducted through video conferencing?  Frequently  Rarely  Never

Applicants are entitled to a personal interview,<sup>45</sup> and this is standard practice. There is an initial screening interview before the substantive interview, see section B1. Interviews may be dispensed with in defined circumstances including where: a positive decision can be taken on the basis of the evidence available; the facts given in the application only raise issues of minimal relevance or which are clearly improbable or insufficient or designed to frustrate removal, or the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his control. Where a refused asylum seeker returns to the UK and wishes to claim again, guidance to Home Office officers is that this should be treated as a further submission.<sup>46</sup> In this case they may be refused an interview. Applicants under 12 years old are not normally interviewed, though they can be if they are willing and it is deemed

<sup>43</sup> Rule 54.7A Civil Procedure Rules. <http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part54>

<sup>44</sup> Regulations are made implementing the power in Borders, Citizenship and Immigration Act 2009 s.53.

<sup>45</sup> Immigration rules para 339NA.

<sup>46</sup> The Home Office, *Asylum Process Guidance: Routing Asylum Applications*, para.3.9.

appropriate.<sup>47</sup> In summary, it is very rare for an asylum applicant over 12 years of age on their first application in the regular procedure not to have an interview.

Personal interviews are conducted by the authority responsible for taking the decisions, i.e. by the Home Office caseworkers. Asylum seekers are entitled to have a legal representative with them at the personal interview, but there is no public funding for this for adults except in the Detained Fast Track, and so few are able to do so in practice. Where there is a legal representative present, their role is not to put the asylum seeker's case, but to ensure that their client is able to participate fully and properly in the interview. Legal representatives say that this role can be difficult to fulfil since the warning which the Home Office caseworker reads out at the beginning of the interview says that they cannot interrupt. The legal representative's professional standard may conflict with this if for instance there is a problem with the interpretation, or the caseworker is not taking full notes.<sup>48</sup> Some Home Office caseworkers and legal representatives may not be aware of the full scope of the representative's role.

Interpreters are required by the immigration rules and are provided by the Home Office. There is a code of conduct for these interpreters, but in practice asylum seekers are unaware of it and of what to expect from their interpreter unless they have a legal adviser who has informed them about this beforehand. Lawyers, NGOs and refugee groups frequently report problems with interpreters including misinterpretation, the interpreter not being fluent in the asylum seeker's language or having a very different dialect so that there is misunderstanding. Since inconsistencies on matters of detail in the asylum interview are a common reason for refusing asylum, problems with interpreting can have a significant impact. If the asylum seeker has a representative present, best practice in this case suggests that the representative should interrupt the interview. Home Office caseworkers are not always familiar with this, and it can be difficult for problems of interpretation to be raised and rectified at the time they occur. Asylum seekers are allowed to take an interpreter of their own choosing to the interview, but there is no public funding for this in most adult cases, so taking one's own interpreter is unusual.

Normal good practice is that asylum seekers are asked at the screening interview whether they wish to be interviewed by a man or a woman, and the policy and practice is to respect this preference, subject to availability of staff.<sup>49</sup>

Audio-recording of interviews is permitted and should be allowed where a request has been made in advance by the asylum seeker, except in the unusual cases where an asylum seeker is entitled to a legal representative at their interview. The Home Office advice to interviewers is that they need not arrange tape recording if the asylum seeker has not requested it in advance, and need not ask again when the asylum seeker arrives for interview<sup>50</sup>. The recording must be provided to the applicant after the interview. Verbatim transcripts of the interview are provided to the applicant shortly after the interview and five working days are allowed to make comments or corrections before the first instance decision is taken.

There are no reported instances of interviews being carried out through video link, and there does not appear to be any provision for this.

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<sup>47</sup> Kamena Dorling and Anita Hurrell, *Navigating the System: Advice Provision for Young Refugees and Migrants*, 2012, Coram Children's Legal Centre.

<sup>48</sup> Immigration Law Practitioners Association *Making as Asylum Application: a best practice guide* 2002.

<sup>49</sup> Home Office *Asylum Policy Instruction, Gender issues in the asylum claim* Para 7.1.

<sup>50</sup> Home Office *Asylum Policy Instruction, Asylum Interviews* Version 5.0, 31 March 2014, Section 6.1 Recording policy.

The guidelines on gender issues require provision of child care so that parents do not have to have their children present while being interviewed about possibly traumatic experiences.<sup>51</sup> This is in place in regional offices except London.<sup>52</sup>

### Legal assistance

#### Indicators:

- Do asylum seekers have access to free legal assistance at first instance in the regular procedure in practice?  
 Yes       not always/with difficulty       No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a negative decision?  
 Yes       not always/with difficulty       No
- In the first instance procedure, does free legal assistance cover:  
 representation during the personal interview     legal advice     both     Not applicable
- In the appeal against a negative decision, does free legal assistance cover  
 representation in courts       legal advice       both       Not applicable

Free legal assistance is available to asylum seekers as part of the state funded scheme of free legal aid in restricted areas of legal practice for people who have not sufficient resources. Although the immigration rules provide<sup>53</sup> that asylum seekers shall be allowed 'an effective opportunity' to obtain legal advice, access to this is not guaranteed.

Legal aid is available for appeals, subject to a means test and in England and Wales a merits test, and availability of a representative.

Few asylum seekers obtain advice before their screening interview. In the cases where they do, giving full instructions with an interpreter is not publicly funded, since the maximum that the solicitor can claim for work done before screening is £100 (120€).

In England and Wales, legal aid for legal advice and representation for the initial stage of an asylum case, from claim, through interview up to decision, is paid as a fixed fee of £413 (490€).<sup>54</sup> Exceptions include unaccompanied children applicants, and where the representative can evidence that they have undertaken work that equates to over 3 times the value of the fixed fee. An hourly rate can then be paid if the Legal Aid Agency, which assesses the claim for costs, accepts that 3 times the level of work was done and warranted.<sup>55</sup>

The low fixed fee and the significant jump to achieve an hourly rate both put pressure on conscientious representatives. The low fixed fee at these pre-appeal stages also makes it difficult to conduct a thorough examination of a complex case. The grant of legal aid for appeal depends on this assessment by the lawyer, and the award of legal aid contracts by the Legal Aid Agency depends on performance indicators including success at appeals. From December 2013 the rates paid for Upper Tribunal work have been reduced, and this comes on top of the legal aid cuts referred to below. While dedicated lawyers continue to do high quality work, the system operates to discourage less scrupulous lawyers

<sup>51</sup> Home Office *Asylum Policy Instruction, Gender issues in the asylum claim* Para 7.1.

<sup>52</sup> Christel Querton, *I feel like as a woman I'm not welcome: a gender analysis of UK law, policy and practice*, Asylum Aid 2012, and House of Commons Home Affairs Committee, *Asylum, Seventh Report of Session 2013-14*. HC 71

<sup>53</sup> Immigration rules para 333B.

<sup>54</sup> [The civil legal aid \(remuneration\) regulations 2013](#), schedule 1, table 4(a),

<sup>55</sup> [Immigration Specification to the 2013 Standard civil contract](#).

from granting legal aid at appeal and makes it difficult for quality representatives to stay in business with high standards.<sup>56</sup>

Legal assistance is not provided at the Asylum Screening Unit or at the port of entry. From 1<sup>st</sup> April 2014 screening officers will be able to make appointments for asylum applicants with lawyers, if the applicant wishes. Free legal assistance (funded as described above) is limited to advising the asylum seeker before and immediately after their asylum interview. This may include making additional written representations to the Home Office, which as a matter of usual policy are only allowed within five days after the interview. With some exceptions (including unaccompanied children and people with mental illness), there is no public funding for a legal representative to attend the asylum interview.<sup>57</sup>

The pressures described above do not apply in Scotland, where fees are not fixed, and there is no merits test for representing at a first appeal. For an appeal to the Upper Tribunal where the First Tier Tribunal has not given permission to appeal, a lawyer in Scotland must assess the merits of the case, and payment may be disallowed if the Scottish Legal Aid Board takes a different view.

The amount that is payable per case in England and Wales has been reduced steadily over a period of years. The two major non-governmental organisations which offered immigration and asylum advice have closed, Refugee and Migrant Justice in 2010 and Immigration Advisory Service in 2011. In 2011/12 £12 million less (about 14 mio €) was spent on legal aid for asylum cases despite an increase in asylum claims.

In April 2013 the Legal Aid, Sentencing and Punishment of Offenders Act 2012 came into force, abolishing legal aid in most immigration cases. The resultant financial pressure, combined with the widespread maximum allocations of new cases, limited to 100 under the new April 2013 contract means that legal firms doing immigration and asylum work either need to reduce the number of workers they employ, or open branch offices to attract a further allocation of asylum cases in the hope that these will be viable. The net effect of all this is yet to be seen. There is no government obligation to provide publicly funded representation to any particular level in any region. The availability of publicly funded legal representation in any region of the UK is determined in part by the number of new cases which the former Legal Aid Agency permits. The level of legal aid cases allocated for contracts from April 2013 is proportionate based on historical usage within each region. Therefore in areas where there is a shortage of legal advice there is no governmental procedure for remedying this, i.e. there is no public law or enforceable governmental obligation to provide a level of service in a particular region. Moreover, asylum seekers may be dispersed (moved to another part of the country) where legal advice may be difficult to access. They may also be dispersed away from a solicitor who initially advised them about their asylum claim.

From 27<sup>th</sup> January 2014 legal aid is abolished for civil court cases where the merits are assessed as 'borderline', i.e. over 50% but not more than 60%.<sup>58</sup> This will affect asylum seekers' capacity to access judicial review.

The cumulative impact of the closure of immigration and asylum law firms and departments, the tighter limits on legal aid and the new Act is that there is a shortage of good quality publicly funded advice and representation for asylum seekers. One writer estimates that the loss of legal aid funding in immigration and asylum amounts nationally to the work of around 250 full-time experienced caseworkers and

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<sup>56</sup> Julie Gibbs and Deri Hughes-Roberts, *Justice at Risk: Quality and Value for Money in Asylum Legal Aid*, Runnymede Trust, (2012) and see Christel Querton, *I feel like as a woman I'm not welcome: a gender analysis of UK law, policy and practice*, Asylum Aid 2012.

<sup>57</sup> Legal Aid, Sentencing and Punishment of Offenders Act 2012, Schedule 1 Part 1 para 30.

<sup>58</sup> The Civil Legal Aid (Merits Criteria), [\(Amendment\) Regulations 2014 No. 131](#).

solicitors,<sup>59</sup> and the continued reduction in public funding threatens more reductions in the voluntary sector.<sup>60</sup> Thus the provisions on eligibility for legal aid need to be read in the context of limited availability of representatives in practice.

In Scotland, supply is more closely matched with demand, although there are also measures to contain costs.<sup>61</sup>

In the East Midlands of England, a pilot scheme, the Early Legal Advice Project (ELAP)<sup>62</sup>, ran until the end of December 2012 which entailed more high quality advice given at an early stage. The applicant spent more time with a legal advisor who was able to give higher level advice, both before and after the asylum interview, and there was more opportunity for dialogue between the legal advisor and the Home Office. Legal aid was paid at an hourly rate (capped to a maximum) rather than a fixed fee. The aim was to discover whether more good quality legal advice earlier in the process would result in more soundly based decisions, giving asylum seekers greater security in the process, more sustainable first decisions, and less money wasted in the cost of appeals.<sup>63</sup> The Home Office evaluation indicated improved decision making in complex cases, and more initial grants of discretionary leave, but a higher cost per case.<sup>64</sup> The system has not been adopted, but the Home Affairs Select Committee in October 2013 noted the positive aspects which emerged from the Early Legal Advice Project and recommended that the Government invest in identifying how to improve the early identification of complex cases which would benefit from early legal advice, the front-loading of evidence, and the timely submission of witness statements.<sup>65</sup>

### 3. Dublin

#### Indicators:

- Number of outgoing requests in the previous year: 1,356 in 2012
- Number of incoming requests in the previous year: 1,992 in 2012
- Number of outgoing transfers carried out effectively in the previous year: 714 in 2012
- Number of incoming transfers carried out effectively in the previous year: 262 in 2012\* 2013 figures are not available

#### Procedure

#### Indicator:

- If another EU Member State accepts responsibility for the asylum applicant, how long does it take in practice (on average) before the applicant is transferred to the responsible Member State? **Not available**

<sup>59</sup> Sheona York, *The end of legal aid in immigration: a barrier to access to justice for migrants and a decline in the rule of law*, Journal of Immigration, Asylum and Nationality Law, (2013) Vol. 27.2.

<sup>60</sup> Deri Hughes-Roberts, *Rethinking Asylum Legal Representation: promoting quality and innovation at a time of austerity*, Asylum Aid 2013.

<sup>61</sup> Scottish Legal Aid Board, *Best Value Review: Immigration And Asylum 2011*.

<sup>62</sup> The project was run by the the Home Office and Legal Aid Agency (LSC).

<sup>63</sup> Julie Gibbs and Deri Hughes-Roberts, *Justice at Risk: Quality and Value for Money in Asylum Legal Aid* Runnymede Trust, 2012.

<sup>64</sup> Mike Lane, Daniel Murray, Rajith Lakshman (GVA), Claire Devine and Andrew Zurawan (Home Office Science), *Evaluation of the Early Legal Advice Project Final Report Research Report 70*, May 2013

<sup>65</sup> House of Commons Home Affairs Committee, *Asylum, Seventh Report of Session 2013-14*. HC71



UK legislation provides for different lists of 'safe third countries' to which an asylum seeker can be returned without their asylum claim being considered in the UK. They are called 'third' countries because they are not the UK and not the country of origin.

The First List is set out in the statute and consists of EU member states (except Croatia), Iceland, Norway and Switzerland. There is no reference to the Dublin Regulation, but the legislation states that the listed countries are to be treated as places in which a person will not be at risk of persecution contrary to the Refugee Convention, and from which they will not be sent in breach of the Refugee Convention or ECHR.<sup>66</sup> In relation to a person who can be removed to one of these countries, the Dublin regulation is applied.

Whether the person can be removed to one of these countries is determined in the first instance by whether they can be shown to have travelled through that country. Fingerprinting is a routine part of the screening process, carried out in all cases, and fingerprints are sent to the Immigration Fingerprint Bureau (IFB) which automatically runs a fingerprint check on the EURODAC database.<sup>67</sup>

Enquiries as to the route of travel are also a routine part of the screening process in all cases. Together with the results of a EURODAC search, the asylum seeker's account of their route of travel will determine whether the application is referred to the Third Country Unit. Home Office guidance lays down that a response from the Third Country Unit to the Screening Unit should be received in Dublin cases within two days,<sup>68</sup> with a decision as to whether the applicant should be detained and whether the Dublin regulation will be applied. In practice Dublin decisions are usually taken quickly, although it may take more than two days. If there is a EURODAC match there will usually be a reference to the Third Country Unit and a Dublin decision.

In practice a Dublin decision (i.e. a decision that the Dublin regulation applies) normally entails a decision that the asylum claim will not be considered in the UK. Lawyers say that the UK rarely applies the humanitarian clause of the Dublin Regulation, and that the only exception which the UK regularly makes to issuing a certificate in Dublin cases is where the applicant has a spouse, parents or children who are refugees in the UK.<sup>69</sup> However, at the stage of making a Dublin decision the information that the asylum seeker has close family in the UK may not have been disclosed. Family information and other reasons to apply the humanitarian or sovereignty clauses are not actively sought at the screening interview. In practice such grounds are more likely to be raised as a challenge to the Dublin decision once it is made.

In general applicants are detained when the Dublin decision is made. Information about the Dublin procedure is given once the person is in detention. They are not informed prior to the issue of the certificate that a Dublin decision is under consideration and may not be informed that a request has been made to another Member State or the progress of that request. Applicants are generally detained until removal, which usually happens under escort.

Once the EU Member State or Schengen Associated State takes or is deemed to take responsibility for examining the asylum application on the basis of the Dublin Regulation, the claim is refused on third country grounds without its substance being considered. The only challenge is by judicial review. This is on very limited grounds, generally that the Dublin regulation has not been properly applied because for instance the person has family in the UK, or that human rights will be breached and the humanitarian clause should be applied (see also the next section).

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<sup>66</sup> Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (AITOCA) Schedule 3 Part 2, first list.

<sup>67</sup> The Home Office, *Asylum Process Guidance, Third Country Cases: Referring and Handling* para 2.2.

<sup>68</sup> The Home Office, *Asylum Process Guidance, Third Country Cases: Referring and Handling* para 4.2.

<sup>69</sup> Following *R (on the application of MA, BT, DA) v SSHD C-648/11* the UK will not be able to apply the Dublin regulation to unaccompanied minors.

On the Second List, see Section on Admissibility Procedures.

### Appeal

#### Indicators:

- Does the law provide for an appeal against the decision in the Dublin procedure:  
 Yes       No
- Average processing time for the appeal body to make a decision: **Not available.**

There is no appeal on *asylum grounds* against a decision that a person may be returned to another country on the First List – i.e. through the Dublin regulation, and no appeal against a decision in the Dublin procedure may be made on the grounds that the asylum seeker would be sent to another country in breach of their rights under the European Convention on Human Rights (ECHR) or in breach of the Refugee Convention.<sup>70</sup> The one ground of appeal available against a Dublin removal (i.e. a removal to a First List country) is that the person's ECHR rights would be breached *in* the receiving country. A human rights appeal of this kind may only be brought *in* the UK if the Home Office does not certify that the human rights appeal is clearly unfounded, but the Home Office is required to certify that it is clearly unfounded unless there is evidence to the contrary.<sup>71</sup> In cases where an appeal is available an out of country appeal must be brought within 28 calendar days (where the human rights appeal is certified clearly unfounded); an in-country appeal (where the human rights appeal is not certified) must be brought within 10 working days. There are very few appeals of this kind because the available grounds are so limited. There is no information to suggest that the delay for a decision to be given is different from other appeals, but the appeals statistics do not distinguish these cases.

The result is that the only suspensive appeal against a Dublin removal is a human rights claim where this is not certified by the Home Office as clearly unfounded. Otherwise, the decision to remove under the Dublin Regulation can only be challenged by judicial review. There have been challenges before the courts in relation to conditions of return in Cyprus, Italy, Malta and Hungary. These challenges concern the level of reception conditions and procedural guarantees in the countries to which the asylum seeker would be transferred.<sup>72</sup>

On the Second List, see section on Admissibility Procedures.

### Personal Interview

#### Indicators:

- Is a personal interview of the asylum seeker conducted in most cases in practice in the Dublin procedure?       Yes       No

No personal interview takes place in the Dublin procedure.

The decision that the Dublin procedure is to be used is made on the basis of a Eurodac hit and/or information obtained in the screening interview about the route of travel. Once the Dublin decision is issued the claim is not substantively considered in the UK.

<sup>70</sup> Asylum and Immigration (Treatment of Claimants, etc) Act (AITOCA) 2004 Schedule 3 Part 2. <http://www.legislation.gov.uk/ukpga/2004/19/contents>

<sup>71</sup> AITOCA 2004 Schedule 3, Part 2.

<sup>72</sup>

## Legal assistance

### Indicators:

- Do asylum seekers have access to free legal assistance at the first instance in the Dublin procedure in practice?  Yes  not always/with difficulty  No
- Do asylum seekers have access to free legal assistance in the appeal<sup>73</sup> procedure against a Dublin decision?  Yes  always/with difficulty  No

Before a Dublin certificate is issued an asylum seeker has the same opportunity as any other asylum seeker to obtain access to free legal representation. They are affected by the limited resources and the lack of incentive for legal representatives to advise before the screening interview (see Legal Assistance section in regular procedure). Once the Dublin decision is issued they are likely to be detained. If they already have a legal representative that person may continue to represent them. If not, they may, again subject to resources, obtain access to representation in detention (see legal assistance in detention). There are no special restrictions on legal aid in Dublin cases, and judicial review is funded by legal aid.

## Suspension of transfers

### Indicator:

- Are Dublin transfers systematically suspended as a matter of policy or as a matter of jurisprudence to one or more countries?  Yes  No
  - o If yes, to which country/countries? Greece

Transfers to Greece were generally suspended as a matter of practice following the European Court on Human Rights judgment in *MSS v Belgium and Greece*<sup>74</sup>, and in anticipation of the Court of Justice of the European Union decision in *NS C-411/10*.<sup>75</sup> This was an executive decision applying to all potential transfers to Greece, and is kept under review in conjunction with the European Asylum Support Office and UNHCR.<sup>76</sup> However, decisions can still be made to return asylum seekers to Greece under the Dublin procedure, even if they are not implemented. There is no automatic legal mechanism to prevent such returns actually being carried out. Challenges must be made in individual cases, and practitioners say that some returns to Greece have been made since the decisions in *M.S.S. v Belgium and Greece*. Some individual cases of proposed returns to Italy and Cyprus were suspended awaiting the decision of the Supreme Court in the case of *EM (Eritrea)*<sup>77</sup>. In order for this to happen, legal representatives need to apply in each individual case for it to be stayed. There is no automatic policy of doing so. The Supreme Court decided on 19<sup>th</sup> February 2014 that for an asylum seeker to establish that it would be a breach of Article 3 ECHR to return them to another EU country, they did not have to prove that there would be systemic failings in the asylum system in that country. A real risk of a violation of their rights would be enough to prevent their removal.<sup>78</sup> This means that in the many cases which have been waiting for the outcome of that case, there will now need to be individual decisions on whether asylum seekers' rights are at risk in the EU country to which they would be returned.

Reception conditions in Italy were not considered by the Supreme Court, but will be considered in a group of test cases in May 2014.<sup>79</sup> There are cases in the Court of Appeal challenging returns to

<sup>73</sup> The ticked box concerning appeals refers to judicial review since there is no appeal.

<sup>74</sup> European Court of Human rights, *M.S.S. v. Belgium and Greece*, Application No. 30696/09, Judgment of 21 January 2011.

<sup>75</sup> The Parliamentary Under-Secretary of State, Home Office House of Lords, [25 Oct 2011: Column WA121](#).

<sup>76</sup> Parliamentary Under Secretary of State for the Home Office, House of Lords, [23 January 2013, col. WA 209](#).

<sup>77</sup> [EM \(Eritrea\) v the Secretary of State for the Home Department](#) [2014] UKSC 12.

<sup>78</sup> *EM (Eritrea) v the Secretary of State for the Home Department* [2014] UKSC 12 concerned returns to Italy.

<sup>79</sup> The lead case is [AB \(Sudan\) v Secretary of State for the Home Department](#), [2013] EWCA Civ 921.

Hungary,<sup>80</sup> Malta<sup>81</sup> and Cyprus<sup>82</sup>, and individual returns to these countries are stayed pending the outcome of these cases. The UK has not made findings of systemic deficiencies in relation to other EU countries, but given the outcome of *EM (Eritrea)*, it will not be necessary to do so in order to prevent a Dublin removal.

The UK does not automatically assume responsibility for examining asylum applications where transfers are suspended. If discussions with the receiving country become protracted so that it appears there is no realistic prospect of the transfer taking place, the asylum seeker may be released from detention. Once released from detention in these circumstances, asylum seekers may be granted accommodation and cash support. An asylum seeker who is the subject of a Dublin decision qualifies for reception conditions on the same conditions as those in the regular procedure.<sup>83</sup>

#### 4. Admissibility procedures

##### *General (scope, criteria, time limits)*

The only admissibility procedure in the UK is the safe third country procedure, either removal to an EU country using the Dublin regulation, or another safe third country. There is no screening for admissibility on the basis of the merits of the case (see Section on Dublin procedure). This section deals with decisions to remove the asylum seeker to a safe third country other than an EU Member State or other country using the Dublin Regulation.

As described in the context of the Dublin procedure, in effect the Dublin regulation countries constitute the First List. Legislation gives a power to create a Second List. A country on the Second List is treated as a place to which non-nationals can be returned without a breach of the Refugee Convention, either in that country or through risk of being sent elsewhere.<sup>84</sup> Additionally, there is a presumption that human rights claims against removal to it of non-nationals are unfounded.<sup>85</sup>

There is no time limit for taking a decision but in practice third country decisions often tend to be taken rather quickly.

##### *Appeal*

###### *Indicators:*

- Does the law provide for an appeal against the decision in the admissibility procedure:  
 Yes       No

There is no appeal on *asylum grounds* against a safe third country decision. However, an appeal may be made on the grounds that the person would be sent by that third country to another country in breach of their rights under the European Convention on Human Rights (ECHR) (e.g. indirect refoulement on human rights grounds) or that their ECHR rights would be breached in the receiving country. These human rights appeals may only be brought in the UK if the Home Office does not certify that they are clearly unfounded. In the case of the 'second list' there is an obligation to certify human rights claims as clearly unfounded unless the decision maker is satisfied that they are not unfounded.<sup>86</sup> Where an

<sup>80</sup> R (Toufighy and Duran) v Secretary of State for the Home Department, [2012] EWHC 3004 (Admin).

<sup>81</sup> [MB v Secretary of State for the Home Department](#) [2013] EWHC 123 (Admin), permission to appeal has been granted by the Court of Appeal.

<sup>82</sup> [MC \(Guinea\), Jafari and FJ \(Iran\) v SSHD](#), [2013] EWCA Civ 922.

<sup>83</sup> Information from the Asylum Support Appeals Project, Case 179/11 *Cimade* CJEU.

<sup>84</sup> AITOCA 2004 Schedule 3 Parts 3 and 4.

<sup>85</sup> AITOCA 2004 Schedule 3 Part 3.

<sup>86</sup> AITOCA 2004 Schedule 3, Parts 3 and 4.

appeal is available an out of country appeal must be brought within 28 calendar days; an in-country appeal must be brought within 10 working days. The same problems may arise as with the ten day limit in the regular procedure (see appeal – regular procedure).

The result is that the only suspensive appeal against a third country removal would be where a human rights claim is not certified as clearly unfounded. When a decision is made that the person can be returned to a safe third country, a certificate is issued to that effect, and this can only be challenged by judicial review. The certificate that the case is unfounded can also only be challenged by judicial review. The scope of judicial review is described above in relation to the regular procedure, but in the case of a judicial review based on human rights, the court looks more closely at the substance of the decision.<sup>87</sup>

The main distinction between the legal provisions governing appeals in these safe third country cases and Dublin cases is that in Dublin cases there is no appeal from outside the UK on the basis of indirect refoulement in breach of ECHR rights.

Presently no countries are listed in the Second List, and non-Dublin safe third country returns take place on a case by case basis. They have been carried out to e.g. the US and Canada.

### Personal Interview

#### Indicators:

- Is a personal interview of the asylum seeker conducted in most cases in practice in the admissibility procedure?  Yes  No

As stated above in relation to the Dublin procedure, there is no provision for a personal interview in safe third country cases.

### Legal assistance

#### Indicators:

- Do asylum seekers have access to free legal assistance at first instance in the admissibility procedure in practice?  Yes  not always/with difficulty  No
- Do asylum seekers have access to free legal assistance in the appeal procedure against an admissibility decision?  Yes  not always/with difficulty  No

There are no special rules or restrictions applying to legal assistance in the safe third country procedure. As with applicants who are subject to the Dublin procedure, in principle an asylum seeker subject to a third country decision has the same opportunity as any other asylum seeker to obtain access to free legal representation. However, for both Dublin and other third country procedures, once the decision to use a third country procedure has been made, the person is likely to be detained. If they already have a legal representative that person may continue to represent them. If not, they may, again subject to resources, obtain access to representation in detention (see legal assistance in detention). Judicial review is funded by legal aid, subject to the means of the asylum seeker and the merits of the case.

<sup>87</sup> [R v Secretary of State for the Home Department ex p Daly](#) [2001] UKHL 26.

## 5. Border procedure (border and transit zones)

### General (scope, time-limits)

#### Indicators:

- Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities?  Yes  No
- Are there any reports (NGO reports, media, testimonies, etc) of people refused entry at the border and returned without examination of their protection needs? Are there any substantiated reports of refoulement at the border (based on NGO reports, media, testimonies, etc)?  
 Yes  No
- Can an application made at the border be examined in substance during a border procedure?  
 Yes  No

In the UK there is no provision for asylum decisions to be taken at the border. An application for asylum may be made at the port of arrival, and immigration officers from the UK Border Force may carry out the screening interview, but then refer the claim to UK Visas and Immigration. The substance of the claim is not examined at the border.

If a person claims asylum immigration officers grant temporary admission to enable the claim to be made. Temporary admission is not an immigration status and has no rights attached. It is analogous to release from detention on licence. Detention in an airport is limited to relatively short periods (less than 24 hours). Short-term holding facilities in airports are not subject to the usual rules which govern immigration detention, but are inspected by the government's prison inspectorate.<sup>88</sup>

The Equality Act 2010 permits immigration officers to discriminate on grounds of nationality if they do so in accordance with the authorisation of a minister.<sup>89</sup> This discrimination may include subjecting certain groups of passengers to a more rigorous examination. Ministerial authorisations are made on the basis of statistical information of a higher number of breaches of immigration law or of adverse decisions in relation to people of that nationality. The statistical basis is not published. Immigration officers have the power to refuse entry at the border unless the passenger has a valid entry clearance or claims asylum. It is not known whether and if so how many people sent back from the border wished to claim asylum but did not say so to immigration officers or were de facto not given an opportunity to do so. In 2013, 14,124 people were refused entry at the UK port and subsequently left the country.<sup>90</sup>

The UK also operates juxtaposed controls in France and Belgium. In the control zones in France and Belgium, no asylum claim can be made to UK authorities<sup>91</sup>, and the acknowledged purpose of these agreements with France and Belgium was to stop people travelling to the UK to claim asylum.<sup>92</sup> Of the 4,201<sup>93</sup> people turned back in control zones in 2013, it is not known how many wished to claim asylum. There is little or no information about any attempted claims, and whether those who attempt to claim are referred to the authorities of the state of departure, as the regulations require. During an investigation by the Children's Commissioner for England, the Home Office officials disclosed the 'Gentleman's Agreement'.<sup>94</sup> This operates in relation to people intercepted on landing in the UK who are considered to have made an illegal entry and who do not say that they wish to claim asylum. The agreement is

<sup>88</sup> See reports from the HM Inspectorate of Prisons on the Ministry of Justice [website](#).

<sup>89</sup> [Equality Act 2010](#) s.29 and schedule 3 part 4.

<sup>90</sup> Home Office Research and Statistics Directorate, [Immigration Statistics: Removals](#), Q42 2013.

<sup>91</sup> In the case of France, this is stated in Article 4 of the Additional Protocol CM 5015 to the Protocol between the United Kingdom of Great Britain and Northern Ireland and the French Republic concerning Frontier Controls and Policing, Co-operation in Criminal Justice, Public Safety and Mutual Assistance relating to the Channel Fixed Link, Cm 2366, signed at Sangatte on 25 November 1991. It is not explicit in the Belgian agreement.

<sup>92</sup> Independent Chief Inspector of Borders and Immigration, [An Inspection of Juxtaposed Controls](#), 2013.

<sup>93</sup> Home Office Research and Statistics Directorate, [Immigration Statistics: Removals](#), Q42 2013.

<sup>94</sup> Adrian Matthews, *Landing in Dover: The Immigration process undergone by unaccompanied children arriving in Kent*, 2012, Children's Commissioner.

between the UK and France and obliges France to accept the return of such passengers if this can be effected within 24 hours. Returns under the Gentleman's Agreement are effected without a formal refusal of leave to enter. Following the Commissioner's discovery that this was being applied to young people, the practice was stopped in relation to acknowledged children. In 2012/13 the Independent Chief Inspector of Borders and Immigration carried out an inspection of juxtaposed controls which disclosed that, since 2010 UK officials at Calais had ceased processing people attempting to travel clandestinely, but simply handed them straight to the French police.<sup>95</sup> This was due to lack of detention facilities and was unlike the practice in other ports, where people travelling clandestinely were processed, fingerprinted and formally refused entry. No comment was made by the inspector as to whether this could have had an impact on potential asylum seekers.

The ministerial authorisation to discriminate in refusing leave to enter takes effect also in control zones.<sup>96</sup> Field research by the Refugee Council, though not about juxtaposed controls, found that 'outposted immigration officials fail to differentiate between different types of unauthorised travellers attempting to enter the UK'.<sup>97</sup>

Therefore although there is little or no substantiated evidence of *refoulement* taking place at the border, current UK policy and practice creates a risk of this occurring. However, further research would be required in order accurately to assess this.

### Appeal

#### Indicators:

- Does the law provide for an appeal against a decision taken in a border procedure?  
 Yes       No

There is no substantive border procedure and thus the question of appeal does not arise. The decision to detain or to grant temporary admission or release is not appealable. If a person claims asylum at the port after a refusal or cancellation of immigration leave to enter, the claim must be recorded and referred to the Home Office. The claim then proceeds to the usual screening process. Data on asylum applications do not record whether people who claim at the port after being refused entry are treated in any way differently from those who claim immediately on arrival.

### Personal Interview

#### Indicators:

- Is a personal interview of the asylum seeker conducted in most cases in practice in the border procedure?  Yes       No

No substantive interview should take place at the port. However, it may be that matters relevant to an asylum claim are disclosed during an immigration interview dealing with leave to enter. This will be placed in the same file as any later asylum claim, and may in practice be taken into account in an asylum decision. Sensitivity to gender or trauma issues is not anticipated in an immigration interview as it is in an asylum interview.

<sup>95</sup> Independent Chief Inspector of Borders and Immigration, [An Inspection of Juxtaposed Controls](#), 2013.

<sup>96</sup> Equality Act 2010 Schedule 3, Part 4, Paragraph 17 (4) (A) Ministerial Authorisation para 4.

<sup>97</sup> Sile Reynolds, Helen Muggeridge, [Remote Controls: how UK border controls are endangering the lives of refugees](#), Refugee Council, 2008.

## Legal assistance

### Indicators:

- Do asylum seekers have access to free legal assistance at first instance in the border procedure in practice?  Yes  not always/with difficulty  No

There are no schemes for legal assistance at the ports, and so no regular presence of legal advisers. There is no provision of legal assistance at a screening interview which takes place at a port, and no opportunity for prior advice.

## 6. Accelerated procedures

### *General (scope, grounds for accelerated procedures, time limits)*

There are two kinds of accelerated procedures.

Firstly where the claim is certified by the Home Office as clearly unfounded, there is no in-country appeal. These are called NSA (non-suspensive appeal) cases. The majority of cases certified in this way are of applicants from a deemed safe country of origin, but cases are also certified as clearly unfounded on an individual basis. The applicant may often be detained, though not always, and guidance to Home Office decision makers refers to the procedure as 'DNSA' - detained non-suspensive appeal. About 10% of claims were certified clearly unfounded in 2013. Albania, India and Nigeria were by far the most common nationalities, between them accounting for 76% of those people whose claims were certified unfounded.<sup>98</sup>

The second accelerated procedure is a detained fast track procedure (DFT) where the Home Office consider that the claim is capable of being decided quickly. The whole DFT process is conducted in detention. In theory the two procedures are very different in that NSA implies that there is no merit, whereas DFT is based on speed. However, as described below, informally the DFT also appears to operate as an 'unfounded' procedure.

The most common reason (95% of certified unfounded claims in 2013)<sup>99</sup> for a claim to be certified as clearly unfounded and thus routed through the NSA procedure is that the asylum seeker comes from a country which is considered to be safe. Countries are treated as safe if they are designated as such in binding orders made under section 94 Nationality Immigration and Asylum Act 2002 (See section on the safe country concept). There is no time limit for a decision to be made in such a case, although the Home Office guidance states that the aim is to decide within 14 calendar days. The Home Office is responsible for making the decision. The policy is that all decisions on a potential NSA case must be made by a caseworker who is trained to make NSA decisions, and must be looked at by a second 'accredited determining officer' who decides whether to accept the first officer's recommendation.<sup>100</sup> Guidance to decision makers advises that where the claim is for asylum and human rights protection, both or neither should be certified as unfounded, since any appeals of the two issues must be heard together. The guidance also states that when the asylum seeker comes from a designated state the refusal should not be based on the credibility of the individual applicant but on objective country material.<sup>101</sup> This is general practice and is unlike the regular procedure where no such guidance is given and refusal is commonly based on credibility.

<sup>98</sup> Home Office Research and Statistics Directorate, [Immigration Statistics: Asylum Table 13](#), Q4, 2013.

<sup>99</sup> Home Office Research and Statistics Directorate, [Immigration Statistics: Asylum Table 13](#), Q4, 2013.

<sup>100</sup> Home Office, *Asylum Process Guidance, Special Cases: Certification under s.94*, para. 8.3.

<sup>101</sup> Home Office, *Asylum Process Guidance, Special Cases: Certification under s.94* para 8.4.1.



A claim may also be certified clearly unfounded and routed through the NSA on an assessment of the individual merits of the case, not only on the basis of a deemed safe country of origin (484 cases were individually certified in 2013).<sup>102</sup> This should only be done where the caseworker considers that the claim is incapable of succeeding before an independent tribunal.<sup>103</sup>

The defining characteristics of the detained fast-track procedure (DFT) are speed and detention throughout the process. The criteria for being routed into the DFT are wide: it only requires that the case is considered after the screening interview to be capable of being decided quickly and that the asylum seeker is not excluded from the DFT. The following groups of people are excluded from the DFT:

- women who are 24 weeks pregnant or over;
- applicants with health conditions needing 24 hour medical care;
- applicants with physical disabilities, except the most manageable;
- applicants with infectious and/or contagious diseases
- applicants with severe mental health problems
- where there is evidence that applicants have been tortured
- those under 18 and adults with dependent children
- victims or potential victims of trafficking.

The guidance says that a case may be suitable for the DFT where it appears that further enquiries will not be needed, nor complex legal advice, corroborative evidence, or translation of documents.<sup>104</sup> Since the details of the asylum claim do not form part of the screening interview, in practice the complexity of the case is generally not apparent at the screening stage.<sup>105</sup> Studies of the DFT have shown that people with complex cases and from the excluded groups are in fact placed in the DFT.<sup>106</sup> The UN Committee Against Torture is concerned that torture survivors and people with mental health conditions enter the DFT 'due to a lack of clear guidance and inadequate screening processes, and the fact that torture survivors need to produce 'independent evidence of torture' at the screening interview to be recognized as unsuitable for the DFT system'.<sup>107</sup>

Lawyers and NGOs say that it appears that available space in the detention centre and whether the asylum seeker can easily be removed (e.g. because they have travel documents) are a major influence on the decision to detain.<sup>108</sup> Home Office guidance advises that ease of removal should be taken into account.

All initial asylum claims are referred to a team called the National Asylum Intake Unit (NAIU), who decide on which procedure should be used. Outside the hours of operation of that team, a referring officer must decide how to proceed, and where they take a reasoned view that the claim is suitable for the DFT or detained NSA route, they may decide to detain the person until the NAIU office re-opens.<sup>109</sup>

A very tight timescale is laid down for the DFT which requires that decisions should be taken within 3 days of detention. In practice this time limit is very often not observed. For example, the Independent Chief Inspector of Borders and Immigration reported that only four out of 114 detainees received a

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<sup>102</sup> Home Office Research and Statistics Directorate, [Immigration Statistics: Asylum Table 13](#), Q4, 2013.

<sup>103</sup> *NA (Iran) v SSHD* [2011] EWCA Civ 1172.

<sup>104</sup> Home Office, [Asylum Process Guidance, Detained Fast Track Processes](#), para.2.2.

<sup>105</sup> Independent Chief Inspector of Borders and Immigration, *Asylum: A Thematic Inspection of the Detained Fast Track*, ICIBI, 2012.

<sup>106</sup> E.g. Independent Chief Inspector of Borders and Immigration, *Asylum: A Thematic Inspection of the Detained Fast Track*, ICIBI, 2012; Tamsin Alger and Jerome Phelps, *Fast Track to Despair*, Detention Action, 2011.

<sup>107</sup> UNCAT, *Concluding observations on the fifth periodic report of the United Kingdom*, adopted by the Committee at its fiftieth session (6-31 May 2013)

<sup>108</sup> Human Rights Watch, [Fast Tracked Unfairness: Detention and Denial of Women Asylum Seekers in the UK](#), 2010.

<sup>109</sup> The Home Office, [Asylum Process Guidance, Detained Fast Track Processes](#) par 3.1.1.

decision within 3 days of arriving in detention. Another study found that 71% of those in the DFT waited two weeks or more for their initial decision.<sup>110</sup> There is no automatic sanction if initial interviews are not arranged or initial decisions are not taken within the specified time. The courts have held that the process is not inherently unfair, provided there is some flexibility to respond to circumstances, and that a claim can be taken out of the DFT where it is shown to be not suitable.<sup>111</sup> Applications to take the claim out of the DFT must be made to the Home Office. There is no appeal against refusal to do so, but refusal can be challenged by judicial review (see appeal during the regular procedure). Cases have been taken out of the DFT for instance because a person is shown to have suffered torture, or it is established that there are complex legal or evidential issues. This application is difficult to make successfully for a person who is not represented. Even for a represented applicant, changes to the legal aid scheme mean that an application for funding to apply for judicial review must now be made to the Legal Aid Agency, and duty judges hearing an application to transfer out of the fast track may be inclined to leave this issue to be dealt with at the DFT appeal, if the right of appeal has been exercised. Referral letters from Freedom from Torture or the Helen Bamber Foundation are said by practitioners to be the only reliable way to obtain a transfer out of the fast track.

The asylum decision in the DFT is taken by the Home Office caseworkers based in the detention centre. For instance, in Harmondsworth, the largest detention centre in the UK, there are separate teams of officers whose work is to operate the DFT.<sup>112</sup>

In practice those cases channelled into the DFT are nearly all refused (a 95-99% refusal rate is given in published figures).<sup>113</sup> Although the criterion is that the decision can be made quickly, the very low number of grants of leave in the DFT gives an impression which is shared by lawyers, NGOs and refugees that claims routed into the DFT are regarded as unfounded.<sup>114</sup>

Up to 2007 the Home Office issued lists of countries whose nationals were deemed suitable for the DFT. The list was of countries from which claims were normally treated as unmeritorious and refused. It was withdrawn in 2008, but nationals of countries that were on the list are still among those commonly put into the DFT, and there is concern that an informal presumption is in operation which associates those countries of origin with unmeritorious claims, but without even the rudimentary safeguard of a list which can be challenged. The main examples are Afghanistan, Bangladesh, China, India, Nigeria and Pakistan.<sup>115</sup> Suitability for the NSA procedure is now explicitly a criterion for inclusion in the DFT.<sup>116</sup>

Since 2005 any asylum claim can be fast-tracked, and the DFT is used for nationals of for instance Afghanistan and Iraq, countries in relation to which there are wide-ranging and complex protection issues, as set out in UNHCR's eligibility guidelines, and Sri Lanka, whose human rights record has been the subject of international investigation and criticism<sup>117</sup>

There is an increase in use of the DFT. On December 31 2012, 547 men and 74 women were detained in the fast track as compared with 407 men and 65 women in January 2011.<sup>118</sup>

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<sup>110</sup> Tamsin Alger and Jerome Phelps, *Fast Track to Despair*, Detention Action, 2011.

<sup>111</sup> *R (on the application of the Refugee Legal Centre) v SSHD* [2004] EWCA Civ 1481. A further application was lodged before the courts in 2013 challenging the fairness of the three day timetable to reach an initial decision.

<sup>112</sup> Independent Monitoring Board, Harmondsworth IRC, *Annual Report 2011*.

<sup>113</sup> Home Office Research and Statistics Directorate, *Immigration Statistics: Outcomes of main applicants accepted onto the Detained Fast Track Process*, Vol 4 Table 12 Q4 2012.

<sup>114</sup> See for instance Detention Action, *Briefing: The Detained Fast Track*, 2013.

<sup>115</sup> Home Office Research and Statistics Directorate, *Immigration Statistics: Asylum Table 11, Q4, 2013* and Home Office *Detained Fast Track Processes Suitability List*, Annexe 2, 2006.

<sup>116</sup> Home Office, *Asylum Process Guidance, Detained Fast Track Processes*, para.2.2.

<sup>117</sup> UNHCR, *Eligibility Guidelines For Assessing The International Protection Needs Of Asylum-Seekers From Afghanistan*, 2010; UNHCR, *Eligibility Guidelines For Assessing The International Protection Needs Of Asylum-Seekers From Iraq*, 2012.

<sup>118</sup> FOI request 25597.

The Chief Inspector has recommended that the Home Office study the DFT policy which links complexity of a claim with outcome.

## Appeal

### Indicators:

- Does the law provide for an appeal against a decision taken in an accelerated procedure?
  - Yes       No
  - o if yes, is the appeal:       judicial       administrative
  - o If yes, is it suspensive?       Yes       No

Appeals against refusals in accelerated procedures can be suspensive or non-suspensive because there are two different systems. In the NSA the appeal is non-suspensive; in the DFT no removal will take place until the appeal is decided, but the appeal takes place in a building adjoining the detention centre, and detention is maintained until the case is concluded or removed from the DFT.

Appeals against refusals that are certified as clearly unfounded, i.e. in the NSA track, may not be made from within the UK. They must be made within 28 calendar days of leaving the UK.<sup>119</sup> The scope of the appeal is the same as for in-country appeals, but in practice it is very difficult to appeal from outside the UK

Appeals in the DFT must be made within two working days of receiving the decision.<sup>120</sup> The hearing is required to take place two days after the appeal has been lodged,<sup>121</sup> and the decision should be given two days after the hearing. In practice, the time of fixing the hearing is not observed. The Chief Inspector reported that the average time taken for the appeal to be heard was nine days after it was lodged. Appeals are made to a special sitting of the Immigration and Asylum Chamber of the First Tier Tribunal which happens in the detention centre.

Asylum seekers in the DFT are not guaranteed legal representation before the tribunal. Research in 2011 revealed that 63% of asylum seekers were unrepresented at their DFT appeal,<sup>122</sup> and Freedom of Information requests showed that in 2012, 59% asylum-seekers in Harmondsworth were unrepresented at the first appeal. 1% won their appeals, compared to 20% of those with a representative.<sup>123</sup> To obtain publicly funded legal advice in making their claim they are limited to a representative from a solicitors firm with a contract to do DFT work and who is available. There is substantial dissatisfaction among asylum seekers with the quality of legal representation available in the DFT. Lawyers who work in the DFT say that it is very difficult to do the work effectively. They may have no opportunity to take instructions or meet the client before the asylum interview. Only one day is allowed for this in the procedure, and in practice any consultation is often as short as one hour and in any event inadequate to take full instructions on an asylum claim. After refusal only one day is allowed for preparation of the appeal, during which the representative must advise on the merits of an appeal, draft it and represent. It is almost a certainty that the client will not get the quality of representation that is needed, and, given the refusal rate in DFT appeals, lawyers are likely to advise that the chances of success are less than 50%, which means that public funding for representation at an appeal will be refused.<sup>124</sup>

<sup>119</sup> Asylum and Immigration Tribunal (Procedure) Rules 2005 rule 7.

<sup>120</sup> Consolidated Asylum and Immigration Fast Track Procedure Rules 2005, amended 2010, rule 8.

<sup>121</sup> Consolidated Asylum and Immigration Fast Track Procedure Rules 2005, amended 2010, rule 11.

<sup>122</sup> Tamsin Alger and Jerome Phelps, *Fast Track to Despair*, Detention Action, 2011.

<sup>123</sup> Detention Action, *DFT Briefing*, 2013.

<sup>124</sup> Tamsin Alger and Jerome Phelps, *Fast Track to Despair*, Detention Action, 2011.

## Personal Interview

### Indicators:

- Is a personal interview of the asylum seeker systematically conducted in most cases in practice in the accelerated procedure?  Yes  No
  - o If yes, is the personal interview limited to questions relating to nationality, identity and travel route?  Yes  No
- If so, are interpreters available in practice, for interviews?  Yes  No
- Are interviews ever conducted through video conferencing?  Frequently  Rarely  Never

There are no grounds in the accelerated procedure to omit a personal interview. The same immigration rules apply to the interview as in the regular procedure, but they must be conducted by NSA ('non-suspensive appeal' cases) trained caseworkers in the NSA procedure. In the detained fast track procedure (DFT) the interview is required to take place on the day after arrival. In practice asylum seekers in the DFT may wait on average 11 days for an interview.<sup>125</sup> The interview is conducted by a Home Office case worker. Unlike the regular procedure, the interview takes place in detention. No study has been done on the impact of personal interviews taking place in detention. Lawyers say that the quality of interviewing in the DFT is less skilful, tending to focus extensively on detail and not on the major issues in the claim.

As described above, the screening process is not suited to identifying the complex protection issues that may arise in women asylum seekers' claims. UNHCR<sup>126</sup> and Human Rights Watch<sup>127</sup> have observed that the inadequate screening process followed by an interview under time pressure in detention are not conducive to disclosure of the atrocities that in particular women may have suffered.

Transcripts and tape recordings are provided of interviews in the DFT as in the regular procedure. Interpreters are available as in the regular procedure.

## Legal assistance

### Indicators:

- Do asylum seekers have access to free legal assistance at first instance in accelerated procedures in practice?  Yes  not always/with difficulty  No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a decision taken under an accelerated procedure?  Yes  not always/with difficulty  No

Unlike in the regular procedure, fast track detainees are entitled to have a publicly funded legal adviser present at their initial interview. However, as discussed above, there may have been no opportunity for the client and lawyer to meet before the interview, and the relationship with the lawyer and quality of advice are adversely affected. If the detainee or their representative are able to show that the DFT (detained fast track procedure) is inappropriate, the detainee can apply to be taken from the DFT before or after an asylum decision is made. But, as discussed above, the compressed timescale of the DFT makes it difficult for a lawyer to get a full view of the case. Legal aid for representation at the DFT appeal is based on the merits of the case, and for the reasons described above a lawyer may be inadequately informed to be able to obtain a view of the merits so as to grant or refuse legal aid. As

<sup>125</sup> Independent Chief Inspector of Borders and Immigration, [Asylum: A Thematic Inspection of the Detained Fast Track](#), ICIBI, 2012.

<sup>126</sup> UNHCR, Quality Initiative Project, Fifth Report to the Minister, 2008; UNHCR, Quality Integration Project First Report to the Minister, 2010.

<sup>127</sup> Human Rights Watch, [Fast Tracked Unfairness: Detention and Denial of Women Asylum Seekers in the UK](#), 2010.

described above in relation to the effect on appealing, both asylum seekers and lawyers say that it is almost impossible to have effective legal representation in the DFT.

The Home Office does not keep figures of how many asylum seekers appear unrepresented at their DFT appeal.

Where a client already has a legal aid lawyer before being detained in the DFT, the same lawyer can continue to advise them before and after their interview in the DFT. Otherwise, as mentioned above, the asylum seeker only has access to those lawyers who have a contract for publicly funded work in the DFT, unless they have sufficient means and resources to contact and pay a lawyer privately. Legal aid for the appeal is assessed on the merits of the case as described above.

### C. Information for asylum seekers and access to NGOs and UNHCR

#### Indicators:

- Is sufficient information provided to asylum seekers on the procedures in practice?  Yes  not always/with difficulty  No
- Is sufficient information provided to asylum seekers on their rights and obligations in practice?  Yes  not always/with difficulty  No
- Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice?  Yes  not always/with difficulty  No
- Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice?  Yes  not always/with difficulty  No
- Do asylum seekers accommodated in remote locations on the territory (excluding borders) have effective access to NGOs and UNHCR if they wish so in practice?  Yes  not always/with difficulty  No

The immigration rules provide that asylum applicants should be informed 'in a language they may reasonably be supposed to understand and within a reasonable time after their claim for asylum has been recorded of the procedure to be followed, their rights and obligations during the procedure, and the possible consequences of non-compliance and non-co-operation. They shall be informed of the likely timeframe for consideration of the application and the means at their disposal for submitting all relevant information.'<sup>128</sup>

Further, they shall be informed in writing and in a language they may reasonably be supposed to understand (but in practice the language coverage is unlikely to be comprehensive) 'within a reasonable time not exceeding fifteen days after their claim for asylum has been recorded of the benefits and services that they may be eligible to receive and of the rules and procedures with which they must comply relating to them.' The Home Office is also required to provide information on non-governmental organisations and persons that provide legal assistance to asylum applicants and which may be able to help or provide information on available benefits and services.<sup>129</sup> Until March 31<sup>st</sup> 2014, advice on welfare, the asylum process and life in the UK was delivered through the One Stop Services<sup>130</sup> (OSS) run by charitable organisations and funded by the Home Office. In April 2011, the Home Office reduced funding to the OSS by 62%. This resulted in the closure of three OSS offices and staffing levels in others being cut by up to two thirds. This created 'advice deserts' around the country where advice on the asylum process and support is either not available or in very short supply. In mid-2013, the Home Office re-tendered the contract for asylum welfare advice and support services known as OSS as two separate contracts as (i) Consolidated Advice and Guidance Service (CAGS) and (ii) Consolidated Asylum Support Application Services (CASAS)). The organisation Migrant Help obtained the contract for both. From April 1<sup>st</sup> 2014 there will be no face to face advice on the asylum system available on a drop-

<sup>128</sup> Immigration rules para 357A.

<sup>129</sup> Immigration rules para 358.

<sup>130</sup> Information on the OSS is available [here](#).

in basis in advice locations outside the initial accommodation centres. . Information on the asylum process will continue to be given in the initial accommodation centres, both in person and by video presentation.<sup>131</sup> Information is also available about the asylum process on the new [Asylum Help website](#). One to one appointments will be offered in initial accommodation centres at which applications for support can be made, and there is access to the online appointments system through which asylum seekers can make appointments with legal representatives.<sup>132</sup>

Asylum seekers receive information about the DFT (detained fast track procedure) once they are in it, but the information is geared to the fixed timetable of the DFT, and not to the reality of what the person might encounter. It is also geared towards what will happen on refusal of the claim, and not what will happen if asylum is granted.<sup>133</sup> At the asylum screening unit a Point of Claim leaflet is provided, which explains the next steps if the case is put into the regular procedure, and what it means to be granted or refused asylum. The Asylum Screening Unit also produces a child-friendly version with pictures. This is not necessarily given out if screening takes place elsewhere.<sup>134</sup> A letter prior to the screening appointment also gives information and the Home Office website explains what documents the asylum seeker needs to bring to the screening interview, and rights and responsibilities throughout the asylum process in English only.<sup>135</sup> At the screening stage the different outcomes and their implications are not explained sufficiently for asylum seekers to understand that they may be moved to a different part of the country, or, if they are detained, what the reasons for that would be and how long detention might last.

A notice giving the contact details of the Asylum Screening Unit and the requirement to claim there for a person already in the UK is linked to the Home Office's website in 16 languages.

There is no provision in the rules for information to be given at later stages. Asylum seekers are not systematically informed about the Dublin procedure and its implications until they are detained for transfer to the responsible EU Member State or Schengen Associated State.

Most asylum seekers are provided with initial accommodation for two or three weeks, and then further accommodation which is in the same region of the country as administratively defined by Home Office but this may still be at a considerable distance from where they made their initial claim. There is no provision in the rules for information on local NGOs and access to UNHCR to be provided after dispersal. In practice, the level of information has depended on local effort between local authorities, and NGOs in the region in question. For instance, in Liverpool, the charity Refugee Action delivered a briefing to asylum applicants in Initial Accommodation who had not yet attended their substantive interview, which explained the asylum process, clarified the expectations on the applicant and on their Home Office caseworker and described the possible outcomes of the claim. As mentioned above, this is now delivered by video presentation by Asylum Help.

Access to information is affected by the award in 2012 to private companies of the contracts for accommodation and transport (the so-called COMPASS contracts). Local sub-contractors may not have a track record of experience in the asylum field. Accommodation providers are required to provide a 'move in' and 'briefing' service which should cover registration with a local general doctor, registration of children at a local school, making contact with local NGOs, National Health Services, social services, police, legal advisers and leisure services.<sup>136</sup> This obligation is interpreted differently by each of the contracted accommodation providers who provide information at varying degrees of quality.

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<sup>131</sup> Researcher discussion with NGOs.

<sup>132</sup> Briefing to National Asylum Stakeholders Forum, 5<sup>th</sup> March 2014.

<sup>133</sup> Independent Chief Inspector of Borders and Immigration, [Asylum: A Thematic Inspection of the Detained Fast Track](#), ICIBI, 2012.

<sup>134</sup> Independent Chief Inspector of Borders and Immigration, [An Inspection into the handling of Asylum Applications made by Unaccompanied Children](#), 2013.

<sup>135</sup> Home Office, [How to claim asylum](#).

<sup>136</sup> COMPASS Project, Schedule 2: accommodation and transport – statement of requirements.

UNHCR works with the Home Office on its decision processes and supports its Quality Initiative. In some instances the Home Office is required to involve UNHCR, for instance if considering cessation of refugee status.<sup>137</sup> Individuals contact UNHCR through its website, and there are no reports of access being frustrated.

#### D. Subsequent applications

##### Indicators:

- Does the legislation provide for a specific procedure for subsequent applications?  
 Yes       No
- Is a removal order suspended during the examination of a first subsequent application?
  - o At first instance       Yes       No
  - o At the appeal stage       Yes       No
- Is a removal order suspended during the examination of a second, third, subsequent application?
  - o At first instance       Yes       No
  - o At the appeal stage       Yes       No

Provision for a subsequent claim is made in the immigration rules (HC 395 para 353). Where an asylum seeker makes further representations that are sufficiently different from previous submissions in that the content has not previously been considered, and which, taken together with previously submitted material create a realistic prospect of success, these submissions can be treated as a “fresh claim”. If they are treated as a fresh claim then a refusal attracts a right of appeal to the First Tier Tribunal, and all provisions are the same as for an appeal regarding a first asylum application. Case law provides that the threshold to be passed for submissions to be treated as a fresh claim is a 'relatively modest' one.<sup>138</sup> In practice, lawyers and NGOs say that the threshold employed is very high, and that in the majority of cases it is necessary to proceed to judicial review in order for the claim to be treated as a fresh claim and given a right of appeal. It is, therefore, rare for an appeal right to be generated. Lawyers and NGOs have experience of clearly new circumstances being rejected as not new, and of new evidence which supports the asylum seeker's credibility being disregarded, often by reasserting the earlier, adverse findings, without reference to the strength, cogency or objectivity of either the old or new evidence.

A small percentage of further submissions are treated as fresh claims by the Home Office. National information is not presently available, but figures obtained by an NGO from one regional office show that 86% of further submissions were refused outright. Judicial review is the only means to challenge refusal to treat submissions as a fresh claim, and it is only available with the permission of the tribunal. In such a challenge the Court must consider whether the Home Office considered the right question, namely, not whether the caseworker thinks it is a strong case, but whether there is a realistic prospect of an immigration judge, applying 'anxious scrutiny', thinking that the applicant will be exposed to a real risk of persecution or serious harm on return. In so doing, the Home Office caseworker themselves must also use 'anxious scrutiny'. Whether this has been done is a question the court can consider for itself on the basis of the evidence that the Home Office caseworker had.<sup>139</sup>

In practice, the shortage of publicly funded legal advice and the limitations of judicial review as a remedy mean that poorly based refusals may go unchallenged, with the asylum seeker resorting instead to making another set of further submissions.

<sup>137</sup> Home Office, *Asylum Policy Instruction, Cancellation, Cessation and Revocation of Refugee Status*, para 2.4.

<sup>138</sup> *WM (DRC) v SSHD* [2006] EWCA Civ 1495.

<sup>139</sup> *R (on the application of YH) v SSHD* [2010] EWCA Civ 116.

Where the original claim was made after March 2007, a designated reporting centre at a regional office of UK Visas and Immigration is responsible for deciding whether further representations amount to a fresh claim, and the outcome. Further representations in older cases are made to the Older Live Cases Unit of the Home Office in Liverpool. There is no fixed limit to the number of further submissions that can be made. The response to further submissions is decided on the basis of written submissions and without an interview, but the submissions must be delivered in person at an appointment. Appointments may be difficult to obtain. There are recorded attempts of up to 200 calls by legal representatives attempting to make an appointment at the Liverpool office.<sup>140</sup>

Once they have an appointment (usually 3 to 10 days after it is arranged), applicants need to have the means to travel to lodge their further submissions. For those who are required to lodge the submissions when they regularly report this is relatively unproblematic as the Home Office will pay travel expenses to report where the distance is over 3 miles. For those who are required to attend more distant regional offices, or to travel to Liverpool, the Home Office will not pay travel expenses. Although the applicant, if destitute, should be eligible for section 4 support (see chapter on Reception Conditions, section on Criteria and Restrictions) as soon as they have alerted the Home Office to the existence of further submissions,<sup>141</sup> in practice, it can be extremely difficult to access support while waiting for an appointment, and while waiting for a decision on whether those further submissions constitute a fresh claim.<sup>142</sup> In effect, this means that people with further submissions may be left destitute.

A person may not be removed before a decision is taken on any submissions they have outstanding.<sup>143</sup> Removal directions (the order to a carrier to take the person on a particular flight or crossing) may remain in place while further submissions are being considered, only to be cancelled if the claimant is successful or if the Home Office decides they need more time to decide. Further submissions may be allowed or refused at any time until the asylum seeker is actually removed. A last-minute refusal may leave no time for any further legal challenge, and there is no obligation for the Home Office to respond in time for the asylum seeker to take advice or challenge a refusal.

Preparation of further submissions is funded under a limited form of legal aid (Legal Help). Again this puts pressure on lawyers, challenging conscientious representatives to maintain quality work. Funding for expert reports can be obtained from the Legal Aid Agency, though the representative will usually have to argue for this.

The procedure for further submissions is different for unaccompanied children who have been granted discretionary leave. When this is due to expire they may apply for further leave. This triggers an 'active review',<sup>144</sup> which means that there must either be a grant of further leave or an interview.

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<sup>140</sup> Written submissions of the intervener (Refugee Action) in *MK and AH v SSHD* [2012] EWHC 1896 (Admin).

<sup>141</sup> *MK and AH v SSHD* [2012] EWHC 1896 (Admin).

<sup>142</sup> Asylum Support Appeals Project, [Further submissions and access to asylum support](#), 30 July 2010.

<sup>143</sup> Immigration rules para 353A.

<sup>144</sup> Home Office, *Asylum Policy Instruction, Active Review* Section 2.



## E. Guarantees for vulnerable groups of asylum seekers (children, traumatised persons, survivors of torture)

### 1. Special Procedural guarantees

#### Indicators:

- Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers?  Yes  No  Yes, but only for some categories (specify )
- Are there special procedural arrangements/guarantees for vulnerable people?  Yes  No  Yes, but only for some categories (people for whom detention is accepted to be damaging and unaccompanied children)

There is no specific mechanism to identify adult asylum seekers who need specific procedural guarantees. The inadequacy of the screening interview to identify such vulnerabilities is discussed above in the section on registration of the asylum application. The standard questionnaire used asks only basic questions about health. Reports on the detained fast track procedure (DFT) agree that torture survivors are placed in the DFT, against policy, partly because there is no effective mechanism to identify them.<sup>145</sup>

Guidance on the substantive interview advises asking detailed questions about torture, though not about sexual violence. The new draft guidelines (not yet issued) take the same approach. The response of the Immigration Law Practitioners Association to this is that for other torture or ill-treatment the humiliation and distress can be just as grave and they question the need to extract these details, suggesting that the best place for detail to emerge would be with the support of Freedom from Torture or the Helen Bamber Foundation.

Adult asylum seekers who are already in the UK and who have access to accommodation can submit a written request to register an asylum application if they either have a disability or severe illness (proved by written evidence) and are physically unable to travel, or are imprisoned and unable to make their application in person.<sup>146</sup>

People with mental illness may have a publicly funded representative at their asylum interview.

There are no other procedural guarantees in law for vulnerable adult applicants relating to decision-making or application process, except that they should not, according to policy, be detained. Rule 35 of the Detention Centre Rules provides that where there is evidence that a detainee has been tortured, or for any other reason their health would be injuriously affected by detention, a report should be made to the caseworker for release to be considered. Independent evidence of torture or severe mental illness is also a ground for removal from the DFT. However, rule 35 does not compel release, and in practice rule 35 reports which substantiate torture have often not brought about release. A Parliamentary question revealed that of 983 rule 35 reports made in 2012, only 74 had resulted in the detainee being released.<sup>147</sup>

After the Home Office conducted its own audit, new guidance was issued in January 2013 on the operation of rule 35. This guidance advises Home Office caseworkers how to evaluate a rule 35 medical report to determine whether it constitutes independent evidence of torture so as to warrant release. However, the detention of people with mental illness remains a major source of concern and is covered further in the section on Grounds for Detention.

<sup>145</sup> E.g. Independent Chief Inspector of Borders and Immigration, *Asylum: A Thematic Inspection of the Detained Fast Track*, ICIBI, 2012; Tamsin Alger and Jerome Phelps, *Fast Track to Despair*, Detention Action, 2011.

<sup>146</sup> Home Office *Asylum process guidance: registering asylum claims* para 7.

<sup>147</sup> House of Commons Hansard 24 Jan 2013 : Column 431W.

As discussed in the section on accelerated procedures, although policy states that where there is evidence that applicants have been tortured, they are not suitable for the detained fast track, in practice victims of torture are detained in the fast track, and their own claim that they have been tortured, even with the presence of corroborative scars or injuries, may not be sufficient to secure their transfer out of the detained fast track. Victims of rape or other serious forms of psychological, physical or sexual violence are not excluded even by policy from the detained fast track, unless they have independent evidence which amounts to evidence of torture. In practice people who have suffered in these ways are detained in the fast track.

There are no other published criteria which would prevent someone who had suffered torture or other extreme violence from being routed into the Non-Suspensive Appeal procedure. The policies about vulnerable applicants, although they are unevenly applied, concern suitability for detention, not for a non-suspensive appeal.

Guidance to officers making a decision after the screening interview also advises that where a person through illness has a need for care and attention over and above destitution, they should be referred to a Local Authority for a needs assessment.<sup>148</sup> In practice, local authority support is difficult to obtain, and policies vary in different local authority areas.

## 2. Use of medical reports

### Indicators:

- Does the legislation provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm?  
 Yes       Yes, but not in all cases       No
- Are medical reports taken into account when assessing the credibility of the applicant's statements?       Yes       No

Medical evidence may be submitted but the initiative for obtaining a report comes from the applicant or their lawyer. There is no legal provision which requires the provision of a report for the purposes of the asylum claim.

Asylum Policy Guidance on medical evidence provides for the possibility of delaying an asylum decision pending receipt of a medical report. Home Office caseworkers make this decision and should act reasonably. They are required to take into account whether the applicant declared a medical condition at the screening interview, whether there is written evidence of an appointment with a medical professional, and the length of time the applicant has been in the country and so had the opportunity to consult a medical practitioner. The guidance advises that postponements should be fixed, and preferably only for five to ten days, and that the asylum interview should not be postponed in order to obtain a medical report.

Where a solicitor is funded by legal aid they can request authority from the Legal Aid Agency for payment for medical reports, and this may be granted depending on the relevance and importance of the report to the claim. The solicitor has authority to spend £400 on an expert report without involving the Legal Aid Agency, but this is often not adequate to fund a full expert report.

<sup>148</sup> Home Office *Asylum process guidance: routing asylum applications* para 3.2 and *Processing an Asylum Application from a Child*, Section 5.

Where the asylum seeker has an appointment with the NGO Freedom from Torture (FFT) the effect is different as the decision must be deferred until the report is available.<sup>149</sup> Freedom from Torture is the largest and most established organisation which prepares medico-legal reports, and its work is widely respected. Referral to obtain an appointment for a Medico-Legal report from FFT can normally only be made by a lawyer, and referrals may be accepted if FFT considers that a medico-legal report has the potential to make a material difference to the outcome of the claim.<sup>150</sup> If a report from FFT is received after a refusal of asylum the case must be reviewed.

The Detention Centre rules require that a medical examination should be conducted within 24 hours of arrival in a detention centre, but this must not be used in determining the asylum claim; its purpose is to ascertain fitness for detention.

Case law requires that medical reports are taken into account in deciding the applicant's credibility. The courts have also cautioned against tribunal judges reaching their own diagnoses which depart from the medical evidence, and discounting psychological evidence on the basis that it is founded in part on what the asylum seeker says.<sup>151</sup> Recommendations from Freedom from Torture state best practice, which includes that evidence should be considered as a whole, including expert medical evidence, and a conclusion on the overall credibility of a claim not reached before consideration of an expert medical report. FFT also recommends that due consideration must be given to the medical expert's opinion on the degree of consistency between the clinical findings and the account of torture.<sup>152</sup> Despite the availability of best practice guidance and the judgments of the higher courts, this guidance is not consistently followed. Practitioners report that, although these problems are seen less frequently, there continue to be cases where medical evidence has been downgraded or discounted by a tribunal judge on the basis that they do not believe the applicant, rather than using the report as evidence which contributes to assessing the applicant's case.

Medical reports may be prepared based on the Istanbul Protocol, and this is regarded as best practice and is standard for experienced practitioners.

### 3. Age assessment and legal representation of unaccompanied children

#### Indicators:

- Does the law provide for an identification mechanism for unaccompanied children?  
 Yes       No
- Does the law provide for the appointment of a representative to all unaccompanied children?  
 Yes       No

The procedure for identifying unaccompanied children is governed by guidance and case law. At the screening stage, where a person appears to an immigration officer or the Home Office caseworker to be under 18, policy guidance is that they are to be treated as a child. In case of doubt, the person should be treated as though they are under 18 until there is sufficient evidence to the contrary.<sup>153</sup> Where their appearance strongly suggests to the officer that they are significantly over 18, a second opinion must be sought from a senior officer. If they agree that the person is over 18, the asylum seeker is treated as an adult. In this case, an age assessment can be triggered by the young person or any third party referring to the local authority for an age assessment. However, the result of immediate treatment as an adult

<sup>149</sup> Home Office *Asylum process guidance: medical evidence – Medical Foundation cases*.

<sup>150</sup> Freedom from Torture, [Medico-Legal Report Referrals](#).

<sup>151</sup> E.g. *Mibanga v SSHD* [2005] EWCA Civ 367.

<sup>152</sup> Jo Pettit, *Body of Evidence – Treatment of Medico-Legal Reports for Survivors of Torture in the UK Asylum Tribunal*, 2011, Freedom from Torture.

<sup>153</sup> Home Office *Asylum process guidance: processing an asylum application from a child*.

while this process is ongoing means that people who are in fact under 18 may be detained. In *R (on the application of AA) v SSHD* [2013] UKSC 49 the Supreme Court held that the detention of AA while he was a minor was lawful and did not breach the duty to have regard to a child's welfare (s.55 Borders Citizenship and Immigration Act 2009) since the Secretary of State reasonably believed him to be an adult, even though that reasonable belief was wrong.

Those who are given the benefit of the doubt and those who are accepted as being under 18 are referred to a local authority social services department which becomes responsible for their care. They should be looked after according to the same standards as other young people in the care of local authorities. In practice the experience of these children varies; some make good relationships with their carer and feel fully supported. Some are very confused and frightened, are not treated well, and do not have a named social worker responsible for them. The named social worker is responsible for the implementation of the care plan which details how the child should be looked after through the process. This includes helping them to find a legal representative.

The Coram Children's Legal Centre identified 'lack of adequate advice, advocacy and legal representation' as a critical obstacle to children realising their rights.<sup>154</sup>

Once appeal rights have been exhausted the care of young people over 18 is often limited to that which will avoid a breach of their human rights. This tends to be a more minimal standard than the duty of care which applies to people under 18.

The Home Office may request an age assessment from the local authority. This may entail that some who are initially accepted as under 18 may have their age disputed later by the Home Office and be subjected to an age assessment.

Where there is no conclusive documentary proof of age, the Home Office policy is to rely on the age assessment conducted by local authorities. A protocol developed by local authorities and endorsed by the courts<sup>155</sup> provides the approved method for assessing age (Merton guidelines). According to the Merton guidelines the assessment can only be conducted by two appropriately qualified social workers. The guidelines take a holistic approach to age determination, taking into account the child's demeanour, social, cultural and family background, life experiences and educational history. Medical evidence of age is treated as relevant, not determinative; local authorities are not entitled to ignore it. They may take into account the views of other adults with whom the child has had contact, and the child's answers to questions about their particular history.

In practice, there are numerous problems about the conduct of age assessments. NGOs report that the quality of assessments can be poor, and not based on evidence.<sup>156</sup> As there is no specific legislation or guidance on age assessment, individual agencies must keep up to date with the many judgments made by courts and amend their policies accordingly. Some local authorities do not abide by the judgments. Sharing complete contents of social work age assessment reports with immigration officials has resulted in the information collected as part of the assessment being used in the decision on the asylum claim, usually in a refusal of asylum. Social workers conducting assessments are not often trained, other than by colleagues, resulting in widespread poor practice, although some take advantage of training offered

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<sup>154</sup> Kamena Dorling and Anita Hurrell, *Navigating the System: Advice Provision for Young Refugees and Migrants*, 2012, Coram Children's Legal Centre.

<sup>155</sup> *R (B) v London Borough of Merton* [2003] 4 All ER 280.

<sup>156</sup> E.g. see the UK section in Maria Antonia Di Maio, *Review of current laws, policies and practices relating to age assessment in sixteen European Countries*, Separated Children in Europe Programme, Thematic Group on Age Assessment, 2011.

by the Refugee Council.<sup>157</sup> In Scotland the Scottish Refugee Council and Glasgow City Council have collaborated to produce a good practice guide as an aid to achieving consistency of practice.<sup>158</sup>

Where the child disputes the local authority assessment, the only legal challenge is by judicial review. Since Supreme Court decisions in 2009, the court in judicial review may make a finding of fact as to age, not only decide whether the Merton guidelines were correctly applied.<sup>159</sup> Following these rulings, in the context of an age dispute, a court can resolve a dispute about age by making a finding which is then binding on the Home Office and the local authority.<sup>160</sup>

A tribunal is also entitled to decide a person's age as a question of fact in the context of an asylum claim, where age is relevant to the claim, for instance because it has a bearing on other findings such as the credibility of the asylum seeker, but the age found is not binding outside that context, and does not bind a local authority. Since the Supreme Court decisions, the child is now able to obtain a binding finding of fact from the court. This is important because previously a young person could be in the position where the tribunal, and thus the Home Office, accepted that they were under 18, but the local authority did not. The Home Office has no power to support a child, and the local authority in that situation would not do so, yet the child had no power to obtain a resolution.<sup>161</sup> This judicial review power is now transferred to the Upper Tribunal.<sup>162</sup> A report by the Children's Commissioner suggests that judges have tended to continue to defer to social workers' judgments on age, and not to embrace fully the new fact-finding power that they have.<sup>163</sup>

In addition to the social work duty, the immigration rules require that the Home Office caseworker takes steps to ensure that an unaccompanied child has a legal representative.<sup>164</sup> The Refugee Council should be notified within 24 hours. The Independent Chief Inspector found that this only happened in 39% of cases.<sup>165</sup>

This duty applies to a person who is under 18 or who is being given the benefit of the doubt for the time being. There is no stated exception, and the duty accrues as soon as an asylum application has been made, which therefore includes a child who is subject to a Dublin procedure. See the section on border procedures in relation to the 'Gentleman's Agreement' where in practice age-disputed children were returned without representation until this practice came to light.

Unlike the case of adults, the representative is entitled to be present in the asylum interview, and the asylum interview of a child may not take place without a responsible adult present who is not representing the Home Office.

The Home Office has a statutory duty to safeguard and promote the welfare of children in the UK who are subject to its procedures.<sup>166</sup> The duty of a representative of a child includes to ensure that this duty is complied with at all stages of the asylum process and to challenge where it is not. The code of practice for implementing section 55 of the Borders Citizenship and Immigration Act 2009, 'Every Child

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<sup>157</sup> Maria Antonia Di Maio, [Review of current laws, policies and practices relating to age assessment in sixteen European Countries](#), Separated Children in Europe Programme, Thematic Group on Age Assessment, 2011

<sup>158</sup> Karen Dyball, Graham McPhie, Clare Tudor, *Age Assessment Practice Guidance: An Age Assessment Pathway for Social Workers in Scotland* Scottish Refugee Council and Glasgow City Council 2012.

<sup>159</sup> *R (on the application of A) v London Borough of Croydon* and *R (on the application of M) v London Borough of Lambeth* [2009] UKSC 8.

<sup>160</sup> Laura Brownlees and Zubier Yazdani, [The Fact of Age](#), 2012, Children's Commissioner.

<sup>161</sup> Laura Brownlees and Zubier Yazdani, [The Fact of Age](#), 2012, Children's Commissioner.

<sup>162</sup> First Tier Tribunal and Upper Tribunal (Chambers) Order 2010.

<sup>163</sup> Laura Brownlees and Zubier Yazdani, [The Fact of Age](#), 2012, Children's Commissioner.

<sup>164</sup> Immigration rules para 352ZA.

<sup>165</sup> Independent Chief Inspector of Borders and Immigration, [An Inspection into the handling of Asylum Applications by Unaccompanied Children](#), 2013.

<sup>166</sup> Borders, Citizenship and Immigration Act 2009, s.55.

Matters', which is binding on Home Office officers, requires that the voice of the child is heard in the proceedings, and this was reiterated by the Supreme Court, affirming that the wishes and feelings of the child must be taken properly into account by decision makers.<sup>167</sup> The representative accordingly has a duty to ensure that they take the child's own independent instructions and that these form the basis of their representations.

A report produced by the Refugee Council recommended specialist training and accreditation for refugee children's legal advisers.<sup>168</sup> Specialist training has since been given by the Immigration Law Practitioners Association (ILPA)<sup>169</sup> but attending this is not a requirement to advise refugee children. ILPA has also produced a good practice guide,<sup>170</sup> but use of the guide is not mandatory. In order to receive public funding for representing a refugee child, a solicitor must be accredited at Level 2 of the Immigration and Asylum Accreditation Scheme. The Legal Aid Agency framework for authorising legal aid payment requires that work with refugee children is carried out by a senior caseworker at level 2 or above, who has had an Enhanced Criminal Records Bureau check in the previous two years. A publicly funded immigration adviser of an asylum-seeking child is under an obligation to refer the child for public law advice where the child has difficulties with the local authority carrying out its duties towards them under the Children Act 1989.<sup>171</sup> At present a child is entitled to have a publicly funded legal representative at their initial asylum interview. After April 2013, this will only be the case where the Home Office do not dispute that the claimant is a child.<sup>172</sup>

Difficulties in practice arise through inconsistent levels of provision in different places, and the difficulty that a child challenging an age assessment is in the position of challenging the authority which is caring for them. Independent legal advice is essential, but does not overcome this difficulty. The Refugee Council provides advice and support through its Children's Panel of Advisers, but the Refugee Council's funding has been reduced. This has limited the work they are able to do in supporting a child through an age dispute, and children are not guaranteed to see an adviser<sup>173</sup>.

Unaccompanied children seeking asylum are very rarely returned to their country of origin unless they are believed to be over 18. It is standard practice to grant periods of limited leave. Until 2013, this was discretionary leave until the age of 17½. Now standard practice is to grant 30 months leave or leave until the age of 17½, whichever is shorter.<sup>174</sup> Leave can be renewed up to 17½, but then there must be an active review in which their need for protection is considered again, and if this is turned down they may be faced with removal.

Where asylum claims fail, sometimes a family is given discretionary leave on the basis of Article 8 ECHR. The High Court has held that the practice of giving children this limited leave (3 years was the normal policy at the time of the case) conflicts with the duty in s.55 Borders Citizenship and Immigration Act 2009 to have regard to the welfare of children.<sup>175</sup> This does not have a direct impact on the normal practice in the case of unaccompanied children, which is to grant leave until they are 17.5 years, but is an important statement of the impact on children of insecurity of status.

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<sup>167</sup> *ZH (Tanzania) v SSHD* [2011] UKSC 4.

<sup>168</sup> Laura Brownlees and Terry Smith, *Lives in the Balance*, Refugee Council, 2011.

<sup>169</sup> ILPA is a voluntary association of practising lawyers, academics and others. Its activities include promoting and developing good practice.

<sup>170</sup> Heaven Crawley, *Working with Children and Young People Subject to Immigration Control. Guidelines for Best Practice*, 2nd edition 2012.

<sup>171</sup> The Civil Specification 2010, section 8, Immigration, paragraph 8.

<sup>172</sup> Solange Valdez, *Separated Children and Legal Aid Provision*, ILPA, 2012.

<sup>173</sup> Kamena Dorling and Anita Hurrell, *Navigating the System: Advice Provision for Young Refugees and Migrants*, 2012, Coram Children's Legal Centre.

<sup>174</sup> Immigration rules para 352ZE.

<sup>175</sup> *SM, TM JD and others* [2013] EWHC 1144 (Admin).

## F. The safe country concepts (if applicable)

### Indicators:

- Does national legislation allow for the use of safe country of origin concept in the asylum procedure?  Yes  No
- Does national legislation allow for the use of safe third country concept in the asylum procedure?  Yes  No
- Does national legislation allow for the use of first country of asylum concept in the asylum procedure?  Yes  No
- Is there a list of safe countries of origin?  Yes  No
- Is the safe country of origin concept used in practice?  Yes  No
- Is the safe third country concept used in practice?  Yes  No

Legislation allows for a safe country of origin concept.<sup>176</sup> States are designated safe by order of the Secretary of State for the Home Office. The Secretary of State may make such an order where they are satisfied that 'there is in general in that State or part no serious risk of persecution of persons entitled to reside' there, and that removal there 'will not in general contravene' the European Convention on Human Rights. In making the order, the statute requires the Home Secretary to have regard to information 'from any appropriate source (including other member states and international organisations'.<sup>177</sup> Orders are in force in relation to: Albania, Jamaica, Macedonia, Moldova, Bolivia, Brazil, Ecuador, South Africa, Ukraine, India, Mongolia, Bosnia-Herzegovina, Mauritius, Montenegro, Peru, Serbia, Kosovo, South Korea. The section also allows partial designation, and currently designated as safe for men are: Ghana, Nigeria, Gambia, Kenya, Liberia, Malawi, Mali and Sierra Leone. There is no appeal against designations. Designation may be challenged by judicial review. The only successful challenge under the 2002 Act regime has been to the inclusion of Bangladesh.<sup>178</sup>

Where an asylum claimant comes from a designated country, the UK Visas and Immigration caseworker is obliged to certify the case as clearly unfounded unless satisfied that the individual case is not clearly unfounded. The consequence of the certificate is that an appeal against refusal may only be made from outside the UK (See appeal - accelerated procedures).

The Asylum and Immigration (Treatment of Claimants, etc) Act 2004 provides for the use of a safe third country concept. All EU Member states (except Croatia as well as Norway, Iceland and Switzerland are listed in the statute. There is a power to add further countries by order of the Secretary of State. The only one to have been added is Switzerland. There is no obligation to review the lists, and there is no appeal against the inclusion of a country on the list. Safe third country removals take place on an individual basis to other countries.

Where it is certified by the Third Country Unit that an asylum claimant comes from a safe third country, their asylum claim will not be decided in the UK. For different kinds of safe third country decisions, and for challenges to them by judicial review see admissibility procedures above.

Both these concepts are widely used in practice.

Challenges by judicial review to safe country of origin decisions are also difficult to establish on a case by case basis, but some do succeed. For instance in a case in which the Court of Appeal held that it was not irrational to treat Gambia as safe in general, the court still held that the applicant's asylum claim was not bound to fail. He had already been ill-treated in detention because of his politics, and faced a

<sup>176</sup> Nationality Immigration and Asylum Act 2002 s.94.

<sup>177</sup> Nationality Immigration and Asylum Act 2002 s.94 (5C).

<sup>178</sup> *R (on the application of Zakir Husain) v SSHD* [2005] EWHC 189 (Admin).

possible trial for sedition.<sup>179</sup> The general designation as safe is often perceived to be very risky for particular groups who have not been taken into account in the assessment of the country as safe. In particular, the safety of women has been shown to have been left out of account. Lesbians, trafficked women, single women who are outside the accepted family structure may all be at risk in some countries designated as safe. The Court of Appeal in 2013 found Jamaica unsafe for this reason, but the case is being appealed to the Supreme Court.<sup>180</sup> Designation is also not reviewed routinely and there is no automatic review in response to changes in country conditions.

In these judicial reviews, as in any judicial review, it is possible for NGOs to make representations, to be joined as parties, or even to initiate the challenge in the courts if they are able to establish standing in the sense required by public law, i.e. that they have sufficient interest in the outcome of a case. Current government proposals on judicial review seek to dissuade such interventions by proposing a presumption that intervenors pay their own costs and costs of other parties caused by their intervention.

Asylum applicants in 2013 from countries designated as safe were as follows:

Albania 1,593 (5% of the total applicants), Jamaica 125, Macedonia 3, Moldova 3, Bolivia 5, Brazil 24, Ecuador 5, South Africa 56, Ukraine 75, India 1,096 (4%), Mongolia 38, Bosnia-Herzegovina 4, Mauritius 53, Montenegro 0, Peru 3, Serbia 2, Kosovo 31, South Korea 11.

Gender breakdown is not available until August. Figures for both sexes are as follows for Ghana 197, Nigeria 1,402 (5%), Gambia 353, Kenya 82, Liberia 11, Malawi 178, Mali 21 and Sierra Leone 107.

It appears from this that there is no consistent pattern in terms of the relevance of designation to the numbers of asylum seekers coming from these countries to the UK.

### G. Treatment of specific nationalities

From time to time the Home Office announces that removals of refused asylum seekers to particular countries are suspended. This is rare and there are no such concessions currently in force. The only one in the last ten years was in relation to Zimbabwe, but this is no longer in force. When there is such a concession in force, refused asylum seekers from that country become eligible to apply for a specific form of support (known as section 4 support and which covers accommodation and non-cash support – see Section on Reception Conditions).

Uniquely at the time of the invasion of Iraq by the UK and USA, appeals of Iraqi refused asylum seekers were suspended in the Tribunal at the request of the government. The freeze was lifted after a short period when it became apparent that the conflict would not be short-lived.

The response to a political/humanitarian crisis can also be through immigration routes. Currently there is an immigration concession for Syrians who have immigration leave to be in the UK. This allows them to extend their leave for a further temporary period in specified ways, but does not in itself permit them to claim asylum. The policy is to manage the situation through temporary immigration measures rather than through inviting asylum claims.

The Upper Tribunal Immigration and Asylum Chamber has the power to make findings of fact which constitute binding 'country guidance' for other cases. Depending on whether these issues are brought before the tribunal in a particular case, there may from time to time be binding country guidance about the impact of a crisis. Currently there is a country guidance case which says that, due to the high levels

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<sup>179</sup> *R on the application of MD (Gambia) v SSHD* [2011] EWCA Civ 121.

<sup>180</sup> *R (on the application of JB(Jamaica)) v SSHD* [2013] EWCA Civ 666.



of repression in Syria, any forced returnee from the UK including refused asylum seekers would face a real risk of arrest and detention and of serious mistreatment during that detention.<sup>181</sup> This does not result in a proactive grant of status from the asylum authorities but can be relied on by asylum seekers and refused asylum seekers in making representations to the Home Office.

From time to time the Home Office may accept that as a matter of fact there is no safe route of return for certain refused asylum seekers. This may be as a result of country guidance from the Tribunal or as a result of the Home Office's own factual findings. This qualifies the asylum seekers for a specific form of support (section 4 support) but does not in itself entail a grant of status.

The Home Office uses charter flights to effect the return of large numbers of refused asylum seekers to one country. Sometimes charter flights are stopped by the courts when a group of those who were due to be removed are shown to be potentially at risk. In February 2013 for example the High Court held that Tamil refused asylum seekers would be at risk of persecution or serious harm, and the planned charter flight was stopped. The impact of decisions which stop flights depends upon the terms of the decision. In this case, the terms of the decision mean that, until any further order in the case, any Tamil refused asylum seeker may be able to successfully argue that they would be at risk, and prevent their own removal. However, the injunction which was issued in the case above applied only to the passengers on that particular flight.<sup>182</sup> Concerns are being voiced by NGOs in the UK about the possibility of further removals of Tamils to Sri Lanka, in the light of evidence from UNHCR and the European Court of Human Rights judgment in *R.J. v France*, application no. 10466/11.

When considering the treatment of particular caseloads at first instance, it is worth noting that the countries with some of the highest success rates at appeal in 2013 were:

- Ethiopia: 48% (32 successful appeals)
- Sudan: 45% (36 successful appeals)
- Sri Lanka: 43% (417 successful appeals)
- Kenya: 40% (20 successful appeals)
- DR Congo 38% (24 successful appeals)<sup>183</sup>

With regards to the processing of asylum applications from persons fleeing Syria, the Home Office is not postponing or freezing decisions. While there is no consistent practice, it appears that some applications are being granted very quickly. In 2013, there were 1,440 grants of refugee status to Syrians, and the overall rate of rejection was 14%. Those refused refugee status have a right of appeal; however, after having exhausted all available remedies, they will not be granted any special form of humanitarian status. For those granted refugee status they will receive a residence permit for five years, enjoy the right to family reunification for immediate family members living with the refugee before they departed from Syria, and be granted access to the labour market. Those having been granted subsidiary protection status enjoy the same rights as refugees.

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<sup>181</sup> *KB (Syria) v SSHD* [2012] UKUT 00426.

<sup>182</sup> Channel 4 News, [Sri Lanka: high court blocks Tamil deportations](#), 27 February 2013.

<sup>183</sup> Home Office Research and Statistics Directorate, [Immigration Statistics](#), Q 4 2013.

## Reception Conditions

### A. Access and forms of reception conditions

#### 1. Criteria and restrictions to access reception conditions

##### Indicators:

- Are asylum seekers entitled to material reception conditions according to national legislation :
  - o During the accelerated procedure?  
 Yes                       Yes, but limited to reduced material conditions                       No
  - o During admissibility procedures:  
 Yes                       Yes, but limited to reduced material conditions                       No
  - o During the regular procedure:  
 Yes                       Yes, but limited to reduced material conditions                       No
  - o during the Dublin procedure:  
 Yes                       Yes, but limited to reduced material conditions                       No
  - o During the appeal procedure (first appeal and onward appeal):  
 Yes                       Yes, but limited to reduced material conditions                       No
  - o In case of a subsequent application:  
 Yes                       Yes, but limited to reduced material conditions                       No
- Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions?  Yes                       No

In all procedures for determining a first claim, where asylum seekers are not detained, if they are destitute they are entitled to accommodation and/or a weekly sum of money. While the assessment of their eligibility for support is going on, they may be paid a temporary sum (section 98 support)<sup>184</sup> This can only be paid once the claim is registered. The application must be made on a prescribed form, and this is the only formal requirement.<sup>185</sup> Although there is a policy that a destitute asylum seeker should be seen the same day so that they can register their asylum claim and claim s.98 support, in practice there are obstacles as e.g. a same day appointment may be refused, they may not be believed, or not be told of this possibility and not be aware of it. Once the assessment is complete, an asylum seeker who is accepted to be destitute receives what is commonly referred as section 95 support. They are considered destitute if they do not have adequate accommodation or any means of obtaining it, or else they do have adequate accommodation but no means of meeting their other essential needs, or else they will be in this position within 14 calendar days.<sup>186</sup> The entitlement to s.95 support continues until 28 calendar days after a form of leave is granted or, if the claim is refused, until 21 calendar days after a non-appealable decision or the expiry of the time allowed to appeal the most recent decision (this is called Appeal Rights Exhausted: ARE).

In practice asylum seekers are required to prove that they are destitute and this is strictly enforced. All assets which are available to them are taken into account, whether in the UK or elsewhere, if they consist of cash, savings, investments, land, cars or other vehicles, and goods held for the purpose of a trade or other business.<sup>187</sup> If relevant assets come to light which were not declared, support can be stopped and payments made can be recovered, although it appears that recovery happens infrequently in practice.<sup>188</sup> Asylum seekers are expected to use the assets they have before being granted asylum support, but once they are assessed as destitute there is no requirement for contributions from them.

<sup>184</sup> Immigration, Asylum and Nationality Act 1999 s.98.

<sup>185</sup> [Form ASF 1.](#)

<sup>186</sup> Immigration, Asylum and Nationality Act 1999 s.95.

<sup>187</sup> Asylum Support Regulations 2000 SI 704 reg.6.

<sup>188</sup> Asylum Support Regulations 2000 SI 704 reg. 20 as amended.

Obstacles to claiming support include that the application form is 24 pages long, has 20 annexes, is in English only and from 1<sup>st</sup> April 2014 is only available online. From 1<sup>st</sup> April 2014 applications will be made by calling a freephone number, and using the new online system, and supporting documentation must be sent in a freepost envelope for verification. Asylum seekers in initial accommodation centres will be assisted to make this application and face to face advice will be available there.

Where asylum claimants have been in the UK for some time without government assistance, it may be difficult for them, especially without advice, to gather the right evidence for support claims. They may need to get letters from friends/acquaintances they have lost touch with for example, to show what support they have and why this is no longer available to them. Requests for evidence often include items such as friends' bank statements or payslips, the details of empty bank accounts or evidence of homelessness. These requests delay the support decision which results in prolonged destitution for asylum seekers. If the applicant fails to satisfy the request for further information, the Home Office can decide not to consider the application under section 57 and this decision cannot be appealed.<sup>189</sup> These requirements are likely to become more of an obstacle after 1<sup>st</sup> April 2014 since asylum seekers will not be able to see a regular adviser and will have no reference point to deal with ongoing correspondence.

The policy of dispersing asylum seekers round the UK and usually away from the south east may also provide a disincentive to claim support. Asylum seekers may decide to live in poor conditions with friends or relatives in London rather than move far away from them and perhaps their legal adviser.

Once an asylum claim is refused and appeal rights exhausted, s.95 support stops, except for families with children. Asylum seekers then become absolutely destitute, with no entitlement to accommodation or money. People in this position may be reliant on friends, who may themselves be in asylum support accommodation which prohibits guests, and who thus risk losing their support by hosting a friend. Many destitute refused asylum seekers rely on charities for food vouchers, food parcels, sometimes accommodation or small amounts of money. One reason that backlog of unresolved asylum cases has caused such public concern is that refused asylum seekers, who may still be trying to establish their claim, may spend years in destitution. Six or seven years in destitution is common, and there are people who survive this limbo for periods up to 15 years. A study in Manchester found that one in ten refused asylum seekers had been destitute for more than 10 years.<sup>190</sup>

Support may be available (accommodation and £39.50 per week) from local authorities where the person is destitute and in need of care and attention because of physical or mental ill health, but recognition of this statutory provision is very uneven around the country and some local authorities simply do not assess refused asylum seekers, or delay for lengthy periods, despite the statutory duty to do so.<sup>191</sup> Where ill health results from destitution, and not from another condition, local authority support is not available. Thus it does not present any solution for the people whose health is ruined by years in destitution.

A minority<sup>192</sup> of refused asylum seekers qualify for no-choice accommodation and a form of non-cash support from the Home Office called an Azure card (s.4 support) if they meet one of the qualifying conditions set out in the next paragraph. The card can only be used at a limited number of designated shops. This card has a weekly value of £35.39 per person but cannot be used to obtain cash or to pay any living expenses not incurred at the designated shops, e.g. not bus fares. This is so even if the

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<sup>189</sup> NIAA 2002 s57 available [here](#).

<sup>190</sup> British Red Cross and Boaz Trust, *A Decade of Destitution: Time to Make a Change* 2013

<sup>191</sup> National Assistance Act 1948 s.21

<sup>192</sup> About 3,400 households are living on s.4 support at the end of 2013 [Home Office Statistics table 18](#) Q4 2013. The numbers of refused asylum seekers in the UK are unknown, but since nearly 14,000 people were refused asylum in 2013, and since the numbers of those who are refused and remain destitute are cumulative, the proportion on s.4 is small. See also the *Still Human Still Here* submission to Home Affairs Select Committee inquiry on Asylum, 2013.

designated shops are miles from their accommodation and they have small children. Users are also prohibited from purchasing petrol, diesel, gift cards, alcohol or cigarettes.

Section 4 support is available only if refused asylum seekers can show either that they are not fit to travel, that they have a pending judicial review, that there is no safe and viable route of return, that they are taking all reasonable steps to return to their home country, or that it would be a breach of their human rights not to give this support.<sup>193</sup> In practice this latter category is used mostly where the asylum seeker has further representations outstanding. The principle underlying this is that if a person does not meet one of the other conditions, and does not have further representations outstanding, it is not considered a breach of their human rights to leave them destitute, because it is considered that they can return to their home country. The period of s.4 support is tied to meeting the condition. So people may submit further representations; obtain s.4 support, move, and a few weeks later receive a refusal of their further representations and so return to destitution. This process may be repeated.

The absence of a safe and viable route of return is rarely accepted unless there is a Home Office policy of non-return in relation to the country in question. Attempting to prove that they have taken all reasonable steps to return is problematic for those who come from countries with which diplomatic relations are suspended, or whose embassies have complex requirements which are difficult to fulfil, or who belong to a group which is denied documents by their country of origin. There are also practical problems, given that they are destitute, in obtaining the fare to visit their embassy, the resources to send faxes, make phone calls, and so on. The Home Office has issued guidance to caseworkers about dealing with s.4 applications from Iranians. This acknowledges that there is no consular service run by the Iranian Government in the UK and that Oman, which represents Iran's interests in the UK via its London Embassy, is not currently providing consular services to Iranians. However, caseworkers are advised that Iranian refused asylum seekers should not be granted s.4 support unless they can show that they have tried without success to obtain travel documents from the Iranian Embassy in Dublin, or the Iranian Ministry of Foreign Affairs in Tehran.<sup>194</sup>

From 1<sup>st</sup> April 2014 applications for s.4 support for refused asylum seekers must be made through the online and telephone service, except for vulnerable applicants who can have a face to face appointment at the initial accommodation centres.

For all refused asylum seekers who cannot fulfil the conditions for s.4 support, with the exception of families who have retained s.95 support, (see below) there is no support available. If, for whatever reason, they are unable to return to their country of origin, these asylum seekers are left destitute and homeless. The numbers of refused asylum seekers who are absolutely destitute in the UK is unknown, but an estimate of 283,500 was made in 2005 and the problem is substantial and widespread.<sup>195</sup> It is estimated that in Greater Manchester alone NGOs are supporting 2,000 destitute refused asylum seekers.<sup>196</sup>

There is a provision for support to be refused if asylum has not been claimed as soon as reasonably practicable, unless to do so would breach the person's human rights.<sup>197</sup> This is rarely used for claims made soon after arriving in the UK, but may be used where a person claims asylum after a period of residence in the UK. Human rights protection, following the House of Lords case of *Limbuela*, means that a person will not be made street homeless as a result of this provision, but may be denied cash support if they have somewhere to stay.

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<sup>193</sup> Immigration and Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005.

<sup>194</sup> Home Office guidance, *Considering Section 4 applications from failed asylum seekers from Iran*, June 2013.

<sup>195</sup> Oxfam and Swansea University, [Coping with Destitution: Survival and Livelihood Strategies of refused asylum seekers living in the UK](#), 2011.

<sup>196</sup> British Red Cross and Boaz Trust, *A Decade of Destitution: Time to Make a Change* 2013.

<sup>197</sup> NIAA 2002 s.55 and *Limbuela v SSHD* [2005] UKHL 66.

Quality of decision making on support applications is a significant obstacle, particularly in relation to the destitution test. A study showed that in 80% of appeals against refusal of section 95 support, and 84% of appeals against refusal of section 4 support the applicant was found to be destitute after all.<sup>198</sup>

## 2. Forms and levels of material reception conditions

### *Indicators:*

- Amount of the financial allowance/vouchers granted to asylum seekers on 31/12/2012 (per month, in original currency and in euros):

Section 95 Cash support: Couple: £314.25, E 373.91; Lone parent aged 18 or over: £190.41, E 226.56; Single person aged 18 or over: £158.69, E 188.81; Person aged at least 16 but under 18 (except a member of a qualifying couple): £172.47, 205.21; Person aged under 16 £229.49, E 273.05; Section 4 Azure card support: £153.36, E 182.47 per person.

The legislation allows section 95 support (for asylum seekers with a pending case, who are not detained and are destitute) to be provided in the form of accommodation and cash or vouchers, but section 4 support (available in the situations described above) cannot be provided in cash as it constitutes 'facilities for the accommodation' of supported persons in primary legislation.<sup>199</sup> Section 4 vouchers have been replaced with an Azure card as describe above. Accommodation and cash under section 95 are provided in the conditions described in the previous section on criteria and restrictions. No contribution can be requested from the asylum seeker. Initial accommodation is provided while the claim for support is being determined. This is in initial accommodation centres, and if there is no immediately available space in an accommodation centre, asylum seekers may be accommodated for a short while in hotels or bed and breakfast accommodation. Asylum seekers are dispersed from initial accommodation centres to accommodation if they are assessed as qualifying for support. This accommodation may be in a shared house or flat, self-contained, or a hostel. Most of it is privately owned and privately managed. Once asylum support ends the asylum seeker must leave, and any extensions granted are individual, discretionary, and uncommon.

Section 95 Cash support amounts to £314.25 (373.91€) per calendar month for a couple: £190.41 (€226.56) for a lone parent aged 18 or over; £158.69 (188.81€) for a single person aged 18 or over; £172.47 (205.21€) for a person aged at least 16 but under 18 (except a member of a qualifying couple); and £229.49, 273.05€ for a person aged under 16.

The amounts of section 95 support are set by regulations, while section 4 rates are a matter of policy.<sup>200</sup> Small additional payments are available for pregnant women (£3 per week) if they claim this. They may also claim a maternity allowance of £250 (s.4) or £300 (s.95). In August 2013 the Home Office revised its guidance to make it explicit that pregnant women can be provided with the cost of a taxi journey when they are or may be in labour.<sup>201</sup> Parents on Azure card support may claim an additional £5 on the card per week for children under 12 months, £3 per week for children between 1 and 3 years, and a clothing allowance for children under 16. None of these payments are made automatically, and if the asylum seeker is not aware of them or has difficulties in applying, the payments are not made. Section 4 support is paid at a flat rate of £35.39 per person per week. This is lower than asylum support under s.95.

<sup>198</sup> Sophie Wickham and Rossen Roussanov, [UKBA decision making audit one year on: still no credibility](#). Asylum Support Appeals project, 2013.

<sup>199</sup> NIAA 2002 s.49.

<sup>200</sup> Currently Asylum Support (Amendment) Regulations 2010 SI 784.

<sup>201</sup> Asylum Process Guidance – additional services or facilities under the 2007 Regulations.

In practice, families who have dependent children before they have exhausted all appeal rights normally stay on cash support (s.95) after their claim has been refused for as long as they remain in the UK or until the youngest child turns 18, although this can be removed if they do not abide by conditions.<sup>202</sup> The Home Office has adopted an 'interim position' that they will not withdraw Azure card support from families with children where they no longer meet the qualifying conditions for s.4 support, providing they are still destitute and have not breached the conditions of support.<sup>203</sup>

Home Office guidance provides that asylum seekers may stay in initial accommodation for a short time after their initial support under s.98 has been ended. Where further support has been refused this can be up to 7 days; where leave has been granted, up to 28 days; where leave has been refused, 21 days. If there are children, support can continue.<sup>204</sup>

The amount of support is not adequate to meet basic living needs. Section 95 support for a single adult was originally set at 70% of the social welfare payment for nationals which is calculated to meet only basic living needs. It was reduced from 90% because asylum seekers' fuel bills are met by the government, whereas those of nationals on benefits are not. However in 2010/2011 the link with benefits for nationals was broken and asylum support rates have not increased since then. Asylum support for a single adult over 25 is now 52% of the rate for a UK national. For an asylum-seeking lone parent it is 50%. People on section 4 support receive even less, and the requirement to use their Azure card at designated shops devalues their support further, since many could obtain cheaper and more suitable goods at local shops.<sup>205</sup> Only for children under 16 is asylum support more than 70% of the rate for nationals. A Parliamentary Inquiry has called for this to be remedied because of the children who are living in poverty.<sup>206</sup> The inquiry also called for the end of cashless support (Azure cards). Children of families on s.95 and s.98 support receive free school meals, but children of families on s.4 do not.

The adequacy of s.95 support is now the subject of a court challenge. Judgment was given in the High Court on 9th April 2014.<sup>207</sup> The judge held that the decision to keep s.95 support at its present rate was unlawful because:

“the Secretary of State had failed to factor into the assessment of the level of support necessary the following essential living needs:

- (1) Essential household goods such as washing powder, cleaning materials and disinfectant.
- (2) Nappies, formula milk and other special requirements of new mothers, babies and very young children.
- (3) Non-prescription medication.
- (4) The opportunity to maintain interpersonal relationships and a minimum level of participation in social, cultural and religious life.

The Secretary of State had failed to consider whether the following were essential living needs:

- (1) Travel by public transport to attend appointments with legal advisors, where this is not covered by legal aid.
- (2) Telephone calls to maintain contact with families and legal representatives, and for necessary communication to progress their asylum claims, such as with legal representatives, witnesses and others who may be able to assist with obtaining evidence in relation to the claim.
- (3) Writing materials where necessary for communication and for the education of children.”

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<sup>202</sup> Melanie Gower, *Asylum: Financial Support for Asylum Seekers*, House of Commons note SN/HA/1909, 2013.

<sup>203</sup> Asylum Support Appeals Project, Factsheet 15.

<sup>204</sup> Home Office, *Asylum Support Bulletin 73: Access to Support*.

<sup>205</sup> Sile Reynolds, *Your inflexible Friend: the cost of living without cash*, Asylum Support Partnership 2010.

<sup>206</sup> Sarah Teather MP (chair), *Report of the Parliamentary Enquiry into Asylum Support for Children and Young People*, 2013.

<sup>207</sup> *R (On the Application Of Refugee Action) v The Secretary of State for the Home Department* [2014] EWHC 1033 (Admin)

The Secretary of State is required to remake the decision in the light of the court's guidance.

The Home Affairs Select Committee report on Asylum published in October 2013 found:

We are not convinced that a separate support system for failed asylum seekers, whom the Government recognise as being unable to return to their country of origin, is necessary. The increasing period of time which asylum seekers have to wait for an initial decision suggests that staff resources could be better used by being allocated to asylum applications. Section 4 is not the solution for people who have been refused but cannot be returned and we call on the Government to find a better way forward.<sup>208</sup>

There is no transparent mechanism for review of asylum support rates to ensure that they meet essential living needs, and the government's present position is that no increase can be expected.

Further problems come from faults in the operation of the system, particularly when changes occur, such as moving from section 95 to section 4, or getting refugee status. Families may be left for weeks without any form of support through administrative delays and mistakes.<sup>209</sup>

### 3. Types of accommodation

#### Indicators:

- Number of places in all the reception centres (both permanent and for first arrivals):  
Around 1200 places in initial accommodation centres for new claimants
- Type of accommodation most frequently used in a regular procedure :  
 Reception centre     Hotel/hostel     Emergency shelter     private housing  
 other (please explain)
- Type of accommodation most frequently used in an accelerated procedure: (only for non-suspensive appeals, not for Detained Fast Track procedure)  
 Reception centre     Hotel/hostel     Emergency shelter     private housing  
 other (please explain)
- Number of places in private accommodation: 20,687 asylum seekers are in dispersed accommodation at the end of December 2013  
Number of reception centres: 6
- Are there any problems of overcrowding in the reception centres?     Yes     No
- Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places?     Yes     No
- What is, if available, the average length of stay of asylum seekers in the reception centres?  
2 or 3 weeks
- Are unaccompanied children ever accommodated with adults in practice?     Yes     No

Reception centres, called initial accommodation, each accommodate around 200 people – fewer in Glasgow and Northern Ireland. These centres are the usual first accommodation for any asylum seeker who is not immediately detained apart from unaccompanied children. If a place cannot be found on the first night after claim, asylum seekers may be accommodated in a hotel or interim hostel in Croydon while accommodation is found. Having said this, overcrowding can also be an issue as at least one initial accommodation centre has continued to accommodate more than the 200 people for which the

<sup>208</sup> House of Commons Home Affairs Committee, *Asylum, Seventh Report of Session 2013-14*. HC71

<sup>209</sup> Asylum Support Partnership, *Response to the Home Office consultation Reforming Asylum Support: effective support for those with protection needs*, 2010.

property is given permission by the local authority.<sup>210</sup> Accommodation in the initial accommodation centres is full board with no cash provided.

Recently, the short term use of bed and breakfast accommodation has been more frequent. The drawback is that people accommodated in a hotel, even if only for one or two nights, have limited or no access to many of the reception-related rights granted to asylum seekers, with reported cases of persons having only restricted access to accommodation. The consequence of such temporary 'emergency' accommodation is that it additionally delays their access to the support system and other welfare services to which they are entitled, as it may take a couple of days before they access advice and complete an application for asylum support.<sup>211</sup> Asylum seekers should not stay in initial accommodation for any longer than 19 days, but in certain areas (north west and west midlands) there are dispersal backlogs and it is common to find asylum seekers stuck in Initial Accommodation for over 3 weeks due to a lack of dispersal accommodation. The consequence of such backlogs is the increasing likelihood of people gaining status while still in Initial Accommodation and therefore disadvantaged in relation to accessing housing from the local authority because they cannot prove a link to their local area. If the asylum seeker qualifies for support, they are moved into smaller units, mainly flats and shared houses, in the same region, but as regions are large this may not be within travelling distance of their solicitor if they have one. Accommodation is in the North, Midlands and South West of England and in Wales and Scotland, not in the South or in London. Asylum seekers have no choice of location. If asylum seekers are not detained after screening in the fast track or for a non-suspensive appeal, there is no distinction in the initial accommodation based on the claim or its route.

In the initial accommodation centres, there is no guarantee that single people will be accommodated on single sex corridors; this is the practice in some centres but not in others. In one centre single sex corridors were introduced after a woman was followed into the showers and watched by a male neighbour.<sup>212</sup> Rooms are usually shared with one other person, and beds may be bunk beds.<sup>213</sup> In some initial accommodation centres the accommodation is set out in shared flats.

Showers and toilets are shared between six or seven people. They are designated for men or women by signs on the door but there is no security. The bathrooms were said to be dirty by women interviewed for the Refugee Council and Maternity Action research. There is a lack of women-only space, and no facilities for babies such as baby baths or access to boiling water for sterilising bottles. Women reported feeling unsafe.

There are reports that some asylum seekers take only cash support and continue to 'sofa-hop' - i.e. move from one person to another, staying on floors and in shelters, because they do not want to leave London. The Home Office may consider a request to be accommodated in London or the South East if the applicant is in receipt of therapeutic services from the Helen Bamber Foundation or the NGO Freedom from Torture.

Since the beginning of 2012, all accommodation for asylum seekers is managed by large private companies under contract to the Home Office, and in four out of the six regions sub-contracted to local companies. The assessment process for eligibility for the accommodation remains with the Home Office, which is ultimately responsible in law for the provision of accommodation. The companies remain responsible to the Home Office under the terms of their contracts to provide and manage the accommodation.

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<sup>210</sup> National Audit Office, [COMPASS contracts for the provision of accommodation for asylum seekers](#), 2014.

<sup>211</sup> Information provided by Refugee Action.

<sup>212</sup> Refugee Council and Maternity Action, [When Maternity Doesn't Matter](#), 2013.

<sup>213</sup> See Refugee Council and Maternity Action, [When Maternity Doesn't Matter](#), 2013, for pregnant women who had to share a room and to sleep on top bunk.



The contract between the Home Office and the private companies requires that families shall be housed in self-contained accommodation.<sup>214</sup> In practice there is some use of hostel-type accommodation for families with small children, and some lone parent families are housed with unrelated families, though nuclear families are normally kept together.<sup>215</sup> Accommodation frequently fails to meet the needs of supported persons, particularly those with children or mobility and health needs.<sup>216</sup> Asylum accommodation has been repeatedly criticised for failing to provide security, respect for privacy and basic levels of hygiene and safety, particularly for women.<sup>217</sup>

The most common form of accommodation after the initial period in the initial accommodation centres is in privately owned flats and houses, managed by the companies contracted to the Home office, or by their sub-contractors.

Unaccompanied children are looked after by local authorities, sometimes before claiming asylum. If an unaccompanied child not already looked after claims asylum they will be referred to the care of a local authority. Many children aged 16 or 17 are housed in hostel or shared accommodation; most under 16s are in foster families.

Section 4 support can only be provided as accommodation, in a location determined by the Home Office, and 'facilities for accommodation' i.e. the Azure card. Consequently the recipient cannot choose to receive financial support only (as they can with section 95) and continue to live with family members who are not included in the support application. This means that the family will be split, possibly over some distance, the person on section 4 having no cash with which to travel to visit.

#### **4. Conditions in reception facilities**

The most common form of accommodation is the initial accommodation centres and then privately owned flats and houses.

In the centres food is provided at fixed times. There is little choice but sometimes people who make their needs known will be given food that is more suitable for them. Pregnant women have said how difficult it is to cope with fixed mealtimes, especially if they are not well during their pregnancy.<sup>218</sup>

Lighting is not always sufficient, since it may in some centres be turned off. As far as our information goes, rooms are generally lockable, but the fact of sharing with a stranger removes some of the benefit and practicality of this.

The initial accommodation is for a short stay (intended to be 19 days maximum, though it can be longer). Asylum seekers are able to go outside at any time.

Dispersed accommodation, in flats and houses among the general population, is where asylum seekers stay for most of the time while their claim is being decided. Basic furniture and cooking equipment is

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<sup>214</sup> Home Office, *Compass Project: Schedule 2, Accommodation and Transport, Statement of Requirements*, B.8.  
<sup>215</sup> Evidence given to the Parliamentary Enquiry on Asylum Support for Children and Young People.

<sup>216</sup> Evidence given to the Parliamentary Enquiry on Asylum Support for Children and Young People; Nina Lakhani, *Asylum seeker houses 'unfit for children'*, The Independent, 20 November 2012.

<sup>217</sup> Christel Querton, *I feel like as a woman I'm not welcome: a gender analysis of UK law, policy and practice*, Asylum Aid, 2012. National Audit Office, *COMPASS contracts for the provision of accommodation for asylum seekers*, 2014.

<sup>218</sup> Refugee Council and Maternity Action, *When Maternity Doesn't Matter*, 2013.

provided. Although nuclear families are housed together, two single parent families may be placed in one house together, and this has caused significant problems.<sup>219</sup>

Although UK Visas and Immigration (UKVI)'s contract terms with the accommodation providers say that these houses and flats should be in good repair, there are frequent reports of slow or inadequate repairs and insanitary conditions.<sup>220</sup> Financial pressures to obtain large stocks of low cost accommodation quickly to meet the COMPASS contract<sup>221</sup> in 2012 appeared to have had an adverse impact on the quality of the accommodation procured, and there seems to have been inadequate maintenance capacity to compensate for this.<sup>222</sup> Problems include pest infestations, lack of heating or hot water, windows and doors that cannot be locked, lack of basic amenities including a cooker, a shower, a washing machine and a sink and a general lack of cleanliness.<sup>223</sup>

As discussed in the section on Criteria and restrictions to access reception conditions, there is no choice of accommodation, and families may be separated if they are not claiming asylum together. For instance where the father of a child is not an asylum seeker or is not part of the same asylum claim as the mother, mothers are placed in accommodation without their partners. This accommodation is, in most cases, in a different city, and sometimes in a different region, from where the child's father lives. Being close to the child's father is not normally accepted as a reason to be in a particular location. 'The strict rule that no-one else is allowed to stay overnight in Home Office provided accommodation deprives the newborn baby, and indeed other children in the family, of the opportunity to build a relationship with their father'.<sup>224</sup>

The impact of living on s.4 support is discussed in the section Forms and levels of material reception conditions above.

## 5. Reduction or withdrawal of reception conditions

### Indicators:

- Does the legislation provide for the possibility to reduce material reception conditions?  
 Yes       No
- Does the legislation provide for the possibility to withdraw material reception conditions?  
 Yes       No

The legislation does not permit the amount received to be reduced, but support can be withdrawn if the Home Office has reasonable grounds to believe that the supported person or his dependant has committed

- (a) a serious breach of the rules of their collective accommodation;
  - (b) an act of seriously violent behaviour whether at the accommodation provided or elsewhere;
  - (c) an offence relating to obtaining support
- or has;
- (d) abandoned the authorised address without first informing the Home Office;

<sup>219</sup> See [Refugee Council submission to the parliamentary inquiry into asylum support for children and young people](#), 2012.

<sup>220</sup> [Refugee Council submission to the parliamentary inquiry into asylum support for children and young people](#), 2012; National Audit Office, [COMPASS contracts for the provision of accommodation for asylum seekers](#), 2014.

<sup>221</sup> The allocation to private companies of asylum accommodation provision – see section C on provision of information.

<sup>222</sup> National Audit Office, [COMPASS contracts for the provision of accommodation for asylum seekers](#), 2014.

<sup>223</sup> Home Affairs Select Committee, [Asylum Seventh Report of Session 2013-14](#), HC 71.

<sup>224</sup> [Refugee Council submission to the parliamentary inquiry into asylum support for children and young people](#), 2012.

- (e) not complied with requests for information relating to their eligibility for asylum support;
- (f) failed, without reasonable excuse, to attend an interview relating to their eligibility for asylum support;
- (g) not complied within a reasonable period, (no less than ten working days) with a request for information relating to their claim for asylum;
- (h) concealed financial resources and therefore unduly benefited from the receipt of asylum support;
- (i) not complied with a reporting requirement;
- (j) made or sought to make a further different claim for asylum before their first claim is determined, in the same or a different name; or
- (k) failed without reasonable excuse to comply with a relevant condition of support.<sup>225</sup>

In the past the Home Office relied on checks by a credit check agency, interviews with supported people, and investigations into the existence of bank accounts as a method of determining asylum support fraud. Of 200 cases in a pilot investigation conducted with the Identity and Passport Service, none had their support withdrawn as a result of fraudulent activity. Subsequent court action revealed that checks of bank accounts did not constitute sufficient evidence to justify withdrawing support.<sup>226</sup> It is not common for support to be withdrawn in practice. Where it does happen, the most common reason is as a sanction for breach of conditions of support, for instance being absent from the accommodation or allowing others to stay in it.<sup>227</sup> According to Home Office published figures, the power to withdraw support has not been used since 2010.<sup>228</sup>

Asylum seekers can appeal to the First Tier Tribunal (Asylum Support) in London against a decision to withdraw their support.<sup>229</sup> On application the Home Office sends travel tickets to attend the hearing.<sup>230</sup>

As described above, refused asylum seekers on cashless support (section 4) are in practice on lesser conditions than those pursuing a first claim who are on s.95 cash support. Users of the Azure card (excluding families and pregnant women) may only carry forward a weekly sum of £5. If there is more than £5 on their card at the end of the week, this is reclaimed by the Home Office.

As listed above, seriously violent behaviour can result in the withdrawal of support, and in addition, people staying in reception centres are subject to the general law.

No emergency measures have been applied in reception centres due to large numbers of arrivals, though as mentioned in section 3 above, there has been some overcrowding.

## 6. Access to reception centres by third parties

### Indicators:

- Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?
  - Yes
  - with limitations
  - No

Contract terms between the Home Office and the private companies provide that there shall be access and facilities in initial accommodation for nominated third parties (including NGOs, UNHCR, legal

<sup>225</sup> Asylum Support Regulations 2000 reg. 20.

<sup>226</sup> Asylum Support Partnership, *Response to the UKBA consultation Reforming Asylum Support: effective support for those with protection needs*, 2010.

<sup>227</sup> Asylum Support Appeals Project, [Factsheet 1](#): s.95

<sup>228</sup> Home Office, [Immigration Statistics](#), Q4, 2013, table 16.

<sup>229</sup> Immigration and Asylum Act 1999 s. 103.

<sup>230</sup> Asylum Appeals Support Project, [Factsheet 3](#).

advisers). Advice on welfare, the asylum process and life in the UK until March 31<sup>st</sup> 2014 was delivered through the One Stop Services (OSS)<sup>231</sup> run by charitable organisations and funded by the Home Office. This service ended on 1<sup>st</sup> April 2014, although there will still be advice about the asylum process given by a charity called Migrant Help in each of the Initial Accommodation centres around the UK.<sup>232</sup> There is usually access to an initial health screening, often provided by a local enhanced primary care service, homeless health service or GP (a general practitioner). In at least some regions the obligation to give access to legal advisers is met by an electronic appointments system in the initial accommodation centre. Through this, appointments are made with local solicitors who have the legal aid contract and facilities to be able to offer advice in an office that is close enough to the centre to be accessible, and the asylum seeker finds their own way there.

## 7. Addressing special reception needs of vulnerable persons

### *Indicators:*

- Is there an assessment of special reception needs of vulnerable persons in practice?  Yes  No

There is no mechanism laid down by law to identify vulnerable groups or persons with special reception needs, although there is policy that instructs caseworkers to assess whether the asylum seekers have any special medical needs that will affect dispersal.<sup>233</sup> If the asylum seeker has e.g. a medical report which already shows that they are vulnerable, or has some other individual assessment showing this, the accommodation provider is required to take their vulnerability into account in providing accommodation.<sup>234</sup> The arrangements for accommodation of children have been described above (see section on Types of accommodation). Aside from this the law provides no specific measures to address the reception needs of vulnerable groups.

If an asylum seeker discloses a health need during screening (i.e. before dispersal) the Home Office must provide sufficient information to the accommodation provider to ensure that necessary arrangements for dispersal are put in place i.e. appropriate travel, accommodation and location. The accommodation provider is contractually obliged to take an asylum seeker to a General Practitioner within 5 days of dispersal if s/he has a pre-existing condition or is in need of an urgent General Practitioner review.<sup>235</sup>

Whether needs are addressed in fact is variable according to local practice. Initial accommodation centres are run by private companies under contract to the Home Office. Staff at the initial accommodation are not required or trained to assess the asylum seeker's health needs on arrival. The obligations are on the contractors to respond to need when it is apparent by taking the person to a doctor, but they are not required to be pro-active in finding out about needs. Provision by the NGOs is described in section 5 above. In practice, unless vulnerability is identified at one of the Initial Accommodation centres by a healthcare provider, it is unlikely to be identified until the asylum seeker discloses a problem to a voluntary, community or community advice organisation. An asylum seeker can request relocation if the accommodation provided is inappropriate and this falls to be considered by the accommodation provider in liaison with the Home Office, This process can take a long time and is very non-transparent.<sup>236</sup>

<sup>231</sup> Information on the OSS available [here](#).

<sup>232</sup> <http://asylumhelpuk.org/>

<sup>233</sup> Healthcare needs and pregnancy dispersal guidance v1.0, [Home Office Asylum Process Guidance](#).

<sup>234</sup> Asylum Seeker (Reception Conditions) Regulations SI 2005/7.

<sup>235</sup> *Ibid*, Home Office Asylum Process Guidance.

<sup>236</sup> Information provided by Refugee Action.

The Home Office has introduced a 'protected period' of eight weeks for women not to be moved for four weeks before and after giving birth. However, the accommodation allocated during this time is in initial accommodation centres, in which conditions are often not conducive to the care of a new baby.<sup>237</sup>

If it comes to light that an asylum seeker has been trafficked, they may be referred to special accommodation run by the Salvation Army where specific support is given and the trafficking case considered.

## 8. Provision of information

Para 358 (see accelerated procedures) of the immigration rules is the only provision in law on information concerning reception conditions. Para 344C requires a person who is granted asylum to be provided with access to information, as soon as possible, in a language that they may reasonably be supposed to understand which sets out the rights and obligations relating to refugee status.

Until March 31<sup>st</sup> 2014 this information was provided through the One Stop Service delivered by NGOs around the UK and funded by the Home Office.<sup>238</sup> In this service, paid advisers and volunteers offer confidential advice and information concerning reception conditions, assist with applications for support, deal with any problems and delays, and update the Home Office on any changes in circumstances. From 1<sup>st</sup> April 2014 the charity Migrant Help will provide a new system, renamed Asylum Help. General information will be delivered by video presentations. One to one appointments will be offered to help with applications for s.95 support.

Asylum seekers are asked at the screening interview if they wish to apply for support. Apart from the difficulties in claiming (see section on criteria and restriction to access reception conditions), there are no other significant reported problems in obtaining access to initial support including s.95. Initial information appears to be adequate.

There are widespread misperceptions about the conditions for s.4 support, and there is no specific contact point with the Home Office at which this information is provided. It has been provided by voluntary sector advisers, but this will cease from 1<sup>st</sup> April 2014 when a telephone-only application and advice system will be in place for s.4.

## 9. Freedom of movement

Movement is not restricted to defined areas, but temporary admission, which is the usual status of asylum seekers, is usually conditional on residence at a particular address, and there is a requirement to keep the Home Office informed of any change of address.

Asylum seekers accommodated by the Home Office are not permitted to stay away from their accommodation, and the Home Office will cease providing accommodation in practice if an asylum seeker stays elsewhere for more than a few days. Refugee Council and Maternity Action research found an example of a woman in hospital after giving birth who was contacted by the Home Office and told that she must return to her accommodation or risk losing it. She left hospital against medical advice as a result.<sup>239</sup>

Allocation to accommodation is by the private company which manages property in the relevant region on the basis of the availability of housing. The initial allocation to a region and to an initial accommodation centre is arranged after the screening interview. This has been mainly based on availability of a space, but the Home Office's current change process includes an intention to create

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<sup>237</sup> Refugee Council and Maternity Action, [When Maternity Doesn't Matter](#), 2013.

<sup>238</sup> The Home Office, [One Stop Services](#).

<sup>239</sup> Refugee Council and Maternity Action, [When Maternity Doesn't Matter](#), 2013.

some specialisms in regions. Specialisms have not yet been defined, although one regional office (Leeds) has been designated to deal with the main body of s.4 applications.<sup>240</sup> The availability of housing in a region depends on procurement by the private company, which is affected by local housing markets, and local authority policy.

The limits on asylum seekers' choice of location have been described in the section on criteria and restrictions to access reception conditions. When the provision of accommodation was transferred to private contractors in 2012, just over 2,300 people were required to move, including families with children at school. Normally however, moves after dispersal are not common. There is no appeal against the location allocated.

Asylum seekers live among the rest of the population and have no restrictions on their freedom of movement except that imposed by lack of resources and the requirement to stay at the allocated address. That they stay at the address is monitored by routine visits by the housing providers, and by the requirement to report regularly (anything from twice weekly to every two months) at a regional Home Office reporting centre.

## B. Employment and education

### 1. Access to the labour market

*Indicators:*

- Does the legislation allow for access to the labour market for asylum seekers?  Yes  No
- If applicable, what is the time limit after which asylum seekers can access the labour market:  
1 year
- Are there restrictions to access employment in practice?  Yes  No

Asylum seekers are not generally allowed to do paid work. The limited exception is that they may apply to the Home Office to be given permission to enter employment when their claim has been outstanding for a year.<sup>241</sup> The same applies when further submissions have been outstanding for a year, whether or not they have been recognised as a fresh claim.<sup>242</sup> If permission is granted it is limited to applying for vacancies in listed shortage occupations. These are specialist trades and professions which are in short supply in the UK and are defined very specifically (e.g. consultant in neuro-physiology, electricity sub-station electrical engineer). Self-employment is prohibited.<sup>243</sup>

The main obstacle is that since these occupations are so narrowly defined, the chances that an asylum seeker will qualify are quite low. The asylum seeker's residence status does not change as a result of obtaining permission to work. They remain on temporary admission, and subject to conditions which may include residing at an address that they give. There is no special access to re-training to enable access to the labour market. Any vocational training is subject to the conditions for education set out in the section on "Access to education".

### 2. Access to education

*Indicators:*

- Does the legislation provide for access to education for asylum seeking children?  Yes  No
- Are children able to access education in practice?  Yes  No

<sup>240</sup> Researcher conversation with NGO.

<sup>241</sup> Immigration rules para 360.

<sup>242</sup> *ZO (Somalia) v SSHD* [2009] EWCA Civ 442.

<sup>243</sup> Immigration rules para 360D.

Education is compulsory for children from 5 to 16. This includes asylum-seeking children, who attend mainstream schools local to where they live under the same conditions, formally, as other children in their area. However, destitution may affect their access to education. For instance, children on s.4 support are not entitled to free school meals or other benefits and yet have no cash to pay for school meals. There are not generally preparatory classes to facilitate access. If asylum-seeking children have special educational needs these may be assessed and met as for other children.

In further education and higher education the UK maintains different provisions for 'home' students and 'overseas' students. Regulations permit universities to charge higher fees to overseas students than to home students.<sup>244</sup> The regulations do not compel universities to charge these higher fees, but government subsidy is only paid for home students, and so for economic reasons universities charge the higher fees. Asylum seekers are routinely classed as overseas students, and are thus liable to pay overseas student fees for university education of £8,500 to £29,000 per year. This is prohibitive generally for someone seeking asylum. In England, Wales and Northern Ireland some universities have agreed to treat asylum seekers (generally on a limited individual basis) as home students. There has been a development in relation to education costs for young people who have been in local authority care. The Court of Appeal held that there is a duty on a local authority to make a grant for educational expenses as part of its support to a child leaving its care, to the extent that the child's educational needs require this. The court held that their immigration status was relevant to their need. The resources of the local authority were not relevant.<sup>245</sup>

In Scotland, the child of an asylum seeker or a young asylum seeker (under 25) is treated as a home student if they meet a set of residence conditions including 3 years residence in Scotland.<sup>246</sup>

Being treated as a home student also opens up eligibility for student loans. Even where a university agrees to treat an asylum seeker as a home student, that person will still need finance to pay the fees.

As explained in the section on unaccompanied child asylum seekers, young people whose asylum claim has not been resolved are commonly given discretionary leave. They may renew this by applying before their 18<sup>th</sup> birthday, and so may be applying to higher education while still on discretionary leave. Young people in this position are also treated as overseas students. This can impose obstacles on young people who have sought asylum and are leaving local authority care.<sup>247</sup>

There is no explicit legal bar to asylum seekers entering into higher or further education, but the barriers are financial since in addition to the high fees and lack of access to loans they also have no access to mainstream benefits or work. 16- to 18-year-olds are eligible for Learning and Skills Council funding in respect of attendance on further education courses, the same as UK students.<sup>248</sup>

Under certain conditions asylum seekers are treated as home students for the purposes of further education. In England, this is so for those aged 16 to 18, or who have been waiting for a Home Office decision for more than six months, or who are on s.4 support or other statutory assistance. In Wales those on asylum support are treated as home students. In Northern Ireland asylum seekers and their families are treated as home students.<sup>249</sup> In Scotland, the conditions are as for higher education, and in addition full-time English courses for speakers of other languages and other part-time courses may be

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<sup>244</sup> The Education (Fees and Awards) (England) Regulations 2007 SI 779 reg.4; The Education (Fees and Awards) (Wales) Regulations 2007 SI 2310 reg.4.

<sup>245</sup> *R (Kebede) v Newcastle City Council* [2013] EWCA Civ 960.

<sup>246</sup> The Higher Education (Fees) (Scotland) Regulations 2011 SI 389 reg. 4 and schedule 1.

<sup>247</sup> STAR, [How to Campaign for Equal Access: a Guide](#).

<sup>248</sup> Magnus Gittins and Laura Broomfield, [The Organisation of Reception Facilities for Asylum Seekers in different Member States - National contribution from the United Kingdom](#), European Migration Network, 2013.

<sup>249</sup> Department of Employment and Learning, Circular FE 15/12.

taken by asylum seekers as home students. One effect is that in England there is a six month wait for eligibility for free English classes.

In addition to financial difficulties, language, interrupted education due to experiences as a refugee, and incompatibility of educational systems and qualifications may all be barriers to access to further and higher education.

### C. Health care

#### Indicators:

- Is access to emergency health care for asylum seekers guaranteed in national legislation?  
 Yes       No
- In practice, do asylum seekers have adequate access to health care?  
 Yes       with limitations       No
- Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?  
 Yes       Yes, to a limited extent       No
- If material reception conditions are reduced/ withdrawn are asylum seekers still given access to health care?  
 Yes (access to a local general doctor and emergency care, but not free hospital treatment)       No

In England, there is free hospital treatment to asylum seekers with a current claim, those refused asylum seekers who are receiving s.95 or s.4 support and unaccompanied asylum seeking children.<sup>250</sup> Current asylum seekers are entitled to register with a general doctor. Free hospital treatment is not generally available to asylum seekers who are not on s.95 or s.4 support. Hospital doctors should not refuse treatment that is urgently needed for refused asylum seekers who are not receiving s.95 or s.4 support, but the hospital is required to charge for it. The hospital also has discretion to write off the charges. Any course of treatment should be continued if it is under way at the time when asylum is refused, and thus when s.95 support stops for single people.<sup>251</sup>

Accident and emergency services (but not follow-up in-patient care) and treatment for listed diseases are free to all including refused asylum seekers who are not on asylum support. General doctors have the same discretion to register refused and unsupported asylum seekers that they have for any person living in their area.<sup>252</sup>

Access to mental health services is not guaranteed, and indeed is often lacking.

Specialised treatment for victims of torture and traumatised asylum seekers is available, but is in short supply. It is provided by a number of independent charities, the largest being Freedom from Torture, the Helen Bamber Foundation, and the Refugee Therapy Centre. Specialist trauma practitioners, including psychiatrists, psychologists and trauma counsellors and therapists, also work in health authorities and trusts around the country, but they are few and access is extremely limited. Language and cultural barriers also hinder appropriate referrals from workers with initial contact, and impede asylum seekers' own awareness of what is available. Smaller NGOs also specialise in counselling for refugees.

In practice inadequate levels of support, destitution and the charging regime impede and discourage access to healthcare. Mothers on asylum support who are required to move during pregnancy usually lose continuity of ante-natal care. Moves during pregnancy may take place including at very late stages of pregnancy, even when doctors and midwives advise against a move, and are thought to contribute to

<sup>250</sup> National Health Service (Charges to Overseas Visitors) Regulations 2011 SI 1556 reg.11.

<sup>251</sup> Department for Health, Guidance on implementing the Hospital Charging Regulations, paras 361-365

<sup>252</sup> [Access to health care for asylum seekers and refused asylum seekers – guidance for doctors](#), April 2012, British Medical Association.



the far higher infant and mother mortality rate which there is among asylum seekers.<sup>253</sup> Moves sometimes entail a break of several weeks in antenatal care including monitoring and treatment of conditions such as diabetes or hepatitis, which need to be sustained during pregnancy.<sup>254</sup> Moves are not frequent once accommodation is allocated, but can happen for instance when an asylum seeker is allocated s.95 or s.4 housing away from the area where she has been previously living.

A consultation on charging all overseas visitors for access to both primary and secondary healthcare was issued in July 2013. It does not propose to remove the exemption from charges for refugees, asylum seekers and refused asylum seekers who are on s.4 or s.95 support. However, it does not appear to retain discretion to treat other refused asylum seekers, and respondents to the consultation have voiced concerns that to introduce charges for migrants which are not fully understood will result in more loss of care for very vulnerable asylum seekers and refused asylum seekers.<sup>255</sup> The power to levy charges on migrants for health care is included in an Immigration Bill currently before Parliament.

In Scotland all asylum seekers are entitled to full free health care, including those refused asylum seekers not on s.4 support and including the spouse/civil partner and any dependent children of any of these people.<sup>256</sup>

In Wales, regulations which entailed charging refused asylum seekers were introduced, but after lobbying these charges were revoked.<sup>257</sup>

In Northern Ireland, a refused asylum seeker is not entitled to free secondary healthcare unless they can show that they are ordinarily or lawfully resident. This has not been tested before the courts.<sup>258</sup> A government proposal which is currently the subject of consultation in Northern Ireland would bring about a similar position to that in England except that refused asylum seekers would only be able to obtain free health care if they were receiving support *and* co-operating with government efforts for them to return to their country of origin.<sup>259</sup>

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<sup>253</sup> Refugee Council and Maternity Action, [When Maternity Doesn't Matter](#), 2013.

<sup>254</sup> Refugee Council and Maternity Action, [When Maternity Doesn't Matter](#), 2013.

<sup>255</sup> Department of Health: [Migrant Access to the NHS: Consultation](#), July 2013.

<sup>256</sup> Scottish Government Healthcare Policy & Strategy Directorate (April 2010) CEL 9 (2010) Overseas Visitors' Liability to Pay Charges for NHS Care and Other Services.

<sup>257</sup> NHS (Charges to Overseas Visitors) (Amendment) (Wales)(Regulations 2009).

<sup>258</sup> Northern Ireland Law Centre, [Refused asylum seekers and access to free secondary healthcare](#).

<sup>259</sup> Department Of Health, Social Services And Public Safety, Proposed Consolidation And Updating Of The Provision Of Health Services To Persons Not Ordinarily Resident Regulations (Northern Ireland) 2005, Including Amendments To Specific Provisions And Extension To Primary Care Services, 2013.

## Detention of Asylum Seekers

### A. General

#### Indicators:

- Total number of asylum seekers detained in the previous year (including those detained in the course of the asylum procedure and those who applied for asylum from detention): 14,145 in 2013
- Number of asylum seekers detained or an estimation at the end of the previous year (specify if it is an estimation): 1,684
- Number of detention centres: 15
- Total capacity: 4,000

When asylum seekers are detained, they are detained in immigration removal centres, usually under the same legal regime and in the same premises as other people subject to immigration detention. The full capacity of the detention centres is used, with over 3,000 people in immigration detention at any one time, an estimated 60% of whom are asylum seekers. In 2013, a total of 14145 asylum seekers have been detained and there were 1684 in detention at the end of the year. The centres consist of 11 Immigration Removal Centres, 3 short-term holding facilities, and Cedars, which is for families only. The total includes the conversion of a 600 bed prison, The Verne, into an immigration detention centre with effect from March 2014.

Detention during the asylum decision-making process is not usual. Most asylum seekers whose claim has not yet been decided are at liberty on a status known as temporary admission. The main exception is in the detained fast track (see section on accelerated procedures) where asylum seekers are detained throughout the asylum process (about 9% of applicants). In Dublin and non-suspensive appeal cases although the individual is not always detained, detention is more common than in the regular procedure.

If the person is already in immigration detention when they claim asylum, whether they are then released will be determined by whether criteria for detention continue to exist after the asylum claim has been made. These are the criteria set out in section on "grounds for detention". Making an asylum claim does not of itself secure release. Alternatively, if in the judgment of the Home Office official who screens the asylum application, the claim is capable of being decided quickly, the applicant may be transferred into fast track detention. This means remaining in immigration detention, but may mean a transfer to a different centre.

Asylum seekers may be detained after their claim has been refused, in preparation for removal. Most of the content of the sections on detention therefore refers to asylum seekers who are detained in preparation for removal, after final refusal of their claim.

## B. Grounds for detention

### Indicators:

- In practice, are most asylum seekers detained
  - o on the territory:  Yes  No
  - o at the border:  Yes  No
- Are asylum seekers detained in practice during the Dublin procedure?  
 Frequently  Rarely  Never
- Are asylum seekers detained during a regular procedure?  
 Frequently  Rarely  Never
- Are unaccompanied asylum-seeking children ever detained in practice?  
 Frequently  Rarely  Never
- o If frequently or rarely, are they only detained in border/transit zones?  Yes  No
- Are asylum seeking children in families ever detained in practice?  
 Frequently  Rarely  Never
- What is the maximum detention period set in the legislation (incl. extensions): None
- In practice, how long in average are asylum seekers detained? Not available.

There are no special grounds in legislation for the detention of asylum seekers. They may be detained on the same legal basis as others who are subject to immigration control. There is a power to detain pending a decision as to whether to grant leave to enter or remain; pending a decision as to whether to remove; and pending removal. This power may only be exercised if there is a policy reason to detain this person, and if they have not already been detained for an unreasonable length of time. The policy reasons are:

- (a) that the person is likely to abscond if released;
- (b) There is currently insufficient reliable information to decide whether to release them (for instance their identity cannot be verified);
- (c) Removal from the United Kingdom is imminent;
- (d) The person needs to be detained whilst alternative arrangements are made for their care;
- (e) Release is not considered conducive to the public good;
- (f) The application may be decided quickly using the fast track procedures.<sup>260</sup>

Whether a person is likely to abscond is decided on the basis of such factors as whether they have absconded before, whether they have a criminal record, whether they have significant relationships in the UK, whether they have reported regularly to the Home Office if required to do so.

Most asylum seekers are not detained before their claim is decided. As mentioned above, the main exception is the Detained Fast Track (DFT, see section on Accelerated procedures) for which an asylum seeker may be detained without regard to the merits of their case (because these are not obtained at the screening interview where the decision to detain in the DFT is taken) and without any individual justification in terms of the policy reasons other than that the Home Office has decided that their case can be decided quickly.

National legislation does not distinguish between different procedures in terms of detention. By definition during the accelerated procedure of the Detained Fast Track asylum seekers are detained. In practice asylum seekers are often detained in the accelerated procedure with non-suspensive appeal (NSA procedure) and very often in the Dublin procedure. In the regular procedure asylum seekers are not usually detained at the beginning of the procedure, but may be at later stages after their claim is refused if removal is being considered.

<sup>260</sup> Home Office *Enforcement Instructions and Guidance*, Detention 55.1.1.

Policy is that vulnerable people are unsuitable for detention, and that they should only be detained exceptionally, or when their care can be satisfactorily managed. Those who, according to policy guidance, should be treated as vulnerable are: the elderly; pregnant women, unless there is the clear prospect of early removal and medical advice suggests that there is no question of the baby arriving before this; people with serious disabilities; people with serious medical conditions or mentally ill; unaccompanied children and young people under 18; persons identified by the Competent Authorities as victims of trafficking; where there is independent evidence that they have been tortured. In practice some individuals in all of these groups are detained.<sup>261</sup>

Research for Women for Refugee Women found that of the 46 women detainees interviewed, prior to their arrival in the UK, 72%, had been raped, 11 of them by soldiers, police or prison guards, and 41%, had been subjected to other forms of torture, most by state officials. Over 80% had been either raped or otherwise tortured.<sup>262</sup> Research for Medical Justice found that only 5% of pregnant women detained were in fact removed from the UK (this was the purpose of the detention).<sup>263</sup>

The High Court has found a number of breaches of Article 3 in relation to the detention of severely mentally ill people and such detention has also repeatedly been found unlawful under domestic law and in the Court of Appeal.<sup>264</sup> Torture survivors continue to be detained even after rule 35 reports (see Special Procedural Guarantees for Vulnerable Persons).<sup>265</sup>

Where a person is treated after screening as under 18 they are not detained. However, there are instances of applicants detained as adults and found to be children: numbers identified and helped by the Refugee Council were 26 in 2010, 22 in 2011<sup>266</sup> and 22 in 2012.<sup>267</sup> Home Office published policy is that children may be detained for short periods pending removal if other steps in the family removal procedure do not result in their leaving the UK, and this is the purpose of the Cedars detention centre. However, statistics show that of 206 child detainees in the year up to December 2013, 119 were released and only 84 were removed from the UK.<sup>268</sup>

Detention of people with serious medical conditions, serious mental illness or serious disability, is only considered unsuitable if the condition 'cannot be satisfactorily managed' in detention.<sup>269</sup> However, the centres are not equipped for elderly people and those with disabilities and few Immigration Removal

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<sup>261</sup> HM Inspector of Prisons, [Report on an Unannounced Inspection of Yarlswood Immigration Removal Centre, 4 – 8 July 2011](#), 2011 found seven pregnant women detained.

<sup>262</sup> Women for Refugee Women, [Detained: Women Asylum Seekers Locked up in the UK](#), 2014.

<sup>263</sup> Natasha Tsangarides and Jane Grant, [Expecting Change: The Case for Ending the detention of pregnant women](#), Medical Justice, 2013.

<sup>264</sup> For example, *R (S) v Secretary of State for the Home Department* [2011] EWHC 2120 (Admin) (5 August 2011); *R (BA) v Secretary of State for the Home Department* [2011] EWHC 2748 (Admin) (26 October 2011); *R (HA) v Secretary of State for the Home Department* [2012] EWHC 979 (Admin) (17 April 2012); *R (D) v Secretary of State for the Home Department* [2012] EWHC 2501 (Admin) (20 August 2012); *R (on the application of Lamari) v SSHD* [2013] EWHC 3130 and *R (on the application of Das) v SSHD* [2014] EWCA Civ 45. See Jed Pennington, *Deplorable Failure, Bureaucratic Inertia and Callous Indifference: The Immigration Detention of Mentally Ill People by the UK Border Agency*, *Journal of Immigration Asylum and Nationality Law* (2013) Vol. 27 no.1 pp. 41-46.

<sup>265</sup> Independent Chief Inspector of Borders and Immigration and Chief Inspector of Prisons, [The effectiveness and impact of immigration detention casework](#), 2012 and Natasha Tsangarides, [The Second Torture: immigration detention of torture survivors](#), Medical Justice, 2012.

<sup>266</sup> Judith Dennis, [Not A Minor Offence; Unaccompanied Children Locked up as Part of the Asylum Process](#), Refugee Council 2012.

<sup>267</sup> The Supreme Court has decided that this is not unlawful if the Home Office reasonably believed that the child was over 18. *R (on the application of AA) v SSHD* [2013] UKSC 49.

<sup>268</sup> Home Office, [Immigration statistics: detention tables](#), Q4 2013. Only 143 of the detained children were asylum seekers, but the figures do not show how many of those released and removed were asylum seekers.

<sup>269</sup> UK Visas and Immigration, [Enforcement Instructions and Guidance](#), chapter 55.10.

Centres (IRCs) have 24 hour health care. The policy is criticised by the UN Committee against Torture.<sup>270</sup>

Healthcare in IRCs in England now comes under NHS commission provisions, which are themselves undergoing upheaval at present with new structures not yet in place. As things stand therefore, the provision of health care in IRCs is not subject to publicly laid down standards, and remains subcontracted by the commercial operators of the centres to private health care contractors, who are still responsible for delivering and auditing healthcare to detainees. As a result, staff and facilities for identifying and treating mental illness and distress varies greatly between IRCs.<sup>271</sup> The Home Office does not collect data on the numbers of people with mental illness in immigration detention. NGOs regularly request the numbers of incidents of self-harm in immigration detention which required medical treatment. These were said to be 94 in the third quarter of 2013, with 624 individuals at risk. However, the way this data is collected varies across the immigration detention estate and the Home Office is attempting to standardise it.<sup>272</sup> Some detention centres have a local group of approved visitors, who provide an external point of reference for detainees and the centre. Visitors increasingly report that detainees are experiencing high levels of anxiety and distress, are self-harming, have symptoms of depression or post-traumatic stress disorder (PTSD), or are suffering from severe and enduring mental illness.<sup>273</sup> The courts have now held that even someone who is so severely ill as to be hospitalised may remain in immigration detention in hospital.

Alternatives to detention are permitted by legislation but not required. Permitted are: electronic tagging,<sup>274</sup> regular reporting;<sup>275</sup> bail with sureties;<sup>276</sup> residence restrictions.<sup>277</sup> Guidelines say that detention should only be used as a last resort. However, no proof is required that alternatives are not effective. Residence restrictions and regular reporting are routinely applied to all asylum seekers, and bail will always include residence restrictions and reporting. Breach of these conditions may result in detention. Electronic tagging is in frequent use mainly for ex-offenders and may be a bail condition. Numbers of asylum seekers tagged are not available.

The Home Office is responsible for ordering detention of asylum seekers. It is difficult to give meaningful data on the average length of detention of asylum seekers (outside the Detained Fast Track, for which see the section on Accelerated Procedures). There is no maximum period set in law, and the total detention period for individuals was not recorded until approximately two years ago, and so full information on the length of detention is only gradually becoming available. Another reason is that the Home Office does not collect data on how long asylum seekers are detained. Around 45% of people in immigration detention have sought asylum at some stage. Periods of immigration detention including asylum seekers and other foreign nationals vary enormously from a few days to several years. During 2013, 30,036 people left immigration detention. Of these, 18,544 (62%) had been in detention for less than 29 days, 5,628 (19%) for between 29 days and two months and 3,988 (13%) for between two and four months. Of the 1,876 (6%) remaining, 199 had been in detention for between one and two years and 50 for two years or longer. However, there is no published record of how many of these people had sought asylum. The longest periods of detention are usually of people awaiting deportation after having served a criminal sentence.

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<sup>270</sup> UNCAT, *Concluding observations on the fifth periodic report of the United Kingdom*, adopted by the Committee at its fiftieth session, 6-31 May 2013.

<sup>271</sup> Ali McGinley and Adeline Trude, [Positive duty of care? The mental health crisis in immigration detention](#), AVID and BID, 2012.

<sup>272</sup> [Ibid.](#)

<sup>273</sup> [Ibid.](#)

<sup>274</sup> AITOCA 2004 S.36.

<sup>275</sup> Immigration Act 1971 sched 2 para 21 (2).

<sup>276</sup> Immigration Act 1971 sched 2 paras 22 and 29 -34.

<sup>277</sup> Immigration Act 1971 sched 2 para 21(2).

### C. Detention conditions

#### Indicators:

- Does national legislation allow for asylum seekers to be detained in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)?  Yes  No
- If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedures?  Yes  No
- Do detainees have access to health care in practice?  Yes  No
  - o If yes, is it limited to emergency health care?  Yes  No
- Is access to detention centres allowed to
  - o Lawyers:  Yes  Yes, but with some limitations  No
  - o NGOs:  Yes  Yes, but with some limitations  No
  - o UNHCR:  Yes  Yes, but with some limitations  No
  - o Family members:  Yes  Yes, but with some limitations  No

Asylum seekers are normally detained in immigration removal centres (IRCs) in preparation for removal together with other third country nationals who are there for immigration reasons. They are not detained in prisons purely in order to process an asylum claim or to remove them after they have been refused asylum.

If someone who is serving a prison sentence claims asylum, including if they do so in response to a decision to deport them, they may continue to be detained in prison while their asylum claim is processed. There is no data presently available on the extent of this. The practice is problematic, as detainees in prison experience much greater barriers to accessing legal advice and basic information about their rights, particularly in isolated local prisons. There is no regular advice surgery as there is in the IRCs, and detention of a person held under immigration powers in a prison is not governed by the Detention Centre Rules and Orders. This means that the detainee may have legal advice on their asylum claim if they can make contact with an adviser outside the prison, and if necessary obtain legal aid to fund the advice, but there is no on-site access to asylum advice.

There is an agreement between the National Offender Management Service and the Home Office for immigration detainees up to a specified limit to be held in the prison estate. The number of prison beds purchased by the Home Office has now risen to 1000 (around one quarter of the total detained population). As of late 2012 the Home Office has been operating a revised policy on transfers to an IRC at the end of a prison sentence, meaning that transfers to IRCs have effectively stopped, with the exception of temporary transfers for court hearings or embassy interviews.<sup>278</sup>

The purpose built IRCs (Colnbrook, Brook House and the new wings at Harmondsworth) are built to Category B (high security) prison designs, and are run by private security companies. While some efforts are made by contractors to distinguish regimes from those in prisons, in practice the physical environment means that most detainees experience these centres as prisons.<sup>279</sup> Dover, Haslar, The Verne and Morton Hall are also converted prisons, albeit with lower security.

The Detention Centres Rules provide that there must be a medical team in each detention centre, and that each detainee must be medically examined within 24 hours of arrival. The only provision in the rules as to what access to the medical team a detainee can expect or request is that where a detainee asks a detention centre officer for medical attention, the officer must record the request and pass it to the medical team, and the medical practitioner must pay special attention to any detainee whose mental

<sup>278</sup> Home Office, Enforcement Instructions and Guidance, Chapter 55.10.1. 'Criteria for detention in prison'

<sup>279</sup> For instance as found by the Gatwick Detainees Welfare Group (GDWG): [A Prison in the Mind: Mental health implications of detention in Brook House Immigration Removal Centre](#), 2012.

condition appears to require it. The charity Medical Justice has documented the denial of crucial medical care.<sup>280</sup> The Independent Monitoring Board for Harmondsworth (the largest IRC) has reported serious shortcomings in medical provision,<sup>281</sup> and this situation has worsened. The prison inspector reported major concern with ‘an inadequate focus on the needs of the most vulnerable detainees, including elderly and sick men, those at risk of self-harm through food refusal, and other people whose physical or mental health conditions made them potentially unfit for detention’.<sup>282</sup> Some centres have better health resources than this. For instance the inspector reported good facilities in Morton Hall, with the hours from a visiting doctor increased in response to need, a good pharmacy and good management of lifelong conditions. ‘Health services staff had received effective in-house training in recognising the signs of torture and trauma. Custodial staff received insufficient mental health awareness training.’<sup>283</sup> Most inspection reports refer to limited training or shortcomings in access to medical care. In some centres there are in-patient units for people who need medical care, but again the quality of care varies from centre to centre and within one centre over time. Counsellors are available in some centres (e.g. Colnbrook).

Detainees can activate a rule 35 report by reporting to an officer that their health is injuriously affected by detention, but, rule 35 reports rarely result in release (see Asylum procedures – guarantees for vulnerable groups).

The rules require that each detainee should have the opportunity of at least one hour in the open air every day. This can be withdrawn in exceptional circumstances for safety or security. Most IRCs have a gym or fitness suite (Dungavel, Dover, Harmondsworth, Morton Hall) and outdoor exercise space. Access is variable, ranging from being generally accessible during daylight hours to restricted. The HM Inspector of Prisons 2013 reports noted that access to the gym in Morton Hall was quite easy<sup>284</sup>, but had become more difficult in Harmondsworth where was a range of activities available,<sup>285</sup> but only a three hour period during the day when detainees were expected to carry out any activity. In some IRCs the opportunity for exercise is part of the daily routine (Brook House, Colnbrook,) however in these two centres the detainees spend the majority of the day locked in their rooms. Physical freedom is very variable between centres. In some wings in Harmondsworth detainees were locked into rooms at night time, in some wings they were locked into the wing at night but not into individual rooms. In Dungavel detainees are not locked into their rooms. In Tinsley House corridors are locked at 11pm but detainees can leave their rooms.

Women and children are detained separately from men except where there are family units. There are units for families at the Cedars, and at Tinsley House, which is a short-term holding facility. Some asylum-seeking families may be detained on arrival at Tinsley House, as well as before removal.

The Cedars is designed for families,<sup>286</sup> and includes some facilities for children but these do not include education. 206 children were detained in 2013. 167 were detained for 3 days or less, 33 for 4 to 7 days. 3 were detained for a month or more.<sup>287</sup>

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<sup>280</sup> Medical Justice: [Detained and Denied: the clinical care of detainees living with HIV/AIDS](#), 2011.

<sup>281</sup> Independent Monitoring Board, [Harmondsworth IRC, Annual Report 2011](#).

<sup>282</sup> HM Inspector of Prisons, [Report on an unannounced inspection of Harmondsworth Immigration Removal Centre, 5-16 August 2013](#).

<sup>283</sup> HM Chief Inspector of Prisons, [Report on an announced inspection of Morton Hall Immigration Removal Centre, 4-8 March 2013](#).

<sup>284</sup> [Ibid.](#)

<sup>285</sup> HM Inspector of Prisons, [Report on unannounced inspection of Harmondsworth Immigration Removal Centre, 5-16, August 2013](#).

<sup>286</sup> Nick Hardwick, [Report on an announced inspection of Cedars Pre-Departure Accommodation, 30 April – 25 May 2012](#), HM Chief Inspector of Prisons, 2012.

<sup>287</sup> Home Office Research and Statistics Directorate, [Immigration Statistics: Detention](#), Q4, 2013.

Other than the Cedars, there are not special facilities for vulnerable people. Some centres are poorly equipped to accommodate people with disabilities (e.g. Colnbrook).<sup>288</sup> Medical facilities are as described above. In theory health care provided to detainees is not limited to emergency health care; however, in practice detainees have difficulty obtaining access to care.

In 2013 it was revealed that there had been sexual abuse of women detainees in Yarls Wood. Those responsible were dismissed, and the inspector found that women's histories of victimisation were insufficiently recognised by the authorities, and that more women staff were needed.<sup>289</sup>

Detainees may have visits during visiting hours. All visits take place within the sight of a detention centre officer, but not within their hearing. There are no limits on the frequency of visits, but visits are required to take place during visiting hours. As long as visitors provide the requested forms of identification there is no obstacle to their visiting. Individual visitors may be prohibited for reasons of security but this cannot be applied to a legal adviser. Media and politicians have no special access but may be treated like other visitors. Detainees are issued with a mobile phone that is not capable of taking photographs. Although the signal may be poor in parts of some IRCs, it is usually possible for detainees to communicate with people outside.

There are NGOs who provide support to detainees. Each IRC has a visitors group, which is an organisation of volunteer visitors who provide support, practical help and friendship to detainees.<sup>290</sup> Some visitors groups engage in policy and advocacy work and research.<sup>291</sup> Bail for Immigration Detainees (BID) provides advice and information for detainees generally including self-help packs to make bail applications.<sup>292</sup> The charity Medical Justice works for good medical care for immigration detainees and to obtain evidence of torture and the release of those who are ill.<sup>293</sup> UNHCR does not have the capacity to represent people in detention and in practice detainees rarely seek help from UNHCR.

Surveys carried out by the NGO Bail for Immigration Detainees (BID) found, in relation to immigration detainees held in IRCs, that 43% of detainees had legal representatives. 33% of these were paying the solicitor privately. 26% of detainees interviewed in May 2013 had never had a legal representative while they were in detention.<sup>294</sup> There are concerns among NGOs about the movement of detainees between different centres, and the resulting disruption in their access to legal advice.

Provision of showers, laundry facilities, etc is usually to an adequate level so that detainees have access, but standards of cleanliness and repair are variable, with some detention centres having a much better maintained environment and others poor. In particular some of the older prison buildings can be poorly maintained and drab. Sometimes a room or cell for two is used for three people.<sup>295</sup>

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<sup>288</sup> HM Chief Inspector of Prisons, [Report on an unannounced inspection of Colnbrook Immigration Removal Centre](#), 28 January – 8 February 2013.

<sup>289</sup> HM Inspector of Prisons, [Report on unannounced inspection of Yarlswood Immigration Removal Centre](#), 17-28 June and 30 Sept – 1 Oct 2013.

<sup>290</sup> See <http://www.aviddetention.org.uk/>

<sup>291</sup> E.g. [Detention Action](#).

<sup>292</sup> <http://www.biduk.org/>

<sup>293</sup> See <http://www.medicaljustice.org.uk/>

<sup>294</sup> Bail for Immigration Detainees, [Immigration Detainees' Experiences of Getting Legal Advice Across the UK Detention estate: summary results for surveys 1 – 46](#), 2013.

<sup>295</sup> HM Inspector of Prisons, [Report on unannounced inspection of Harmondsworth Immigration Removal Centre](#), 5-16 August 2013.



Detainees normally wear their own clothes. IRCs make an attempt to meet dietary needs of detainees. The food was said in the latest inspections to be poor at Morton Hall and Colnbrook, adequate at Harmondsworth, mainly unsatisfactory at Brook House<sup>296</sup> and reasonable at Yarlswood.<sup>297</sup> Detainees have access to the detention centre library and to the internet Facilities normally include a fax machine.

#### D. Procedural safeguards and judicial Review of the detention order

##### Indicators:

- Is there an automatic review of the lawfulness of detention?  Yes  No

Detainees have a right to be informed of the reason for their detention. This is generally done by ticking a box on a standard list of reasons, and sometimes is inaccurate or omitted. The reasons for detention should be subject to regular monthly reviews by detention officers, and a breach of this requirement can make the detention unlawful if the effect is that the continued legality of the detention has not been effectively considered.<sup>298</sup>

A detainee can apply for bail at any time, although if they are detained while their application is being considered they must have been in the UK for seven calendar days. Application can be made to the Chief Immigration Officer (CIO), who is part of the Home Office or to the First Tier Tribunal. Since the decision to detain was made by the Home Office, it is not common for bail to be granted by the CIO: applications to the Chief Immigration Officer only account for about 10% of those released on bail.<sup>299</sup>

A bail application to the Tribunal involves a hearing before an immigration judge. The Home Office is required to provide a summary before the hearing of the reasons for opposing bail. Studies of bail hearings show that in practice the summary may occasionally be late, or non-existent, but the most persistent problem is reliance on standard reasons without evidence that they apply to the particular applicant. The hearing may then focus on unsubstantiated risks of absconding or offending but fail to focus on how long the person has been detained and what prospect there is of the Home Office being able to arrange their removal from the UK, matters which are critical to the lawfulness of detention.<sup>300</sup> First-tier Tribunal judges hearing bail applications do not have the jurisdiction to consider the lawfulness of detention, and there is no full reasoned decision given by the judge.

Bail hearing centres may be far removed from the detention centre, and the use of video conference systems has become routine. While this avoids long journeys for the detainee, the lack of personal contact with the judge, and problems in quality of sound and visual transmission are also experienced as obstacles to an effective hearing. Detainees in prisons may have video links cut off before the end of the bail hearing if it continues over 60 minutes. Technical problems may compound the difficulty of speaking through an interpreter. In video conferencing cases the lawyer is only allowed 10 minutes to speak with their client before the hearing. This is insufficient.<sup>301</sup>

<sup>296</sup> HM Chief Inspector of Prisons, [Report on an unannounced inspection of Brook House Immigration Removal Centre](#), 28 May – 7 June 2013.

<sup>297</sup> HM Inspector of Prisons, [Report on unannounced inspection of Yarlswood Immigration Removal Centre](#), 17-28 June and 30 Sept – 1 Oct 2013.

<sup>298</sup> *Kambadzi v SSHD* [2011] UKSC 23.

<sup>299</sup> Damien Green MP, *Home Affairs Committee: Written evidence: The work of the UK Border Agency and Border Force*, 6 June 2012.

<sup>300</sup> Adeline Trude, [The Liberty Deficit, Bail for Immigration Detainees](#), 2012; Bail Observation Project, second report, 2013.

<sup>301</sup> *Ibid.*

Bail hearings are timetabled so that several can be heard in one day, and this creates pressure on the proceedings, sometimes with the result that an interpreter is not given time to interpret everything that is said.<sup>302</sup>

Friends or family can stand as sureties for the applicant, which means that they undertake to ensure that the person reports again when they are required to, and they forfeit a sum of money if this does not happen. Sureties are not essential, but there is a tendency to require them. There is no concept of continuing surety, meaning sureties who wish to continue to stand are required to travel to each hearing, even if bail is refused many times, and even if bail is granted and then applied for again after a further detention without any breach of conditions by the asylum seeker. Repeat detentions can occur for asylum seekers when further submissions are refused, and they are detained with a view to removal, but without giving time for them to challenge the refusal of further submissions, or else when they are detained while further submissions are being prepared but have not yet been made. Removal cannot take place while a challenge or consideration of submissions are pending, and good legal representation can mean that they are released while the challenge or consideration of new submissions takes place, only to be re-detained in the same circumstances if there is a further refusal.

There is no automatic independent judicial consideration of the lawfulness of detention. Bail must be applied for by the detainee. However, the Home Office is obliged to review the reasons for continued detention monthly. The Supreme Court has emphasised that this is a public law duty which should operate as an active safeguard against unlawful detention.<sup>303</sup> In practice this duty may be neglected and the reviews may be carried out in a cursory way or even omitted. The Chief Inspector has urged the Home Office to address this by carrying out proper reviews of the basis for detention in accordance with the Detention Centre Rules, such that release is granted where this is warranted.<sup>304</sup>

The lawfulness of detention may be subject to judicial review in the High Court, with the permission of that court. The criteria for lawfulness are, as mentioned above, that it is for a statutory purpose, and for approved policy reasons, and the length of detention must not be unreasonable. The lack of a statutory limit on the length of detention has consequences for the potential for effective challenge. Case law states that the length of detention must be reasonable to achieve the purpose for which the person is detained. The usual legal issue which affects the length of detention for refused asylum seekers is whether the Home Office can arrange the detainee's removal within a reasonable period. No clear and coherent case law on reasonable periods has emerged. However, the Home Office's own guidance on whether removal is 'imminent' is that 'removal could be said to be imminent where a travel document exists, removal directions are set, there are no outstanding legal barriers and removal is likely to take place in the next four weeks.'<sup>305</sup> Guidance issued in 2012 to immigration judges for the conduct of bail hearings advised that: 'detention for three months would be considered a substantial period of time and six months a long period.'<sup>306</sup>

Challenges are also made to the lawfulness of detention in civil proceedings for unlawful imprisonment, when damages may be awarded.

The case law and the legal structure of challenge to immigration detention make no distinction between the detention of asylum seekers and the detention of other foreign nationals.

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<sup>302</sup> Adeline Trude, [The Liberty Deficit, Bail for Immigration Detainees](#), 2012.

<sup>303</sup> *Kambadzi v SSHD* [2011] UKSC 23.

<sup>304</sup> Independent Chief Inspector of Borders and Immigration and Chief Inspector of Prisons, [The effectiveness and impact of immigration detention casework](#), 2012.

<sup>305</sup> Home Office Enforcement Instructions and Guidance, Ch55, para 55.3.2.4.

<sup>306</sup> Mr Clements, President of the First Tier Tribunal, Immigration and Asylum Chamber, [Bail Guidance for Judges Presiding over Immigration and Asylum Hearings](#), 2012, Ministry of Justice.

## E. Legal assistance

### Indicators:

- Does the law provide for access to free legal assistance for the review of detention?  Yes  No
- Do asylum seekers have effective access to free legal assistance in practice?  Yes  No

Access to legal assistance is subject to the same means test as for immigration and asylum legal aid generally. Detention centres provide legal surgeries run by legal aid providers who have exclusive contracts with the Legal Aid Agency to do immigration and asylum work in detention centres (IRCs). Detainees cannot obtain legal aid to instruct a lawyer other than those with a contract for that centre. Delays in getting an appointment at a legal surgery mean that in practice they may face removal before they can obtain an appointment, although some centres operate a priority system for people who have removal directions. The Independent Monitoring Board at Harmondsworth immigration removal centre records a wait of 3 weeks for a legal appointment,<sup>307</sup> and the Bail for Immigration Detainees' survey shows that 69% had to wait more than a week.<sup>308</sup> Notice of removal may be as short as 72 hours, and five days is common.

Discussions with lawyers are held in private. Lawyers can contact their clients by mobile phone or fax, or they may also be able to speak to them on the IRC's phone, or leave message for them.

<sup>307</sup> Independent Monitoring Board, [Harmondsworth IRC, Annual Report, 2011](#).

<sup>308</sup> Bail for Immigration Detainees, [Immigration Detainees' Experiences of Getting Legal Advice Across the UK Detention estate: summary results for surveys 1 – 6, 2013](#).