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The information is up-to-date as of 30 September 2015.

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 16 EU Member States (AT, BE, BG, CY, DE, FR, GR, HR, HU, IE, IT, MT, NL, PL, SE, UK) and 2 non-EU countries (Switzerland, Turkey) which is easily accessible to the media, researchers, advocates, legal practitioners and the general public through the dedicated website 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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Glossary & List of Abbreviations

APPG	All Party Parliamentary Groups
ARE	Appeal Rights Exhausted
AIU	Asylum Intake Unit
ASU	Asylum Screening Unit
BID	Bail for Immigration Detainees
CAGS	Consolidated Advice and Guidance Service
CASAS	Consolidated Asylum Support Application Services
CIO	Chief Immigration Officer
CJEU	Court of Justice of the European Union
DFT	Detained Fast Track System
DNSA	Detained Non-Suspensive Appeal
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EWCA	England and Wales Court of Appeal
EWHC	England and Wales High Court
FFT	Freedom From Torture
FTT (IAC)	First-Tier Tribunal Immigration and Asylum Chamber
IRC	Immigration Removal Centres
NAAU	National Asylum Allocation Unit
NGO	Non-Governmental Organisation
NHS	National Health Service
NIAA	Nationality, Immigration and Asylum Act
NSA	Non-Suspensive Appeals
OLCU	Older Live Cases Unit
OSS	One Stop Services
PTSD	Post-Traumatic Stress Disorder
SSHD	Secretary of State for the Home Department
UKBA	United Kingdom Border Agency
UKBF	United Kingdom Border Force (previously part of UKBA)
UKHL	United Kingdom House of Lords (appellate court now UKSC)
UKSC	United Kingdom Supreme Court
UKVI	United Kingdom Visas and Immigration
UT (IAC)	Upper Tribunal Immigration and Asylum Chamber
VPR	Vulnerable Person Relocation Scheme

Statistics

Table 1: Applications and granting of protection status at first instance in 2015 (January-September)

	Applicants in 2015	Pending applications in 2015	Asylum status	Humanitarian Protection	Discretionary leave	Rejection	Asylum rate	Hum. Prot. rate	Disc. Leave rate	Rejection rate
Total	22,314	24236	7594	71	188	13,337	36%	0.3%	0.8%	63%

Breakdown by countries of origin of the total numbers

Eritrea	2,842	6,335	1,076	17	4	1,339 ¹	44%	1%	0.2%	54%
Iran	2,407	820	1,260	8	4	984	56%	0.4%	0.2%	44%
Sudan	2,395	3,317	1,463	2	0	275	84%	0%	0%	16%
Pakistan	1,764	5,882 ²	372	1	4	1,456	20%	0%	0%	79%
Syria	1,698	3,274	1,418	6	1	248	85%	0.4%	0%	15%
Afghanistan	1,446	4,110	249	1	19	669	27%	0%	2%	71%
Albania	1,098	4,628	6	0	29	1110	0.5%	0%	2.5%	97%
Bangladesh	665	1,885	46	0	5	509	8%	0%	1%	91%
India	650	1,427	7	0	3	440	2%	0%	1%	97%
Nigeria	624	2,470	70	1	15	607	10%	0%	2%	88%
Somalia	265	1,175	149	7	6	226	38%	2%	2%	58%
Kosovo	19	63	0	0	0	20	0%	0%	0%	100%

Source: *Home Office Immigration Statistics* Q 3 2015 Asylum 1 Table 1

¹ The recognition rate for Eritreans fell from 87% in 2014 to approximately 44% in the third quarter of 2015, almost certainly due to reliance on the report of a Danish fact-finding mission which has subsequently been found to be deeply flawed.

² In addition to the number pending initial decision, a high number of Pakistani claims are pending further review: 872.

Table 2: Gender/age breakdown of the total numbers of applicants: 2014

	Number	Percentage
Total number of applicants	25,033	100%
Men	16,406	65%
Women	6,719	27%
Children	2,022	8%
Unaccompanied children	1,945	7.7%

Source: *Home Office Immigration Statistics* Q2 2015 Asylum 2 Table 3 and Asylum 3 Table 9

The number of unaccompanied children in the year January to September 2015 was 1,963 out of a total number of 22,314 applicants. Unaccompanied children make up approximately 9% of all asylum applicants in the period January to September 2015.

Table 3: Comparison between first instance and appeal decision rates: 2015 (January-September)

	First instance		Appeal	
	Number	Percentage	Number	Percentage
Total number of decisions	22,049	100%	6,738	100%
<i>Positive decisions</i>	7,853	40%	2,360	35%
• <i>Refugee status</i>	7,594	34%		
• <i>Humanitarian protection</i>	71	0.3%		
• <i>Discretionary Leave</i>	188	0.8%		
<i>Negative decisions</i>	13,337	60%	4,378	65%

Source: *Home Office Immigration Statistics* Q3 2015 Asylum 1 table 1 and Asylum 4 table 14

Table 4: Applications processed under the accelerated procedure: 2014

	Number	Percentage
Total number of applications	25,033	100%
Applications treated under accelerated procedure at first instance		
• <i>Detained fast-track</i>	3,865	15%
• <i>Non-suspensive appeal</i>	1,702	7%

Source: *Immigration Statistics* Q2 2015 Asylum 3 tables 11 and 13

Table 5: Subsequent applications lodged in 2014

	Number	Percentage
Total number of subsequent applications	10,012	100%

Breakdown by countries of origin

Pakistan	950	9.5%
Iran	905	9%
Iraq	769	7.7%
Sri Lanka	605	6%
China	518	5.2%

Source: Freedom of information request 35829.

Table 6: Number of applicants detained per ground of detention: 2013-2015 (January-September)

There is no publicly disclosed data on the grounds for detention or on alternatives to detention.

Measure	2013	2014	2015
Detention	14806	14056	11,146

Source: *Home Office Immigration Statistics* Q3 2015 Detention 1 Table 1

Overview of the legal framework

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

Title (EN)	Abbreviation	Web Link
Immigration Act 1971	IA 1971	<http://bit.ly/1JKaigx>
Immigration and Asylum Act 1999	IAA 1999	<http://bit.ly/1C2MkVQ>
Nationality Immigration and Asylum Act 2002	NIAA 2002	<http://bit.ly/1Sat0PR>
Asylum and Immigration (Treatment of Claimants etc) Act 2004	AITOCA 2004	<http://bit.ly/1Sat3Lt>
Borders Citizenship and Immigration Act 2009	BCIA 2009	<http://bit.ly/1L4XIOC>
Immigration Act 2014	IA 2014	<http://bit.ly/1cPORMc>

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

Title (EN)	Abbreviation	Web Link
Statement of Changes in Immigration Rules HC 395 Part 11	Immigration rules	<http://bit.ly/1FY1JYi>
Statement of Changes in Immigration Rules HC 395 Part 11B	Immigration Rules	<http://bit.ly/1KKr1zi>
Statement of Changes in Immigration Rules HC 395 Part 12	Immigration Rules	<http://bit.ly/1MOpgiX>
The Asylum Seekers (Reception Conditions) Regulations 2005 SI 7	Reception Conditions Regs	<http://bit.ly/1L52LsU>
Asylum Support Regulations 2000 SI 704	Asylum Support Regs 2000	<http://bit.ly/1C2R7GQ>
Asylum Support (Amendment) Regulations 2005 SI 11	Asylum Support Regs 2005	<http://bit.ly/1Fd2wUj>
The Detention Centre Rules 2001 SI 238	Detention Centre Rules	<http://bit.ly/1GBXGY2>
Detention Service Orders	DSOs	<http://bit.ly/1MOpyr7>
Asylum Process Guidance and Asylum Policy Instructions	APG/API	<http://bit.ly/1BaVlvv>
The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 (S.I. 2014 No.2604 (L.31))	Procedural Rules	<http://bit.ly/1eawcw7>

Overview of the of the main changes since the previous update

The report was previously updated in **December 2014**.

Detention

- In a Court of Appeal case from 2014 the Court found that a practice which had developed in the DFT, namely detention pending appeal in the DFT purely based on the criteria of speed and convenience without considering a risk of absconding, was unlawful.
- In a second case of 2015 heard before the High Court and subsequently the Court of Appeal, the applicants, Detention Action, challenged the lawfulness of the rules governing the fast track appeals. Both Courts found that the time limits for appeal within the DFT were so truncated, rendering a fair hearing of appeals impossible. The Courts therefore concluded that the DFT system for appeals was structurally unfair and unjust. The operation of the DFT system was suspended on 2 July 2015.
- The Secretary of State for the Home Department requested permission to appeal the Court of Appeal's ruling to the Supreme Court. On the 12 November 2015, the Supreme Court refused the Government's permission to appeal thereby rendering the Court of Appeal's judgment definitive.
- Since the suspension of the DFT system, people whose appeals were heard in the DFT should now have their appeals reheard, and should only be detained if their detention is allowed within the terms of normal detention policy. They cannot be removed until the appeals have been reheard.
- The All Party Parliamentary Groups on Migration and Asylum conducted a joint inquiry into the use of immigration detention.³ Their key recommendations were:
 - There should be a **time limit of 28 days** on the length of time anyone can be held in immigration detention.
 - Detention is currently used disproportionately frequently, resulting in too many instances of detention. The presumption in theory and practice should be in favour of **community-based resolutions** and against detention.
 - Decisions to detain should be very rare and detention should be for the **shortest possible time and only to effect removal**.
 - The Government should learn from international best practice and introduce a much wider range of **alternatives to detention** than are currently used in the UK.

Relocation and resettlement

- The UK, which is not a member of the Schengen area, declined to take part in the EU agreement to receive 120,000 refugees. Instead the UK government increased its commitment to the Syrian Vulnerable Persons Resettlement Programme to 20,000 over five years.

Access

- The UK has increased security measures to support its juxtaposed controls at Calais. This includes installation of high security fencing, infra-red cameras, secure waiting areas for lorries and increased dog searches. The camps of migrants and refugees at Calais continued to be controversial, and attracted an increase in both criticism and support from the British public

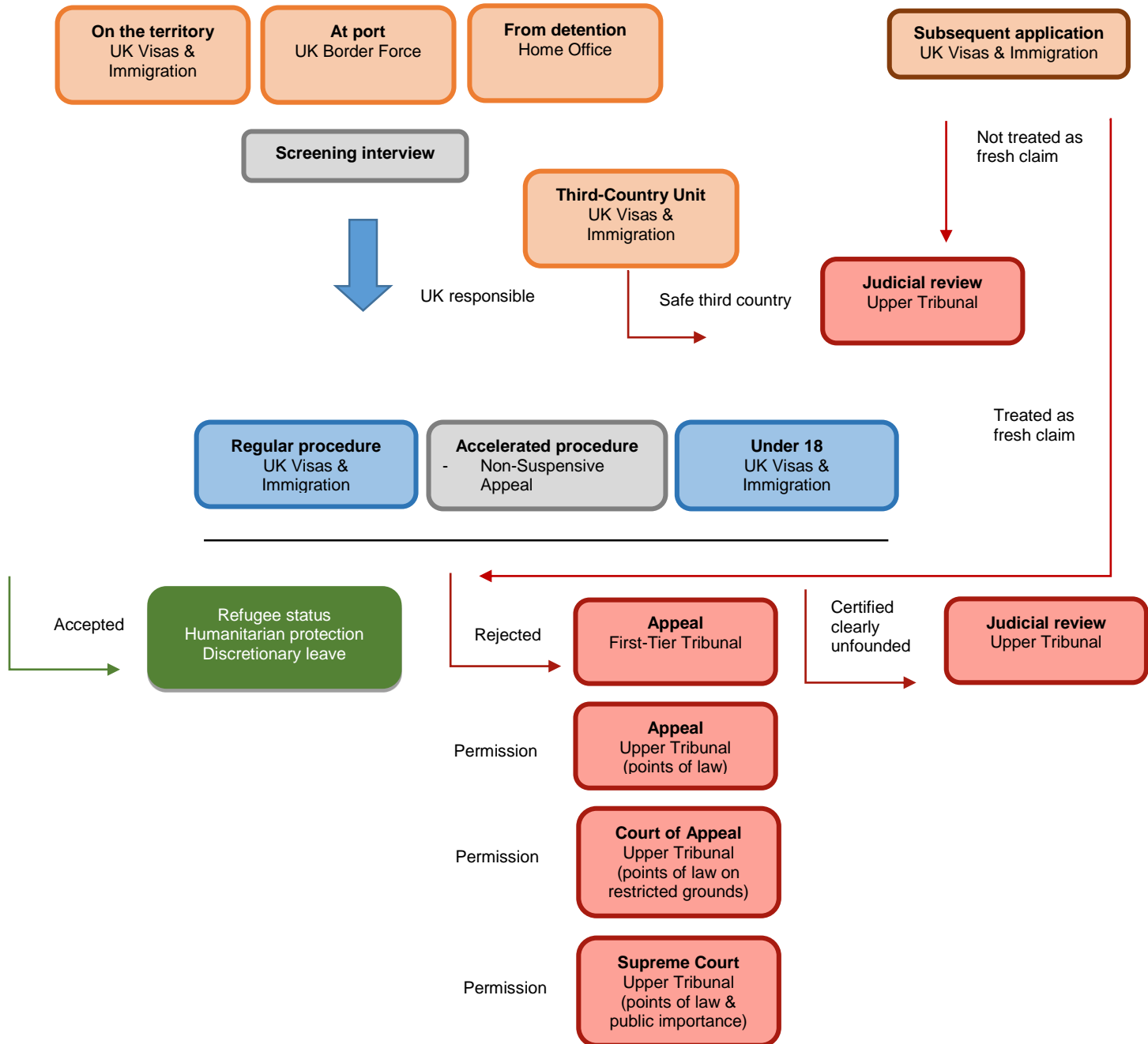
³ The APPG Inquiry into the Use of Immigration Detention in the United Kingdom.

following the 'Refugee Crisis' across the EU. There were no changes to legal procedure, but the security efforts are intended to compel people who wish to claim asylum to do so in France rather than the UK.

Asylum Procedure

A. General

1. Flow chart



2. Types of procedures

Indicators: Types of Procedures

Which types of procedures exist in your country?

- | | | |
|-----------------------------------------|-----------------------------------------|----------------------------------------|
| ❖ Regular procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ▪ Prioritised examination: ⁴ | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ▪ Fast-track processing: ⁵ | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ❖ Dublin procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Admissibility procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Border procedure: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ❖ Accelerated procedure: ⁶ | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Other: | | |

Are any of the procedures that are foreseen in the law, not being applied in practice? ☐ Yes ☒ No

3. List of authorities intervening in each stage of the procedure

Stage of the procedure	Competent authority
Application at the border	
❖ At the border	Home Office: UK Border Force (UKBF)
❖ On the territory	Home Office: UK Visas and Immigration (UKVI)
Dublin (responsibility assessment)	Home Office: UK Visas and Immigration (UKVI), Third Country Unit
Refugee status determination	Home Office: UK Visas and Immigration (UKVI)
Appeal procedures	
❖ First appeal	First Tier Tribunal, Immigration and Asylum Chamber (FTT (IAC))
❖ Second (onward) appeal	Upper Tribunal, Immigration and Asylum Chamber (UKUT (IAC))
Subsequent application (admissibility)	Home Office: UK Visas and Immigration (UKVI)

4. Number of staff and nature of the first instance authority

Name	Number of staff	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the first instance authority?

⁴ For applications likely to be well-founded or made by vulnerable applicants. See Article 31(7) APD.

⁵ Accelerating the processing of specific caseloads as part of the regular procedure.

⁶ Labelled as "accelerated procedure" in national law.

Home Office Visas and Immigration, Asylum Casework Directorate	409 ⁷	Home Office	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> 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 a department called UK Visas and Immigration (UKVI) 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. The ASU has recently been renamed the Asylum Intake Unit (AIU), but this name is not yet used everywhere.

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 Allocation Unit (NAAU) 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 has been considered by the Home Office but no details of such a route have been publicised.

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 to the Upper Tribunal, which can only be made with permission of that tribunal.⁸ 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, and the applicant may be detained.

The UK has operated a Detained Fast Track (DFT) procedure where Home Office officials considered that the case could be decided quickly. Following a series of legal challenges the DFT policy is currently suspended.⁹

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 in straightforward

⁷ More staff were recruited after many left following a downgrading of the posts. The Home Office recruited extra staff, and has now reached its goal of a workforce of 409.

⁸ Tribunals Courts and Enforcement Act 2007 s.16.

⁹ House of Commons: Written Statement (HCWS83) made by The Minister of State for Immigration (James Brokenshire), 2 July 2015.

cases, and 12 months in other cases. 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 14 days of the asylum refusal being sent. 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 14 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. 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, 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 2013, a new Asylum Operating Model was proposed to replace the New Asylum Model as part of a major Home Office re-structuring exercise. However, it was not pursued as such, but instead an organisational change process has been instituted which is ongoing, rather than a single restructuring exercise. A number of national 'commands' were created, including an Asylum Casework Directorate, with a view to achieving greater consistency across the regions. 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 parallel offices simply running differently.

At the time of writing the fourth update, there is no major national change in the way that asylum applicants make their claims. Within UKVI, as part of the effort to improve speed and quality of decision-making, a number of initiatives have been considered and some are at a trial stage. Examples are the use of a form in which the applicant is asked to set out the key elements of their claim prior to interview, and the use of a template structure for decision letters. These and other strategies are still under consideration and it is not known which, if any, will be adopted. Apart from these initiatives in the regular procedure, the other procedural streams are retained. A new Non-Detained Fast Track (Probable Protection) work-stream, i.e.

a form of manifestly well-founded procedure has not been formalised.¹⁰ Specialism in some regional offices is beginning to be established.

B. Procedures

1. Registration of the asylum application

Indicators: Registration

1. Are specific time-limits laid down in law for asylum seekers to lodge their application? ☐ Yes ☒ No
2. If so, what is the time-limit for lodging an application?
3. 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 (SSHD) is responsible in law for registering asylum applications.¹¹ This responsibility is carried out by civil servants in the UK Visas and Immigration Section (UKVI) 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 UKVI.¹²

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.¹³ 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'.¹⁴ 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'.¹⁵ 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',¹⁶ but not if this would entail a breach of human rights (see section on Reception Conditions).¹⁷

First applications made from inside the UK must be registered by appointment at the Asylum Screening, now Asylum Intake Unit (AIU) 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 and where the asylum seeker has left the port. Around 90% of asylum applications in the UK are not registered at the port of entry. These 'in country' applications are made at the AIU or from detention, or in exceptional cases an applicant who is destitute and whose condition is such that they cannot reasonably be expected

¹⁰ See e.g. Independent Chief Inspector of Borders and Immigration Unannounced Inspection of Cardiff Office February 2014.

¹¹ Nationality Immigration and Asylum Act (NIAA) 2002 s.113, available at: <http://bit.ly/1HOZagy>.

¹² Immigration Rules Part 11, para 328, available at: <http://bit.ly/1JRSeKu>.

¹³ Home Office, *Gender issues in the asylum claim*, September 2010, para 7.1, available at <http://bit.ly/1CbiHBK>.

¹⁴ Immigration Rules Part 11, para 339M.

¹⁵ Immigration Rules Part 11, para 339MA.

¹⁶ NIAA 2002 s.55.

¹⁷ UK House of Lords, *Limbuela v SSHD* [2005] UKHL 66.

to travel to the AIU may be permitted to register their claim at a Local Enforcement Office. Child unaccompanied asylum seekers are not expected to travel to the AIU if distance is an obstacle,¹⁸ 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 that their asylum application be registered in writing.¹⁹ In practice, this is only permitted exceptionally. There is no government funding for fares to the AIU. In the absence of this, over a four year period, a charity in Scotland provided 420 grants from its own funds to pay for travel to enable people to claim asylum.²⁰ 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 AIU before they can apply in person, and give some basic personal details over the phone, 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.²¹

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. Appointments for the screening interview are usually fixed within one or two weeks after the telephone call, but there are also reports of very substantial delays.²²

Indeed, 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 AIU but may be 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 ASU, including making available private areas for the screening interview. The lack of private space was one of the factors for which screening interviews had 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.²³ Although confidential space is now provided for interviewing at the Croydon screening unit, there is no supervised child care.²⁴

¹⁸ The Home Office, *Asylum Process Guidance: Registering an asylum application in the UK*, para 7.1 accessible at <http://bit.ly/1BkfXXq>.

¹⁹ The Home Office, *Asylum Process Guidance: Postal claims*, paras 3.4 and 4.1, accessible at <http://bit.ly/1CbntPG>.

²⁰ Morag Gillespie, *Trapped: Destitution and Asylum in Scotland*, Scottish Poverty Information Unit, Institute for Society and Social Justice Research, Glasgow Caledonian University, 2012 and Refugee Survival Trust destitution grant data 2013-14.

²¹ Christel Querton, *I feel like as a woman I'm not welcome: a gender analysis of UK law, policy and practice*, Asylum Aid 2012.

²² House of Commons Home Affairs Select Committee, *Asylum: Seventh Report of Session 2013-14* HC 71, accessible at <http://bit.ly/1dlhjAF>.

²³ Independent Chief Inspector of Borders and Immigration, *Asylum: A Thematic Inspection of the Detained Fast Track*, ICIBI, 2012, accessible at: <http://bit.ly/1JXaARf>.

²⁴ See Joint Committee on Human Rights *Violence against Women and Girls Sixth report of session 2014-15* HL Paper 106 HC 594 recommendation 37.

The lack of childcare provision at the AIU remains an obstacle to disclosure of sensitive information such as an experience of torture or rape since children may be in the same room as the parent while information on the basis of the claim is taken. This is under review by the Home Office.

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.

Improvements made in the screening process at the AIU have not yet been applied in the other locations where screening can take place (ports, police stations, local immigration offices, detention centres and prisons).²⁵

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 a port will not have had that opportunity. The Screening Unit does not have direct access to appointments for legal representatives, but officers can use a public access part of the government website called 'Find an Adviser' which enables a search for contact details of legal representatives listed by subject matter and by region. The officer can search in the area where the asylum seeker is going to be sent for initial accommodation (see section on Reception Conditions). There is no obligation on screening offices to help in finding legal representation.

Calais and push backs

According to a recent decision from the Administrative Tribunal in Lille on conditions in Calais the number of people in camps within the area has increased considerably in the last few months to about 6,000. Most are men from Somalia, Sudan, Eritrea and Syria, however the decision also noted around 300 women in the camps as well as 50 children.²⁶ There are also smaller groups from Ethiopia, Egypt, Afghanistan, Iran and Iraq.²⁷ Most are in the camps as a staging post in their attempt to enter the UK.

In 2014 the UK committed to spending £12 million over three years to address security issues and traffic flows at Calais. The UK Border Force has increased its number of booths in the port. The UK and France announced an increase in collaborative working between French and UK law enforcement agencies on criminal gangs and trafficking.²⁸

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' (see section on Border Procedure). 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 and 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. Evidence to the Home Affairs Select Committee from the UK Chamber of Shipping was that some travellers on arrival at Dover declined to claim asylum and asked to be returned to France.²⁹

²⁵ Independent Chief Inspector of Borders and Immigration, *Asylum: A Thematic Inspection of the Detained Fast Track*, ICIBI, 2012, accessible at: <http://bit.ly/1JXaARf>.

²⁶ Lille Administrative Tribunal, 2 November 2015, No. 1508747. For an English summary of the decision see European Database of Asylum Law, accessible at: <http://bit.ly/1Hbivdt>.

²⁷ Home Affairs - Eighteenth Report The work of the Immigration Directorates: Calais, Session 2014-15 HC 902.

²⁸ For a detailed analysis of conditions in Calais and the impact of security controls and funding on access to the UK territory see Asylum Information Database: Common asylum system at a turning point: Refugees caught in Europe's solidarity crisis, Annual Report 2014-2015, 61-62, accessible at <http://bit.ly/1ighqPs>.

²⁹ Home Affairs - Eighteenth Report The work of the Immigration Directorates: Calais, Session 2014-15 HC 902.

Registration of unaccompanied children

The policy is to treat unaccompanied children differently.³⁰ 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’.³¹ 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.³² Conversely, after a report by the Children’s Commissioner and a judicial review,³³ 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. This has yet to be written into policy and guidance and it is unclear whether or not it is always adhered to, although staff shortages and operational pressures have often resulted in delays to screening.

2. Regular procedure

2.1. General (scope, time limits)

Indicators: Regular Procedure: General

- | | |
|----------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| 1. Time-limit set in law for the determining authority to make a decision on the asylum application at first instance: | N/A |
| 2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Backlog of pending cases as of 30 September 2015 | 24,236 ³⁴ |

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, they are now part of a single Asylum Casework Directorate. Subjects covered by the publicly available guidance for case workers include making an asylum decision.³⁵

Guidance on gender issues in the asylum claim³⁶ 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

³⁰ 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, accessible at <http://bit.ly/1Ldrv2e>.

³¹ Adrian Matthews, Office of the Children’s Commissioner, *Landing in Dover: The Immigration process undergone by unaccompanied children arriving in Kent*, 2012, accessible at <http://bit.ly/1MljwYn>.

³² Independent Chief Inspector of Borders and Immigration, *An Inspection into the handling of Asylum Applications made by Unaccompanied Children*, 2013, accessible at: <http://bit.ly/1N2iN4S>.

³³ *The Queen on the application of AN and FA v SSHD* [2012] EWCA Civ 1636.

³⁴ This figure is for cases awaiting an initial decision and is given in the *Immigration Statistics* 3rd quarter 2015 <http://bit.ly/1QIV9zc>.

³⁵ See guidance at: <http://bit.ly/1Q7pK5Z>.

³⁶ The Home Office, *Asylum Policy Instruction: Gender Issues in the Asylum Claim: process*, 2010, Section 2 accessible at <http://bit.ly/1dK8QNj>.

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 enforceable time limit for deciding asylum applications, but the immigration rules say that the decision must be taken 'as soon as possible'.³⁷ 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 2014/15 showed 17.2% of men's claims and 7.4% of women's decided within 30 calendar days and 47.6% of men's claims and 30% of women's decided within six months.³⁸ Caseworkers are instructed to conclude straightforward cases within six months and non-straightforward within 12 months. If these targets are met time estimates are not usually given, and the case is likely to take very much longer. In 2014/15 only 54.8% of men's claims and 41.7% of women's had been concluded within one year.³⁹ 71.8% of men's cases and 71.6% of women's had been concluded within 36 months.⁴⁰ 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 or withdrawn their asylum claim. '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 September 2015 there were 24,236 applicants, including dependants, who had applied since April 2006, and had not received an initial decision, 22,974 pending applications were recorded at the same time in 2014. 3,623 of these had been waiting more than six months.⁴¹ 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.⁴²

Since 2013, a new source of delay was developing as the time spent waiting after screening for a substantive interview increased for some applicants so that some asylum seekers have waited many months, some even a year, for their initial interview. Those subject to these extended waiting times are in a minority. These delays seemed to coincide 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.⁴³

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 made within 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 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 20,017 of these asylum cases remained outstanding at the end of June 2015.⁴⁴ This does not mean that they have not had an initial decision, but that the case has not been concluded by one of the following:

- a. Grant of permanent or temporary residency
- b. Voluntary or enforced removal
- c. Found to have been given status before July 2006

³⁷ Immigration rules Part 11, para 333A.

³⁸ UKVI, Asylum Transparency data quarter 2 2015 tables ASY_2 and ASY_1.

³⁹ UKVI, Asylum Transparency data quarter 2 2015 table ASY_6q.

⁴⁰ UKVI, Asylum Transparency data quarter 2 2015 table ASY_7.

⁴¹ Home Office Research and Statistics Directorate, Immigration statistics, July to September, November 2015, accessible at <http://bit.ly/1QIV9zc>.

⁴² Independent Chief Inspector of Borders and Immigration, *An Inspection into the handling of Asylum Applications by Unaccompanied Children*, June 2013, accessible at <http://bit.ly/1N2iN4S>.

⁴³ Source: conversations with asylum seekers and NGOs; legal representatives' discussion forums.

⁴⁴ UK Visas and Immigration Transparency Data Q3 2014 Table OLCU 1.

- d. Found to be a duplicate record
- e. Deceased.⁴⁵

These more precise outcomes for old cases were developed in response to recommendations from the Independent Chief Inspector of Borders and Immigration.⁴⁶ This inspection found that decisions on live cases were being made on the correct basis but that one in five asylum cases closed by the Older Live Cases Unit (OLCU) had been closed incorrectly or for the wrong reason. The Home Affairs Select Committee continues to find that delay in decision-making is on the increase, with the risk of a further backlog being generated. The Committee has 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 2015.⁴⁷ The human cost is intensified by the fact that many people in the 'legacy' system are destitute (see section below on Reception Conditions).

2.2. Fast-track processing

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 prioritising manifestly well-founded claims has been considered. The only system for expediting decisions is the Detained Fast Track, discussed below (see section on Accelerated Procedure) and this generally results in refusal.

A new Non-Detained Fast Track (Probable Protection) work-stream, i.e. a form of manifestly well-founded procedure has not been formalised.⁴⁸

2.3. Personal interview

Indicators: Regular Procedure: Personal Interview

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

Applicants are entitled to a personal interview,⁴⁹ and this is standard practice. There is an initial screening interview before the substantive interview. 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.⁵⁰ In this case they may be refused an

⁴⁵ UK Visas and Immigration Asylum Transparency Data Q2 2015 table OLCU 1.

⁴⁶ Independent Chief Inspector of Borders and Immigration, *An investigation into the progress made on legacy and asylum migration case*, June 2013, accessible at <http://bit.ly/1G3nsyY>.

⁴⁷ House of Commons Home Affairs Committee, *The Work of the Immigration Directorates Eighteenth Report of Session 2014-15*. HC902.

⁴⁸ See e.g. Independent Chief Inspector of Borders and Immigration Unannounced Inspection of Cardiff Office February 2014.

⁴⁹ Immigration rules Part 11, para 339NA.

⁵⁰ The Home Office, *Asylum Process Guidance: Routing Asylum Applications*, para.3.9.

interview. Applicants under 12 years old are not normally interviewed, though they can be if they are willing and it is deemed appropriate.⁵¹ 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 DFT, or in the case of lack of mental capacity, 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.

Interpreters are required by the immigration rules and are provided by the Home Office. There is a code of conduct for these interpreters,⁵² 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, and guidance issued to Home Office caseworkers, in the case of interpreting problems, suggests that the representative is permitted to interrupt the interview to raise the problem.⁵³ 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.⁵⁴

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.⁵⁵ 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.

⁵¹ Kamena Dorling and Anita Hurrell, *Navigating the System: Advice Provision for Young Refugees and Migrants*, 2012, Coram Children's Legal Centre.

⁵² Home Office *Asylum Policy Instruction: Asylum Interviews Section 8: Interpreters*.

⁵³ Home Office *Asylum Policy Instruction: Asylum Interviews Section 7.3 Professional conduct*.

⁵⁴ Home Office *Asylum Policy Instruction, Gender issues in the asylum claim*, para 7.1, accessible at <http://bit.ly/1CbiHBK>.

⁵⁵ Home Office *Asylum Policy Instruction, Asylum Interviews Version 6.0*, 4 March 2015, 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.⁵⁶ This is in place in regional offices except London.⁵⁷

2.4. Appeal

Indicators: Regular Procedure: Appeal

1. Does the law provide for an appeal against the first instance decision in the regular procedure?

❖ If yes, is it	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If yes, is it suspensive	<input checked="" type="checkbox"/> Judicial	<input type="checkbox"/> Administrative
	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
2. Average processing time for the appeal body to make a decision: 16 weeks

There is a right to appeal against an initial asylum decision under the regular procedure. Appeals are made to the Immigration and Asylum Chamber of the First Tier Tribunal (FTT (IAC)) 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 14 days from the date that the Home Office 'sent' the decision.⁵⁸ 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.

A fee of £140 (€195) is required for an oral hearing of an asylum appeal in the regular procedure (not if the case is in the DFT). Applicants need not pay if they are receiving asylum support (see section on Reception Conditions and section 95 support) or if they have public funding to be represented.⁵⁹ 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 at this stage of the process.

The complexity of the law and procedure and the barrier of language make it extremely difficult for asylum seekers to represent themselves. Tribunal rules requires all evidence to be translated where relevant and sent to all parties in advance of the hearing.⁶⁰ 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 not available, but for example between January and March 2015 75% of appeals were completed within 16 weeks.⁶¹

⁵⁶ Home Office *Asylum Policy Instruction, Gender issues in the asylum claim*, para 7.1.

⁵⁷ 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.

⁵⁸ The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 rule 19.

⁵⁹ HM Courts and Tribunals Service, *Immigration and Appeals Tribunal Fees Guidance*, accessible at <http://bit.ly/1d19Fk0>.

⁶⁰ The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 SI 2604 rule 12.

⁶¹ Ministry of Justice, Tribunals and Gender Recognition Certificate Statistics Quarterly January to March 2015 11th June 2015, accessible at <http://bit.ly/1HZhDSO>.

Asylum seekers give evidence in person at the appeal hearing, and the Tribunal provides interpreters on request. This service was contracted out in February 2012. Following that, there was a steep rise in formal complaints about the interpreter service. Since then performance has improved, although the National Audit Office found continuing failings in a report published in January 2014.⁶² Hearings are public. Decisions are in theory public documents, but decisions of the FTT (IAC) are not published.

There is an onward appeal to the Immigration and Asylum Chamber of the Upper Tribunal UT (IAC) on a point of law. This is with permission of the FTT (IAC). Application must be made within 14 days of receiving the refusal.⁶³ If the FTT (IAC) refuses permission, an application for permission may be made to the UT (IAC). 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:

1. that there is an arguable case, which has a reasonable prospect of success, that both the decision of the UT (IAC) refusing permission to appeal and the decision of the FTT (IAC) against which permission to appeal was sought are wrong in law; and
2. that either:
 - a. the claim raises an important point of principle or practice; or
 - b. that there is some other compelling reason to hear it.⁶⁴

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 UT (IAC), the UT (IAC)'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 certifies that the case concerns a question of law which is 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.

Where the only remedy is judicial review, this 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 transferred to the Upper Tribunal, and most are now in the Tribunal's jurisdiction.⁶⁵ 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.

⁶² National Audit office, *The Ministry of Justice's language services contract: Progress update*. HC 995 SESSION 2013-14 22 January 2014, accessible at <http://bit.ly/1bcySkN>.

⁶³ Procedure Rules, Rule 33.

⁶⁴ Rule 54.7A Civil Procedure Rules accessible at <http://bit.ly/1Gt3VdE>.

⁶⁵ Regulations are made implementing the power in Borders, Citizenship and Immigration Act 2009 s.53.

2.5. Legal assistance

Indicators: Regular Procedure: Legal Assistance

1. Do asylum seekers have access to free legal assistance at first instance in practice?
☐ Yes ☒ With difficulty ☐ No
❖ Does free legal assistance cover:
☐ Representation in interview
☒ Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?
☐ Yes ☒ With difficulty ☐ No
❖ Does free legal assistance cover
☒ Representation in courts
☒ Legal advice

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 do not have sufficient resources. Although the immigration rules provide that asylum seekers shall be allowed 'an effective opportunity' to obtain legal advice,⁶⁶ 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 (€139) including disbursements.

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 (€577).⁶⁷ 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.⁶⁸

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 UT (IAC) 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 from granting legal aid at appeal and makes it difficult for quality representatives to stay in business with high standards.⁶⁹

Legal assistance is not provided at the ASU or at the port of entry. 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

⁶⁶ Immigration rules Part 11, para 333B.

⁶⁷ The civil legal aid (remuneration) regulations 2013, Schedule 1, Table 4(a), accessible at <http://bit.ly/1fiODPA>.

⁶⁸ Immigration Specification to the 2013 Standard civil contract, accessible at <http://bit.ly/1QFm9iQ>.

⁶⁹ 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.

unaccompanied children and people who lack capacity), there is no public funding for a legal representative to attend the asylum interview.⁷⁰

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 UT (IAC) where the FTT(IAC) 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 (approx. €14 million at the time) 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 normally to 100 per office under the new April 2013 contract, meant that legal firms doing immigration and asylum work have been obliged to take on more privately paid work in order to survive. Once their quota of 100 cases has been reached they must turn away new clients, no matter how deserving the case. The total number of immigration and asylum cases funded by legal aid in 2014 was just over a quarter of what it was in 2010.⁷¹ 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 January 2014 legal aid was abolished for civil court cases where the merits are assessed as 'borderline', i.e. over 50% but not more than 60%.⁷² Further cuts to legal aid in 2014, entailed that legal aid would not be granted for judicial review applications unless the court granted permission for the judicial review to go ahead. This meant that solicitors must do the preparatory work including the application at their own financial risk. The regulations introducing these cuts⁷³ were declared unlawful by the High Court.⁷⁴ Three days after the court's judgement the government introduced new regulations to achieve the same result while allowing for payment where the government withdraws the decision which is being challenged, and where there is an oral hearing of the application for permission.⁷⁵ Given that success in judicial review is anyway difficult to achieve, it is increasingly difficult for asylum seekers to find a lawyer who will apply for judicial review.

⁷⁰ Legal Aid, Sentencing and Punishment of Offenders Act 2012, Schedule 1 Part 1 (30), accessible at <http://bit.ly/1J5vmy0>.

⁷¹ Immigration Law Practitioners Association Response re Questions from Lord Warner during Joint Committee on the Draft Modern Slavery Bill evidence session 11 March 2014.

⁷² The Civil Legal Aid (Merits Criteria), (Amendment) Regulations 2014 No. 131, accessible at <http://bit.ly/1epJg0S>.

⁷³ Civil Legal Aid (Remuneration) (Amendment) (No 3) Regulations 2014.

⁷⁴ *The Queen on the application of: (1) Ben Hoare Bell Solicitors (2) Deighton Pierce Glynn Solicitors (3) Mackintosh Law (4) Public Law Solicitors (5) Shelter - and - The Lord Chancellor* [2015] EWHC 523 (Admin).

⁷⁵ Civil Legal Aid (Remuneration) (Amendment) Regulations 2015.

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 solicitors,⁷⁶ and the continued reduction in public funding threatens more reductions in the voluntary sector.⁷⁷ 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.⁷⁸

In the East Midlands of England, a pilot scheme, the Early Legal Advice Project (ELAP),⁷⁹ 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.⁸⁰ The Home Office evaluation indicated improved decision making in complex cases, and more initial grants of discretionary leave, but a higher cost per case.⁸¹ The system has not been adopted, although 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.⁸²

⁷⁶ 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.

⁷⁷ Deri Hughes-Roberts, *Rethinking Asylum Legal Representation: promoting quality and innovation at a time of austerity*, Asylum Aid 2013, accessible at <http://bit.ly/1N5rxHG>.

⁷⁸ Scottish Legal Aid Board, *Best Value Review: Immigration And Asylum* 2011, accessible at <http://bit.ly/1LqW2fE>.

⁷⁹ The project was run by the Home Office and Legal Aid Agency (LSC).

⁸⁰ Julie Gibbs and Deri Hughes-Roberts, *Justice at Risk: Quality and Value for Money in Asylum Legal Aid* Runnymede Trust, 2012.

⁸¹ 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.

⁸² House of Commons Home Affairs Committee, *Asylum, Seventh Report of Session 2013-14*. HC71.

3. Dublin

3.1. General

Indicators: Dublin: General⁸³

1. Number of outgoing requests in 2015 (January-September):	2,026
❖ Top 3 receiving countries	
IT	779
IE	157
FR	145
2. Number of incoming requests in 2015 (January-September):	713
❖ Top 3 sending countries	
FR	184
DE	130
SE	60
3. Number of outgoing transfers in 2015 (January-September):	510
❖ Top 3 receiving countries	
IT	174
IE	53
BE	48
4. Number of incoming transfers in 2015 (January-September):	150
❖ Top 3 sending countries	
DE	24
FR	23
BE	20

The discretionary clauses

In a written question to the Secretary of State for the Home Department asking how many times the UK had been asked to use the discretionary powers in Article 17 of the Dublin Regulation and how many of those requests resulted in the UK taking charge of an applicant, the Home Office confirmed that between January 2014 to November 2015 29 requests under Article 17.1 and 17.2 of Dublin III had been made and of those requests 14 were accepted.⁸⁴

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.⁸⁵ Details of family members are routinely requested during the screening interview, but the applicant is not advised of the possibility of asking for the discretionary or sovereignty clauses to be invoked. In practice such grounds are more likely to be raised as a challenge to the Dublin decision once it is made.

While it is easy to identify a Eurodac hit at the very early stage of a case (fingerprint match), it is not so easy for the authorities to identify whether family members are present in any Dublin country, and therefore reliance must be placed on the applicant's account. In the experience of lawyers, the authorities are happy to submit a request to a 3rd country to take charge of the claim if the applicant indicates that he/she has family members there. This can happen at any point unless the asylum process has already started, and/or the time limits provided by Dublin III have lapsed.

If the applicant wishes to be transferred out of the UK, a referral is made to the TCU and the HO will not normally object. However, if the applicant wishes to have his/her claim substantively considered in the

⁸³ Information provided by the Home Office: FOI 36688, 23 September 2015. Figures relate to calendar year 2015, although exact reporting period was not explicitly provided by the Home Office.

⁸⁴ Asylum: EU law: Written question – 15249, 6 November 2015, accessible at: <http://bit.ly/1LqRM7S>.

⁸⁵ Following CJEU, Case C-648/11 *R (on the application of MA, BT, DA) v SSHD*, Judgment of 6 June 2013, the UK will not be able to apply the Dublin Regulation to unaccompanied minors.

UK, it is the obligation of the applicant or their legal representative to submit documentary evidence such as status papers, passports, asylum interview records etc of family members, as well as representations explaining why the UK should consider the claim.

DNA tests are not routinely carried out. This would only be necessary if there is no other way to prove relationship. If the applicant fails to declare he/she has family members in the UK at an early stage, normally the HO attempt to proceed with removal. However, a judicial review challenge can be brought if there is a good reason for the lack of disclosure (for example the applicant only found out later the whereabouts of his family).

The majority of requests to third countries are based on Eurodac hits, as these are objective and easy to identify for the authorities. The perception of lawyers is that the Home Office is reluctant to apply other criteria (such as family reunion) however this observation should be balanced with the fact that legal representatives generally see cases where there is a problem. Positive Home Office decisions to take charge of a case are made internally and also occur, including where the applicant has passed through a safe country, and where they have family in the UK.

3.2. Procedure

Indicators: Dublin: Procedure

1. On average, how long does a transfer take after the responsible Member State has accepted responsibility? Not available

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.⁸⁶ 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.⁸⁷

Where a person refuses to have their fingerprints taken, the Home Office can treat this as a failure to provide information relevant to their case. This can then be treated as relevant to a decision that the person has not made out their asylum claim. However the asylum seeker must be given an opportunity to provide a reasonable explanation, and failure to provide fingerprints would not be used alone.⁸⁸ It can also contribute to a decision to detain.⁸⁹

Where a person's fingers are damaged so that they are unable to provide good quality fingerprints, policy says that their fingerprints should still be taken.⁹⁰ During the period of healing the person should be

⁸⁶ Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (AITOCA) Schedule 3 Part 2, first list.

⁸⁷ The Home Office, *Asylum Process Guidance, Third Country Cases: Referring and Handling* para 2.2.

⁸⁸ Immigration rules: HC 395 para 339M.

⁸⁹ Enforcement Instructions and Guidance chapter 55 para 55.6.3.

⁹⁰ Asylum Instruction: *Applicants with Poor Quality Fingerprints* para 1.3.

fingerprinted weekly. If they are in detention and after two months, 'the applicant's fingers have not recovered... nor has the applicant sought medical intervention for the trauma, they will be asked to sign a consent form to attend the removal centre medical facility and be referred to a consultant dermatologist.' (para 8.1)

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,⁹¹ 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.

On the Second List, see the section on Admissibility Procedure.

Individualised guarantees

The UK does not formally recognise any requirement to request individual guarantees of adequate reception facilities. The judgment of the High Court in *MS* [2015] EWHC 1095 (Admin), referring to the ECHR case of *Tarakhel*, maintains that there is no such general requirement where children are not involved, even where applicants have experienced trauma and have mental health difficulties. This does not mean that guarantees are never sought in individual cases, since officers in UKVI may do so, but it means that the UK does not seek guarantees as a matter of routine practice or policy. The appellants in *MS* have sought permission to appeal from the Court of Appeal.

Transfers

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 in the UK. 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 section on Dublin: Appeal below).

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.

⁹¹ The Home Office, *Asylum Process Guidance, Third Country Cases: Referring and Handling* para 4.2.

3.3. Personal interview

Indicators: Dublin: Personal Interview

☐ Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the Dublin procedure? ☐ Yes ☒ No

No personal interview takes place in the Dublin procedure.

Information obtained in the screening interview, particularly about route of travel, is used to make a decision that the case should be referred to the Third Country Unit. The standard information read out from the screening form includes the following:

“It is possible that the United Kingdom may not be the state responsible for considering your asylum application. You will be informed of any application or decision to transfer your case to another country.”

3.4. Appeal

Indicators: Dublin: Appeal

☐ Same as regular procedure

1. Does the law provide for an appeal against the decision in the Dublin procedure? ☐ Yes ☒ No

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 ECHR or in breach of the Refugee Convention.⁹² 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.⁹³ 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 claim is clearly unfounded, but the Home Office is required to certify that it is clearly unfounded unless there is evidence to the contrary.⁹⁴ 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 14 days. There are very few appeals of this kind. Normally any challenge to removal based on breach of human rights in the receiving country is made by judicial review application challenging the Secretary of State's certificate that the human rights claim is unfounded. The result is that the only suspensive appeal against a Dublin removal would be the rare case of a human rights claim which 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.

⁹² Asylum and Immigration (Treatment of Claimants, etc.) Act (AITOCA) 2004 Schedule 3 Part 2. accessible at: <http://bit.ly/1Sat3Lt>.

⁹³ AITOCA 2004 Schedule 3, Part 2 para 5.

⁹⁴ AITOCA 2004 Schedule 3, Part 2 para 5.

There have been challenges before the courts in relation to conditions of return in Cyprus,⁹⁵ Italy, Malta,⁹⁶ Hungary.⁹⁷ Conditions of return for vulnerable applicants in Italy are still before the courts in the UK in the case of *MS* in which an application has been made for permission to appeal to the Court of Appeal.

In relation to France and Sweden, there have been challenges concerning the receiving authority's approach to the asylum application. In the case of *R (on the application of AI) v SSHD* [2015] EWHC 244 (Admin), the High Court held that the challenge to the French fast track procedure and to practice in France towards Darfuri applicants did not displace the presumption that France would abide by its obligations under the Refugee Convention. Similarly in *Musud Dudaev, Kamila Dudaev and Denil Dudaev v SSHD* [2015] EWHC 1641 the High Court held that there was insufficient evidence that Sweden would not comply with its obligations under the Refugee Convention, and that the UK law provisions which deem other EU countries safe (see AITOCA schedule 3 above) were not matters of EU law and could not be argued to be incompatible with it.

On the Second List, see section on Admissibility Procedure.

3.5. Legal assistance

Indicators: Dublin: Legal Assistance

☐ Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> With difficulty	<input type="checkbox"/> No
------------------------------	-----------------------------------------------------	-----------------------------

 - ❖ Does free legal assistance cover:

<input type="checkbox"/> Representation in interview
<input checked="" type="checkbox"/> Legal advice

2. Do asylum seekers have access to free legal assistance on appeal against a Dublin decision in practice? ⁹⁸

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> With difficulty	<input type="checkbox"/> No
------------------------------	-----------------------------------------------------	-----------------------------

 - ❖ Does free legal assistance cover

<input checked="" type="checkbox"/> Representation in courts
<input checked="" type="checkbox"/> Legal advice

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 Regular Procedure: Legal Assistance). 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 section on Legal Assistance for Review of Detention). There are no special restrictions on legal aid in Dublin cases (see section on Regular Procedure: Legal Assistance) and judicial review is funded by legal aid, although only if the merits are considered strong, and if the Court grants permission for the case to go ahead.

3.6. Suspension of transfers

Indicators: Dublin: Suspension of Transfers

1. Are Dublin transfers systematically suspended as a matter of policy or jurisprudence to one or more countries?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
-----------------------------------------	-----------------------------

 - ❖ If yes, to which country or countries?

Greece

⁹⁵ Permission has been granted for judicial review in a number of cases but there are no reported decisions
⁹⁶ *R (on the application of Hagos) v SSHD (Dublin returns – Malta)* IJR [2015] UKUT 271 (IAC). Upper Tribunal found that conditions of return did not 'necessarily' breach Article 3 for vulnerable applicant. High Court also rejected applications in *R (on the application of Hamad and Ararso) v SSHD* [2015] EWHC 2511 (Admin)

⁹⁷ Permission to appeal is being sought from Court of Appeal in all these cases.

⁹⁸ *HK (Sudan)* [2014] EWCA Civ 1481 permission for judicial review refused.

⁹⁸

Transfers to **Greece** were generally suspended as a matter of practice following the European Court on Human Rights (ECtHR) judgment in *MSS v Belgium and Greece*,⁹⁹ and in anticipation of the Court of Justice of the European Union (CJEU) decision in *NS*.¹⁰⁰ 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 (EASO) and UNHCR.¹⁰¹ 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)*.¹⁰² 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 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.¹⁰³ Suspensions of this kind are repeated when the courts accept that one case is to be treated as a lead case in relation to an issue. Once it is decided, returns in all the cases are no longer suspended. The effect of this depends on the stage which each individual case has reached.

In the cases which challenged returns to **Hungary**, **Malta**¹⁰⁴ and **Cyprus**,¹⁰⁵ individual returns to these countries were stayed pending the outcome of these cases. The Court refused permission to proceed with the appeal in the case of Hungary, saying that although there were serious concerns about detention conditions, and that access to toilets and the use of leashes were degrading, the Article 3 threshold was not met.¹⁰⁶ The UK has not made findings of systemic deficiencies in relation to other EU countries. Given the outcome of *EM (Eritrea)*, it will not be necessary to do so in order to prevent a Dublin removal, but individual challenges in the courts have generally not succeeded so far, as listed here and in the procedure section above.

The High Court in *Tabrizagh* found that returns to **Italy** would not in general breach Article 3 ECHR, though they might in individual cases.¹⁰⁷ The Court of Appeal refused permission to appeal against this decision.

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

⁹⁹ ECtHR, *M.S.S. v Belgium and Greece*, Application No. 30696/09, Judgment of 21 January 2011.

¹⁰⁰ The Parliamentary Under-Secretary of State, Home Office House of Lords, 25 Oct 2011: Column WA121, accessible at <http://bit.ly/1LkBdg0>.

¹⁰¹ Parliamentary Under Secretary of State for the Home Office, House of Lords, 23 January 2013, col. WA 209, accessible at <http://bit.ly/1fjefT>.

¹⁰² *EM (Eritrea) v SSHD* [2014] UKSC 12, accessible at <http://bit.ly/1dM83eJ>.

¹⁰³ *EM (Eritrea) v the Secretary of State for the Home Department* [2014] UKSC 12, which concerned returns to Italy.

¹⁰⁴ *MB v SSHD* [2013] EWHC 123 (Admin), accessible at <http://bit.ly/1Rccool>.

¹⁰⁵ *MC (Guinea), Jafari and FJ (Iran) v SSHD* [2013] EWCA Civ 922.

¹⁰⁶ *HK (Sudan) v SSHD* [2014] EWCA Civ 1481, accessible at <http://bit.ly/1MO96GL>.

¹⁰⁷ *R (on the application of Tabrizagh) v SSHD* [2014] EWHC 1914 (Admin).

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.¹⁰⁸

4. Admissibility procedure

4.1. 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 (see section on Dublin), 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.¹⁰⁹ Additionally, there is a presumption that human rights claims against removal to it of non-nationals are unfounded.¹¹⁰

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

4.2. Personal interview

Indicators: Admissibility Procedure: Personal Interview

☐ Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted 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.

4.3. Appeal

Indicators: Admissibility Procedure: Appeal

☐ Same as regular procedure

1. Does the law provide for an appeal against the decision in the admissibility procedure? ☐ Yes ☒ No

Similarly to the Dublin procedure 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 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

¹⁰⁸ Information from the Asylum Support Appeals Project, CJEU, Case 179/11 *Cimade & GISTI v Ministre de l'intérieur*, 27 September 2012.

¹⁰⁹ AITOCA 2004 Schedule 3 Parts 3 and 4.

¹¹⁰ AITOCA 2004 Schedule 3 Part 3.

unless the decision maker is satisfied that they are not unfounded.¹¹¹ Where an appeal is available an out of country appeal must be brought within 28 calendar days; an in-country appeal must be brought within 14 days. The same problems may arise as with the 14 day limit in the regular procedure (see section on Regular Procedure: Appeal).

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 the decision 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.¹¹²

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.

4.4. Legal assistance

Indicators: Admissibility Procedure: Legal Assistance

☐ Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?
☐ Yes ☒ With difficulty ☐ No
❖ Does free legal assistance cover:
☐ Representation in interview
☒ Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against an inadmissibility decision in practice?
☐ Yes ☒ With difficulty ☐ No
❖ Does free legal assistance cover
☒ Representation in courts
☒ Legal advice

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 (see section on Dublin: Legal Assistance), 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 section on Legal Assistance for Review of Detention).

Judicial review is funded by legal aid, subject to the means of the asylum seeker and the merits of the case. However, as in all judicial review, since changes in 2014, this is broadly speaking only if the court grants permission for the judicial review or the Home Office retracts the decision.

5. Border procedure (border and transit zones)

5.1. General (scope, time limits)

¹¹¹ AITOCA 2004 Schedule 3, Parts 3 and 4.

¹¹² *R v Secretary of State for the Home Department ex p Daly* [2001] UKHL 26, accessible at: <http://bit.ly/1lbyKpJ>.

Indicators: Border Procedure: General

1. Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities? ☒ Yes ☐ No
2. Can an application made at the border be examined in substance during a border procedure? ☐ Yes ☒ No
3. Is there a maximum time-limit for border procedures laid down in the law? ☐ Yes ☒ No
❖ If yes, what is the maximum time-limit?

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 (see section on Regular Procedure). 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 therefore there are no rights attached to the admission. 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.¹¹³

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.¹¹⁴ 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 2014, 15,993 people were refused entry at the UK port and subsequently left the country¹¹⁵ and 12,191 in the year January to September 2015.¹¹⁶

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,¹¹⁷ and the acknowledged purpose of these agreements with France and Belgium was to stop people travelling to the UK to claim asylum.¹¹⁸ Of the 4,399 people turned back in control zones in the year to January to September 2015,¹¹⁹ 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

¹¹³ See reports from the HM Inspectorate of Prisons on the Ministry of Justice, accessible at <http://bit.ly/1Blx77p>.

¹¹⁴ Equality Act 2010 s.29 and schedule 3 part 4, accessible at <http://bit.ly/1MOliag>.

¹¹⁵ Home Office Research and Statistics Directorate, *Immigration Statistics: Removals, Q3 2015 Table 1*, accessible at: <http://bit.ly/1XibVJM>.

¹¹⁶ Home Office Research and Statistics Directorate, *Immigration Statistics: Removals, Q3 2015*, accessible at <http://bit.ly/1PigbDc>.

¹¹⁷ 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.

¹¹⁸ Independent Chief Inspector of Borders and Immigration, *An Inspection of Juxtaposed Controls*, 2013, accessible at: <http://bit.ly/1ImrYsF>.

¹¹⁹ Home Office Research and Statistics Directorate, *Immigration Statistics: Removals, Q3 2015*, accessible at <http://bit.ly/1PigbDc>.

regulations require. During an investigation by the Children's Commissioner for England, the Home Office officials disclosed the 'Gentleman's Agreement'.¹²⁰ 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 between the UK and France and obliges France to accept the return of such passengers if this can be effectuated within 24 hours. Returns under the Gentleman's Agreement are carried out 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, in 2010 UK officials at Calais ceased processing people attempting to travel clandestinely, but simply handed them straight to the French police.¹²¹ This continues up to the present¹²² and is 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 or Home Affairs Committee 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.¹²³ 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'.¹²⁴

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.

5.2. Personal Interview

Indicators: Border Procedure: Personal Interview

☐ Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted 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.

¹²⁰ Adrian Matthews, *Landing in Dover: The Immigration process undergone by unaccompanied children arriving in Kent*, 2012, Children's Commissioner.

¹²¹ Independent Chief Inspector of Borders and Immigration, *An Inspection of Juxtaposed Controls*, 2013, accessible at <http://bit.ly/1lMrYsF>.

¹²² House of Commons Home Affairs Committee, *The work of the Immigration Directorates: Calais Eighteenth Report of Session 2014–15* HC 902.

¹²³ Equality Act 2010 Schedule 3, Part 4, Paragraph 17 (4) (A) Ministerial Authorisation para 4.

¹²⁴ Sile Reynolds, Helen Muggeridge, *Remote Controls: how UK border controls are endangering the lives of refugees*, Refugee Council, 2008, accessible at <http://bit.ly/1K0mHLN>.

5.3. Appeal

Indicators: Border Procedure: Appeal

☐ Same as regular procedure

1. Does the law provide for an appeal against the decision in the 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.

5.4. Legal assistance

Indicators: Border Procedure: Legal Assistance

☐ Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?
☐ Yes ☐ 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 procedure

6.1. General (scope, grounds for accelerated procedures, time limits)

There are two kinds of accelerated procedures: the non-suspensive appeal procedure (NSA) and the detained fast-track procedure (DFT).

Non-Suspensive Appeal

Firstly where the claim is certified by the Home Office as clearly unfounded, there is no in-country appeal. These are called Non-Suspensive Appeal (NSA) 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 a Detained Non-Suspensive Appeal (DNSA). About 7% of claims were certified clearly unfounded in 2014, and approximately 9% in the first three quarters of 2015.¹²⁵ Albania, India, Nigeria, Pakistan and Poland were the most common nationalities, between them accounting for 68% of those people whose claims were certified unfounded in 2014 and 62% in the first three quarters of 2015.¹²⁶

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. In theory the two procedures are very different

¹²⁵ *Immigration Statistics: July to September 2015 Asylum Table AS01q*, November 2015.

¹²⁶ Home Office Research and Statistics Directorate, *Immigration Statistics: Asylum Table 13, Q3 2015*.

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 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 or in the Act itself.¹²⁷ (See section on the Safe Country Concepts).

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.¹²⁸ The Independent Chief Inspector of Borders and Immigration noted a lack of objective standards in accrediting this officer, and of consistent understanding of this role and its remit.¹²⁹ 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 normally be based on the credibility of the individual applicant but on objective country material.¹³⁰ This is general practice and is unlike the regular procedure where no such guidance is given and refusal is commonly based on credibility.

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 (1702 cases were individually certified in 2014).¹³¹ This should only be done where the caseworker considers that the claim is incapable of succeeding before an independent tribunal.¹³²

Not all asylum claimants from designated countries have their claim considered for certification as unfounded. The reason for this suggested to the Chief Inspector was pressure on asylum decision makers to process asylum decisions as quickly as possible to achieve target times for consideration, and the allocation of cases to those who are not trained in NSA procedures.¹³³

Detained-Fast Track

The defining characteristics of the DFT procedure have been speed and detention throughout the decision process. The criteria for being routed into the DFT only require 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.

After a series of legal challenges to the safety and fairness of the DFT process, its operation was suspended on 2 July 2015.¹³⁴

¹²⁷ Nationality, Immigration and Asylum Act 2002, Section 94, accessible at <http://bit.ly/1eqvY4g>.

¹²⁸ UK Visas and Immigration, Asylum decision-making guidance: *Non-Suspensive Appeals (NSA): Certification under s.94*, para. 2.3, accessible at <http://bit.ly/1CfhMAf>.

¹²⁹ Independent Chief Inspector of Borders and Immigration: *An Inspection of the Non-Suspensive Appeals process for 'clearly unfounded' asylum and human rights claims* July 2014, accessible at <http://bit.ly/1Bq4LIW>.

¹³⁰ UK Visas and Immigration, Asylum decision-making guidance: *Non-Suspensive Appeals (NSA): Certification under s.94*, para. 2.2, accessible at <http://bit.ly/1CfhMAf>.

¹³¹ Home Office Research and Statistics Directorate, *Immigration Statistics: Asylum Table 13, Q4, 2014* though 142 of these were from EU countries.
NA (Iran) v SSHD [2011] EWCA Civ 1172.

¹³² Independent Chief Inspector of Borders and Immigration: *An Inspection of the Non-Suspensive Appeals process for 'clearly unfounded' asylum and human rights claims* July 2014.

¹³³ House of Commons: Written Statement (HCWS83) Home Office Written Statement made by: The Minister of State for Immigration (James Brokenshire).

The issues upon which the DFT has been challenged and found unsafe include treatment of vulnerable applicants, short timescales for preparation and access to legal advice and representation and the legality of grounds for detention pending appeal. In summary, the policy and operation of the system before suspension of the system was as follows.

The following groups of people were in theory excluded from the DFT:

- a. women who are 24 weeks pregnant or over;
- b. applicants with health conditions needing 24 hour medical care;
- c. applicants with physical disabilities which cannot be managed in detention;
- d. applicants with a mental or physical condition, including infectious and/or contagious diseases, which cannot be treated or managed in detention;
- e. applicants who lack the mental capacity or coherence to understand the process or present their claim;
- f. where there is independent evidence that applicants have been tortured;
- g. those under 18 and adults with dependent children;
- h. those accepted by a competent authority to be victims or potential victims of trafficking.

These exclusions have been drawn more narrowly over time as they have been amended. For instance all those with illness or disability were previously excluded, but they were amended to exclude only those whose conditions cannot be managed in detention.

The guidance said that a case may be suitable for the DFT where it appeared that further enquiries would not be needed, nor complex legal advice, corroborative evidence, or translation of documents.¹³⁵ 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.¹³⁶ The UN Committee Against Torture was 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'.¹³⁷

In a similar manner, the screening process is not suited to identifying the complex protection issues that may arise in women asylum seekers' claims. UNHCR¹³⁸ and Human Rights Watch¹³⁹ have observed that the inadequate screening process followed by a personal interview under time pressure in detention (see section below on DFT Procedure: Personal Interview) are not conducive to disclosure of the atrocities that in particular women may have suffered.

Available space in the detention centre and whether the asylum seeker could easily be removed (e.g. because they had travel documents) influenced the decision to detain. Home Office guidance advises that these factors and ease of removal should be taken into account.¹⁴⁰

¹³⁵ Home Office, *Asylum Process Guidance, Detained Fast Track Processes*, Para.2.2, accessible at <http://bit.ly/1Rcy1oo>.

¹³⁶ Independent Chief Inspector of Borders and Immigration, *Asylum: A Thematic Inspection of the Detained Fast Track*, ICIBI, 2012.

¹³⁷ UNCAT, *Concluding observations on the fifth periodic report of the United Kingdom*, adopted by the Committee at its fiftieth session (6-31 May 2013).

¹³⁸ UNHCR, Quality Initiative Project, Fifth Report to the Minister, 2008; UNHCR, Quality Integration Project First Report to the Minister, 2010.

¹³⁹ Human Rights Watch, *Fast Tracked Unfairness: Detention and Denial of Women Asylum Seekers in the UK*, 2010, available at: <http://bit.ly/1Rcz08a>.

¹⁴⁰ The Home Office, *Asylum Process Guidance, Detained Fast Track Processes* para 5.2 Operational Considerations, affirmed in *R (on the application of Detention Action) v SSHD* [2014] EWCA Civ 1634 para 37

All initial asylum claims are referred to a team called the National Asylum Allocation Unit (NAAU), 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 NAAU office re-opens.¹⁴¹

A very tight timescale was laid down for the DFT which required that decisions should be taken within 3 days of detention. In practice this time limit was very often not observed. For example, the Independent Chief Inspector of Borders and Immigration reported that only four out of 114 detainees received a 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.¹⁴² There is no automatic sanction if initial interviews are not arranged or initial decisions are not taken within the specified time.

Applications to take the claim out of the DFT had to be made to the Home Office. There was no appeal against refusal to do so, but refusal could be challenged by judicial review (see section on Regular Procedure: Appeal). 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. In 2014 16% were taken out of the fast track before an initial decision was taken.¹⁴³ Referral letters from Freedom from Torture or the Helen Bamber Foundation have been said by practitioners to be the only reliable way to obtain a transfer out of the fast track.¹⁴⁴

Asylum decisions in the DFT were taken by the Home Office caseworkers based in the detention centre.

In practice in 2014 66% of cases channelled into the DFT were initially refused and a further 8% withdrew their applications.¹⁴⁵

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 suitability for the NSA procedure remained a criterion for inclusion in the DFT.¹⁴⁶ In a 2014 High Court challenge to the lawfulness of the DFT, the judge found that there was an operational list of countries which gave a guide to suitability for the DFT, but this was flexible, and changed over time.¹⁴⁷

Since the main criterion is how quickly an asylum claim can be decided, no country of origin is excluded from the fast-track. The DFT continued through 2014 to be used for nationals of for instance Afghanistan (179 cases), in relation to which there are wide-ranging and complex protection issues, as set out in UNHCR's eligibility guidelines, and Sri Lanka (347 cases), whose human rights record has been the subject of international investigation and criticism¹⁴⁸

¹⁴¹ The Home Office, *Asylum Process Guidance, Detained Fast Track Processes* Para 3.1.1, accessible at <http://bit.ly/1Rcy1oo>.

¹⁴² Tamsin Alger and Jerome Phelps, *Fast Track to Despair*, Detention Action, 2011, accessible at <http://bit.ly/1LhrlI6>.

¹⁴³ Home Office Research and Statistics Directorate, *Immigration Statistics: Outcomes of main applicants accepted onto the Detained Fast Track Process*, Vol 4 Table 12 Q2 2015.

¹⁴⁴ See Asylum Policy Instruction *Medico-Legal Reports From The Helen Bamber Foundation and the Medical Foundation Medico Legal Report Service* July 2015 para 2.11.

¹⁴⁵ Home Office Research and Statistics Directorate, *Immigration Statistics: Outcomes of main applicants accepted onto the Detained Fast Track Process*, Vol 4 Table 12 Q4 2014.

¹⁴⁶ Home Office, *Asylum Process Guidance, Detained Fast Track Processes*, para.2.2.

¹⁴⁷ *Detention Action v SSHD and Equality and Human Rights Commission* [2014] EWHC 2245 (Admin) para 62.

¹⁴⁸ UNHCR, *Eligibility Guidelines For Assessing The International Protection Needs Of Asylum-Seekers From Afghanistan*, 2010, accessible at <http://bit.ly/1GuAKa5>; UNHCR, *Eligibility Guidelines For Assessing The International Protection Needs Of Asylum-Seekers From Iraq*, 2012, accessible at <http://bit.ly/1BIJUXt>.

Although policy has been to exclude some vulnerable groups from the DFT, in practice people in these groups were detained in the DFT.¹⁴⁹

The lawfulness of the DFT was challenged in 2014 by the charity Detention Action. The High Court judge held that various shortcomings of the DFT process combined together meant that proper legal representation was essential. To ensure this it was necessary to have enough time between instructing a legal representative and the substantive interview. This did not exist in the DFT as operated, and the judge concluded that this was a 'crucial failing', which was 'sufficiently significant that the DFT as operated carries with it too high a risk of unfair determinations for those who may be vulnerable applicants.'¹⁵⁰ Following this judgment, the Home Office made some adjustments to the operation of the DFT, including to ensure a clear 4 days between instructing a lawyer and the substantive interview.¹⁵¹

One of the key characteristics of the DFT is that the asylum seeker remains in detention after the refusal of their asylum claim, and pending hearing of their appeal, which is also heard in the detention centre. In 2015 Detention Action challenged in the High Court the lawfulness of the fast track appeal process. It was after the success of their challenge that the operation of the DFT was suspended. The cases and their effect are described below.

6.2. Personal Interview

Indicators: Accelerated Procedure: Personal Interview

☒ Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the accelerated procedure?
☒ Yes ☐ No
❖ If so, are questions limited to nationality, identity, travel route? ☐ Yes ☒ No
❖ If so, are interpreters available in practice, for interviews? ☒ Yes ☐ No
2. Are interviews conducted through video conferencing? ☐ Frequently ☐ Rarely ☒ Never

There are no grounds in the accelerated procedure to omit a personal interview.

Non-Suspensive Procedure

The same immigration rules apply to the interview as in the regular procedure (see section on Regular Procedure: Personal Interview) but they must be conducted by NSA trained caseworkers in the NSA procedure.

Detained-Fast Track Procedure

In the DFT procedure the interview was required to take place on the day after arrival. In practice asylum seekers in the DFT could wait on average 11 days for an interview.¹⁵² The interview was 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 said that the quality of interviewing in the DFT was less skilful, tending to focus extensively on detail and not on the major issues in the claim.

¹⁴⁹ 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.

¹⁵⁰ *Detention Action v SSHD and Equality and Human Rights Commission* [2014] EWHC 2245 (Admin), para 221.

¹⁵¹ House of Lords debates, 6 Jan 2015: Column WA113.

¹⁵² Independent Chief Inspector of Borders and Immigration, *Asylum: A Thematic Inspection of the Detained Fast Track*, ICIBI, 2012, accessible at: <http://bit.ly/1JXaARf>.

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

6.3. Appeal

Indicators: Accelerated Procedure: Appeal

☐ Same as regular procedure

1. Does the law provide for an appeal against the decision in the accelerated procedure?

- | | | |
|----------------------------|----------------------------------------------|-----------------------------------------|
| ❖ If yes, is it | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ If yes, is it suspensive | <input checked="" type="checkbox"/> Judicial | <input type="checkbox"/> Administrative |
| - NSA | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| - DFT | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |

In the NSA the appeal is non-suspensive, i.e. they may not be made from within the UK. They must be made within 28 calendar days of leaving the UK.¹⁵³ 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. The Chief Inspector was told that of 114 NSA appeals lodged since 2007, only one appeal had succeeded. The report noted that non-suspensive appeals cases accounted for an increasing percentage of refused asylum seekers removed from the UK, rising to more than a quarter in 2012/13.¹⁵⁴

In the DFT no removal would take place until the appeal is decided, but the appeals took place in a building adjoining the detention centre, and detention was maintained until the case is concluded or removed from the DFT.

There have been two different challenges to the lawfulness of detained fast track appeal process. These have resulted in the suspension of the operation of the DFT.

Firstly, detention pending appeal in the DFT was held by the Court of Appeal to be unlawful unless it is justified on normal detention grounds, i.e. with regard particularly to risk of absconding and imminence of removal. The Court found that the practice which had developed in the DFT was to detain people pending appeal in the DFT purely based on the criteria of speed and convenience without considering whether they were at risk of absconding. This was unlawful.¹⁵⁵

In a second case, Detention Action challenged the lawfulness of the rules governing the fast track appeals. The rules provide that appeals in the DFT must be made within two working days of receiving the decision;¹⁵⁶ The Home Office must respond within two days, the hearing is required to take place three days later,¹⁵⁷ and the decision should be given two days after the hearing.¹⁵⁸ In practice, the time of fixing the hearing was not observed. Evidence before the High Court in the Detention Action case was that the average period from entry into the DFT until appeal rights were exhausted was 23.5 days. This varied as between centres from 33 days to 16.¹⁵⁹

The Court of Appeal held that:

¹⁵³ The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 SI 2604 rule 19.
¹⁵⁴ Independent Chief Inspector of Borders and Immigration: *An Inspection of the Non-Suspensive Appeals process for 'clearly unfounded' asylum and human rights claims* July 2014.
¹⁵⁵ *R (on the application of Detention Action) v SSHD* [2014] EWCA Civ 1634.
¹⁵⁶ The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 SI 2406 Schedule rule 5.
¹⁵⁷ The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 SI 2406 Schedule rules 7 and 8.
¹⁵⁸ The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 SI 2406 rule 10.
¹⁵⁹ *Detention Action v SSHD Equality and Human Rights Commission intervening* [2014] EWHC 2245 (Admin) para 83.

“[T]he time limits are so tight as to make it impossible for there to be a fair hearing of appeals in a significant number of cases... The system is therefore structurally unfair and unjust. The scheme does not adequately take account of the complexity and difficulty of many asylum appeals, the gravity of the issues that are raised by them and the measure of the task that faces legal representatives in taking instructions from their clients who are in detention.”¹⁶⁰

The Secretary of State for the Home Department requested permission to appeal the Court of Appeal's ruling to the Supreme Court. However, on the 12 November 2015, the Supreme Court refused the Government's permission to appeal thereby rendering the Court of Appeal's judgment definitive.¹⁶¹

Since DFT appeals have been found to be unlawful, and the system suspended, people whose appeals were heard in the DFT should now have their appeals reheard, and should only be detained if their detention is allowed within the terms of normal detention policy. They cannot be removed until the appeals have been reheard. This was confirmed by the President of the Tribunal in First Tier Tribunal decisions on 4 August 2015.¹⁶² The President provided a standard letter for appellants to apply to the FTT to have their appeal decision set aside and reheard.

6.4. Legal assistance

Indicators: Accelerated Procedure: Legal Assistance

☐ Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> With difficulty	<input type="checkbox"/> No
------------------------------	-----------------------------------------------------	-----------------------------

 - ❖ Does free legal assistance cover:

<input checked="" type="checkbox"/> Representation in interview (in the DFT only)
<input checked="" type="checkbox"/> Legal advice

2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> With difficulty	<input type="checkbox"/> No
------------------------------	-----------------------------------------------------	-----------------------------

 - ❖ Does free legal assistance cover

<input checked="" type="checkbox"/> Representation in courts
<input checked="" type="checkbox"/> Legal advice

Unlike in the regular procedure, fast track detainees are entitled to have a publicly funded legal adviser present at their initial interview. However, the judge commented in *Detention Action v SSHD* [2014] EWHC 2245 (Admin) that:

“Legal representatives are not excluded from the interview, if the applicant already has a representative, but where the applicant does not have one, the presence of a lawyer is not facilitated.” (para 96)

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,¹⁶³ 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.¹⁶⁴

¹⁶⁰ *The Lord Chancellor v Detention Action* [2015] EWCA Civ 840, para 45.

¹⁶¹ *Detention Action, The Detained Fast Track: the end of the road*, 12 November, accessible at <http://bit.ly/1MCHLKh>.

¹⁶² Appeal refs AA/09953/2014; 10216/2014; 04846/2015; PA 00087/2015; AA/ 03971/2015; 05737/2015; 02797/2015; 03692/2015.

¹⁶³ Tamsin Alger and Jerome Phelps, *Fast Track to Despair*, *Detention Action*, 2011, accessible at <http://bit.ly/1Lhrll6>.

¹⁶⁴ *Detention Action, DFT Briefing*, 2013, accessible at: <http://bit.ly/1JX05NV>.

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. This was endorsed by the High Court in the 2014 Detention Action judgment.

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: Information and Access to NGOs and UNHCR

1. Is sufficient information provided to asylum seekers on the procedures, their rights and obligations in practice? ☐ Yes ☒ With difficulty ☐ No
 - ❖ Is tailored information provided to unaccompanied children? ☒ Yes ☐ No
2. Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice? ☐ Yes ☒ With difficulty ☐ No
2. Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice? ☐ Yes ☐ With difficulty ☒ No
3. 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 ☒ 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.'¹⁶⁵

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.¹⁶⁶ Until March 31st 2014, advice on welfare, the asylum process and life in the UK was delivered through the One Stop Services (OSS) run by charitable organisations and

¹⁶⁵ Immigration Rules, Part 11B, para 357A.

¹⁶⁶ Immigration Rules, Part 11B, para 358.

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 as two separate contracts as (i) Consolidated Advice and Guidance Service (CAGS) and (ii) Consolidated Asylum Support Application Services (CASAS). The scope of the new contracts is more limited than the previous OSS contracts. While the OSS contracts were broad, allowing for a range of work without specifying it in detail, the newer contracts are more specific, the effect being to exclude work that was done by organisations under the OSS contracts. The organisation Migrant Help obtained the contract for both and most of the asylum support advice services which were run by other agencies are no longer funded. A key omission from the new contracts is advocacy, both in relation to the Home Office and at appeal tribunals.

Since 1 April 2014, there is therefore a reduction in face to face advice on the asylum system in advice locations outside the initial accommodation centres. Information on the asylum process continues to be given in the initial accommodation centres, both in person and by video presentation.¹⁶⁷ Information is also available about the asylum process on the new Asylum Help website.¹⁶⁸ One to one appointments are offered in initial accommodation centres, and at some outreach locations, at which applications for support can be made, and asylum seekers can make appointments with legal representatives. However, these are few and far between.

Asylum seekers received information about the DFT procedure once they were in it, but the information was geared to the fixed timetable of the DFT, and not to the reality of what the person might encounter. It was also geared towards what will happen on refusal of the claim, and not what will happen if asylum is granted.¹⁶⁹

At the Asylum Intake 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 Unit also produces a child-friendly version with pictures. This is not necessarily given out if screening takes place elsewhere.¹⁷⁰ 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.¹⁷¹ 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 ASU 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 the Home Office

¹⁶⁷ Researcher discussion with NGOs.

¹⁶⁸ Accessible at <http://bit.ly/1tUedxr>.

¹⁶⁹ Independent Chief Inspector of Borders and Immigration, *Asylum: A Thematic Inspection of the Detained Fast Track*, ICIBI, 2012, accessible at <http://bit.ly/1JXaARf>.

¹⁷⁰ Independent Chief Inspector of Borders and Immigration, *An Inspection into the handling of Asylum Applications made by Unaccompanied Children*, 2013, accessible at <http://bit.ly/1N2iN4S>.

¹⁷¹ Home Office, *How to claim asylum*, accessible at: <http://bit.ly/1G7rHtp>.

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.¹⁷² This obligation is interpreted differently by each of the contracted accommodation providers who provide information at varying degrees of quality.

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.¹⁷³ Individuals contact UNHCR through its website, and there are no reports of access being frustrated. However, the UN's special rapporteur on women and violence was refused entry to Yarl's Wood Detention Centre.¹⁷⁴

D. Subsequent applications

Indicators: Subsequent Applications

1. Does the law provide for a specific procedure for subsequent applications? ☒ Yes ☐ No
2. Is a removal order suspended during the examination of a first subsequent application?
 - ❖ At first instance ☒ Yes ☐ No
 - ❖ At the appeal stage ☒ Yes ☐ No
3. Is a removal order suspended during the examination of a second, third, subsequent application?
 - ❖ At first instance ☒ Yes ☐ No
 - ❖ At the appeal stage ☒ Yes ☐ No

Provision for a subsequent claim is made in the immigration rules (HC 395 para 353).¹⁷⁵ 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 FTT (IAC), and all provisions are the same as for an appeal regarding a first asylum application (see section on Regular Procedure: Appeal).

¹⁷² COMPASS Project, Schedule 2: accommodation and transport – statement of requirements.

¹⁷³ Home Office, *Asylum Policy Instruction, Cancellation, Cessation and Revocation of Refugee Status*, para 2.4.

¹⁷⁴ <http://bit.ly/1hSxhT3>

¹⁷⁵ Immigration Rules Part 12, para 353, accessible at <http://bit.ly/1MOpgjX>.

Case law provides that the threshold to be passed for submissions to be treated as a fresh claim is a 'relatively modest' one.¹⁷⁶ In practice, lawyers and NGOs say that the threshold employed is very high. The majority of cases are not treated as a fresh claim and given a right of appeal. The only remedy to challenge the refusal to recognise submissions as a fresh claim is judicial review. 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. Normally around 86% of further submissions are refused outright.¹⁷⁷ 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.¹⁷⁸

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.

Further representations must be made to the Home Office in Liverpool. This must be done in person unless there are exceptional circumstances such as disability or severe illness or the best interests of a child require an exception to be made.¹⁷⁹ 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.

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. This is problematic as the Home Office will not pay travel expenses, and most refused asylum seekers who have further submissions to make are destitute. Liverpool is more than a day's round trip by cheapest transport methods (usually bus) from many parts of the UK. Although destitute applicants should be eligible for section 4 support (see section on Reception Conditions: Criteria and Restrictions) as soon as they have alerted the Home Office to the existence of further submissions,¹⁸⁰ in practice, it is extremely difficult to access support while waiting for an appointment, and any support is unlikely to materialise before the appointment. It may also be difficult to access s.4 while waiting for a decision on whether those further submissions constitute a fresh claim.¹⁸¹ 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.¹⁸² 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

¹⁷⁶ *WM (DRC) v SSHD* [2006] EWCA Civ 1495.

¹⁷⁷ FOI 35829.

¹⁷⁸ *R (on the application of YH) v SSHD* [2010] EWCA Civ 116.

¹⁷⁹ Asylum Policy Instruction on *Further Submissions* March 2015 paras 3.5 and 1.4.

¹⁸⁰ *MK and AH v SSHD* [2012] EWHC 1896 (Admin).

¹⁸¹ Asylum Support Appeals Project, *Further submissions and access to asylum support*, 30 July 2010, accessible at <http://bit.ly/1GjgdLD>.

¹⁸² Immigration Rules, para 353A.

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',¹⁸³ which means that there must either be a grant of further leave or an interview.

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

1. Special procedural guarantees

Indicators: Special Procedural Guarantees

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers?
☐ Yes ☒ For certain categories ☐ No
❖ If for certain categories, specify which: Unaccompanied children
2. Are there special procedural arrangements/guarantees for vulnerable people?
☐ Yes ☒ For certain categories ☐ No
❖ If for certain categories, specify which: People for whom detention is accepted to be damaging; 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 (see section on Registration and section on Accelerated Procedure). The standard questionnaire used asks only basic questions about health. As previously stated reports on the DFT procedure agree that torture survivors were placed in the DFT, against policy, partly because there is no effective mechanism to identify them.¹⁸⁴

Guidance on the substantive interview advises asking detailed questions about torture, though not about sexual violence.¹⁸⁵

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.¹⁸⁶

People with mental illness severe enough to affect their mental capacity may have a publicly funded representative at their asylum interview.

¹⁸³ Home Office, *Asylum Policy Instruction, Active Review* Section 2.

¹⁸⁴ 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.

¹⁸⁵ Asylum Policy Instruction *Asylum Interviews*, Para 5.7 March 2015.

¹⁸⁶ Home Office *Asylum process guidance: registering asylum claims* para 7.

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 Rules¹⁸⁷ 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.¹⁸⁸ The Independent Monitoring Board for Harmondsworth IRC reported concern that 'doctors declare that a detainee is unfit for detention, yet the detainee remains detained, sometimes for significant periods of time'.¹⁸⁹

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.

As discussed in the section on Accelerated Procedure, 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.

There are no other published criteria which would prevent someone who had suffered torture or other extreme violence from being routed into the NSA 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.¹⁹⁰ In practice, local authority support is difficult to obtain, and policies vary in different local authority areas.

2. Use of medical reports

Indicators: Use of medical reports

1. Does the law provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm?

☐ Yes

☐ In some cases

☒ No

2. Are medical reports taken into account when assessing the credibility of the applicant's statements?

☒ Yes

☐ No

¹⁸⁷ Home Office, Detention Centre Rules, Rule 35 accessible at <http://bit.ly/1N8GLM7>.

¹⁸⁸ House of Commons Hansard 24 Jan 2013: Column 431W.

¹⁸⁹ Independent Monitoring Board Harmondsworth Immigration Removal Centre Annual Report 2014.

¹⁹⁰ Home Office *Asylum process guidance: routing asylum applications* Para 3.2 and *Processing an Asylum Application from a Child*, Section 5.

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 from the Helen Bamber Foundation or Freedom from Torture.¹⁹¹ 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.¹⁹²

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 (approx. €560) on an expert report without involving the Legal Aid Agency, but this is often not adequate to fund a full expert report.

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 unless the caseworker is anyway considering granting leave to remain.¹⁹³ FFT and the Helen Bamber Foundation are the most established organisations which prepare medico-legal reports, and their 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.¹⁹⁴ If a report from FFT or the Helen Bamber Foundation 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.¹⁹⁵

Case law requires that medical reports are taken into account in deciding the applicant's credibility.¹⁹⁶ 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.¹⁹⁷ Recommendations from FFT 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.¹⁹⁸ The Upper Tribunal endorses this but also says that the clinician's judgement is not to be equated to a judgment made by a Tribunal.¹⁹⁹ Despite the availability of best practice guidance and the judgments of the higher courts, this guidance is not consistently followed. Examples in case law show that medical reports are still sometimes downgraded

¹⁹¹ Asylum Policy Instruction *Medico-Legal Reports From The Helen Bamber Foundation and the Medical Foundation Medico Legal Report Service* July 2015 para 2.4.

¹⁹² Asylum Policy Instruction (non- Medical Foundation cases).

¹⁹³ *Asylum Policy Instruction Medico-Legal Reports from the Helen Bamber Foundation and the Medical Foundation Medico-Legal Report Service*.

¹⁹⁴ Referrals to The Medical Foundation Medico Legal Report Service, accessible at: <http://bit.ly/1QG2Pml>.

¹⁹⁵ Detention Centre Rules 2001 SI 238 Rule 34.

¹⁹⁶ E.g. *JL (medical reports – credibility) China* [2013] UKUT 145 (IAC).

¹⁹⁷ E.g. *Mibanga v SSHD* [2005] EWCA Civ 367.

¹⁹⁸ Jo Pettit, *Body of Evidence – Treatment of Medico-Legal Reports for Survivors of Torture in the UK Asylum Tribunal*, 2011, Freedom from Torture.

¹⁹⁹ *KV (scarring - medical evidence) Sri Lanka* [2014] UKUT 230 (IAC).

or discounted on the basis that the decision maker does not believe the applicant, rather than using the report as evidence which contributes to assessing the applicant's case.²⁰⁰

Medical reports may be prepared based on the Istanbul Protocol,²⁰¹ and this is regarded as best practice and is standard for experienced practitioners.

3. Age assessment and legal representation of unaccompanied children

Indicators: Unaccompanied Children

1. Does the law provide for an identification mechanism for unaccompanied children?
☒ Yes ☐ No
2. 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.²⁰² 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 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*,²⁰³ 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,²⁰⁴ 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.²⁰⁵ 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. Many discharge this function through referral to the Refugee Council's Panel of Advisers; funded by the Home Office since 1994 to assist unaccompanied children through the asylum process including finding legal representatives for the children.

The Coram Children's Legal Centre identified 'lack of adequate advice, advocacy and legal representation' as a critical obstacle to children realising their rights.²⁰⁶

²⁰⁰ E.g. *R (on the application of Kakar) v SSHD* [2015] EWHC 1479 (Admin).

²⁰¹ Office of the United Nations High Commissioner for Human Rights, Manual on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment, 'Istanbul Protocol', 2004 accessible at <http://bit.ly/1DVAApu>.

²⁰² Home Office *Asylum process guidance: processing an asylum application from a child*, accessible at <http://bit.ly/1dNQ1ss>.

²⁰³ *R (on the application of AA) v SSHD* [2013] UKSC 49.

²⁰⁴ Borders Citizenship and Immigration Act 2009, Section 55, accessible at <http://bit.ly/1MRIPZ8>.

²⁰⁵ *Asylum Policy Instruction: Processing an Asylum Application from a Child*.

²⁰⁶ Kamena Dorling and Anita Hurrell, *Navigating the System: Advice Provision for Young Refugees and Migrants*, 2012, Coram Children's Legal Centre.

Once appeal rights have been exhausted the care of young people over 18 is often limited to those for whom a withdrawal of support would breach of their human rights. This tends to be a more minimal provision than that provided to children.

The Home Office may request an age assessment from the local authority. This may result in some who are initially accepted as under 18 having their age disputed later by the Home Office and being 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 pro forma developed by local authorities and endorsed by the courts²⁰⁷ provides the approved method for assessing age (often referred to as the Hillingdon and Croydon guidelines). According to case law the assessment can only be conducted by two appropriately trained and qualified social workers.²⁰⁸ 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 with regards to the conduct of age assessments. NGOs report that the quality of assessments can be poor, and not based on evidence.²⁰⁹ 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 by the Refugee Council.²¹⁰ 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.²¹¹ A multi-agency group convened by the Association of Directors of Children's Services has led to revised working together guidance and a document to encourage appropriate information sharing regarding assessments i.e. to avoid sharing complete age assessment reports.²¹² It has also overseen practice guidance aimed at improving social work assessments of age, published in October 2015.²¹³

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 guidelines were correctly applied.²¹⁴ 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.²¹⁵

²⁰⁷ *R (B) v London Borough of Merton* [2003] 4 All ER 280, accessible at <http://bit.ly/1Ln70Ny>.

²⁰⁸ *A v Croydon, WK v Kent and SSHD*, accessible at <http://bit.ly/1RfeWIK>.

²⁰⁹ 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, accessible at <http://bit.ly/1lohB7T>.

²¹⁰ 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, accessible at <http://bit.ly/1lohB7T>.

²¹¹ 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.

²¹² Accessible at <http://bit.ly/1dZk5QR>.

²¹³ See ADCS, *Age Assessment Guidance*, October 2015, available at: <http://bit.ly/1MUduDi>.

²¹⁴ *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.

²¹⁵ Laura Brownlees and Zubier Yazdani, *The Fact of Age*, 2012, Children's Commissioner, accessible at <http://bit.ly/1fm4pJl>.

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.²¹⁶ This judicial review power is now transferred to the Upper Tribunal.²¹⁷ 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.²¹⁸

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.²¹⁹ The Refugee Council should be notified within 24 hours.

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.

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.²²⁰ The duty of a representative of a child includes ensuring 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 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.²²¹ 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.²²² Specialist training has since been given by the Immigration Law Practitioners Association (ILPA)²²³ but attending this is not a requirement to advise refugee children. ILPA has also produced a good practice guide,²²⁴ 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

²¹⁶ Laura Brownlees and Zubier Yazdani, *The Fact of Age*, 2012, Children's Commissioner.

²¹⁷ First Tier Tribunal and Upper Tribunal (Chambers) Order 2010, accessible at <http://bit.ly/1fm4pJl>.

²¹⁸ Laura Brownlees and Zubier Yazdani, *The Fact of Age*, 2012, Children's Commissioner.

²¹⁹ Immigration Rules, Part 11, para 352ZA, accessible at <http://bit.ly/1JRSeku>.

²²⁰ Borders, Citizenship and Immigration Act 2009, s.55.

²²¹ *ZH (Tanzania) v SSHD* [2011] UKSC 4.

²²² Laura Brownlees and Terry Smith, *Lives in the Balance*, Refugee Council, 2011, accessible at <http://bit.ly/1GV9YsZ>.

²²³ ILPA is a voluntary association of practising lawyers, academics and others. Its activities include promoting and developing good practice.

²²⁴ Heaven Crawley, *Working with Children and Young People Subject to Immigration Control, Guidelines for Best Practice*, 2nd edition 2012, accessible at <http://bit.ly/1etJowr>. See also ILPA's *Resources Guide for Legal Practitioners Working with Refugee Children* Shauna Gillan with Sarah Myerscough and Alison Harvey Fourth Edition March 2014.

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 Disclosure and Barring 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 1989.²²⁵ A child is entitled to have a publicly funded legal representative at their initial asylum interview, but only where the Home Office do not dispute that the claimant is a child.²²⁶

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.²²⁷

Unaccompanied children seeking asylum whose claims are refused 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. Since 2013 the leave has been referred to as UASC leave – this is granted for 30 months or until the age of 17½, whichever is shorter.²²⁸ 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.²²⁹ 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.

Through section 15(2) of the Immigration Act 2014 the limitation appeal rights for children refused asylum but granted 12 months or less leave, has been repealed, meaning all asylum refusals, unless certified, will attract an immediate right of appeal. However, the claims of some minors are certified, and so these children are without a right of appeal.²³⁰

1,945 unaccompanied children sought asylum in the UK in 2014. 466 age disputes were completed. These figures were 1,963 and 476 respectively in the year January to September 2015.²³¹

²²⁵ The Civil Specification 2010, section 8, Immigration, paragraph 8.

²²⁶ The Civil Legal Aid (Immigration Interviews) (Exceptions) Regulations 2012 SI No. 2683, accessible at <http://bit.ly/1Bs5dX3>.

²²⁷ Kamena Dorling and Anita Hurrell, *Navigating the System: Advice Provision for Young Refugees and Migrants*, 2012, Coram Children's Legal Centre, accessible at <http://bit.ly/1dNStzp>.

²²⁸ Immigration Rules, para 352ZE.

²²⁹ *SM, TM JD and others* [2013] EWHC 1144 (Admin).

²³⁰ A practitioner organisation contacted for this updated report informed us that this has been observed particularly with children from Albania.

²³¹ Home Office Research and Statistics Directorate, *Immigration Statistics: Asylum applications received from UASCs and Age disputes raised and resolved*, Vol 4 Tables 8 and 10 Q3 2015.

F. The safe country concepts

Indicators: Safe Country Concepts

- | | |
|--------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| 1. Does national legislation allow for the use of “safe country of origin” concept? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| ❖ Is there a national list of safe countries of origin? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| ❖ Is the safe country of origin concept used in practice? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. Does national legislation allow for the use of “safe third country” concept? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| ❖ Is the safe third country concept used in practice? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Does national legislation allow for the use of “first country of asylum” concept? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |

Legislation allows for a safe country of origin concept.²³² 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)’.²³³ 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. After a successful challenge Bangladesh was removed from the list of designated countries.²³⁴ Jamaica remains listed, although the Supreme Court in *R (on the application of Brown) Jamaica* UKSC [2015] 8 held that the designation of Jamaica as a place in which there was ‘in general’ no serious risk of persecution was irrational and therefore unlawful because there is a real risk in Jamaica to all who are homosexual, lesbian, bisexual or transsexual.²³⁵ Apparently in response to the Supreme Court judgment, but without referring to it, the Home Office has issued guidance on assessing claims from Jamaica based on sexuality²³⁶ and on fear of organised criminal gangs.²³⁷

Where an asylum claimant comes from a designated country, the UK VI 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 section on Accelerated Procedure: Appeal).

The Asylum and Immigration (Treatment of Claimants, etc.) Act 2004²³⁸ 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 section on Admissibility Procedure.

²³² Nationality Immigration and Asylum Act 2002 S.94, accessible at <http://bit.ly/1eqvY4g>.

²³³ Nationality Immigration and Asylum Act 2002 S.94 (5C), accessible at <http://bit.ly/1eqvY4g>.

²³⁴ *R (on the application of Zakir Husain) v SSHD* [2005] EWHC 189 (Admin).

²³⁵ Para 36.

²³⁶ Country Information and Guidance Jamaica: Sexual Orientation and Gender Identity Version 1.0 July 2015.

²³⁷ Country Information and Guidance Jamaica: Fear of organised criminal gangs Version 1.0 July 2015.

²³⁸ Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, accessible at <http://bit.ly/1fty2Jc>.

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 possible trial for sedition.²³⁹ 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, as illustrated in the Supreme Court case of *Brown* mentioned above. 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. 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. A new provision in the Criminal Justice and Courts Act 2015 makes such interventions more risky by establishing a presumption that intervenors pay their own costs and costs of other parties caused by their intervention, not in all cases but where one of a number of conditions is met.²⁴⁰

Asylum applicants in 2014 from countries designated as safe were as follows:

Country	Asylum applicants
Albania	1,576 (6% of the total applicants)
India	703 (3%)
Jamaica	133
Ukraine	208
South Africa	59
Mauritius	32
Mongolia	14
Kosovo	24
Brazil	19
South Korea	7*
Bolivia	6
Ecuador	2
Bosnia- Herzegovina	2
Macedonia	3
Moldova	1
Peru	0
Serbia	0
Montenegro	0

*Note that there were 23 applicants from North Korea

Asylum applicants in 2014 from countries designated as partially safe were as follows:

Country	Asylum applicants
Nigeria	899 (3.5% of the total applicants)
Gambia	194
Ghana	132

²³⁹ *R on the application of MD (Gambia) v SSHD* [2011] EWCA Civ 121.

²⁴⁰ Section 87 AITOCA.

Malawi	85
Sierra Leone	66
Kenya	64
Mali	15
Liberia	6

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

Indicators: Treatment of Specific Nationalities

- Are applications from specific nationalities considered manifestly well-founded? ☐ Yes ☒ No
❖ If yes, specify which:
- Are applications from specific nationalities considered manifestly unfounded?²⁴¹ ☒ Yes ☐ No
❖ If yes, specify which: Albania, India, Jamaica , Ukraine, South Africa, Mauritius, Mongolia, Kosovo, Brazil, South Korea, Bolivia, Ecuador, Bosnia- Herzegovina , Macedonia, Moldova, Peru , Serbia, Montenegro

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 support²⁴² – see section on Reception Conditions).

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 UT (IAC) 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 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.²⁴³ 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

²⁴¹ Whether under the "safe country of origin" concept or otherwise.

²⁴² UK Visas and Immigration, Asylum support, section 4 policy and support, Version 4.0, accessible at <http://bit.ly/1Ht8SBE>.

²⁴³ *KB (Syria) v SSHD* [2012] UKUT 00426.

support (section 4 support see section on Reception Conditions) 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.²⁴⁴ Concerns were 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*.²⁴⁵

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 from January to September of 2015 were:

Eritrea: 77% (248 successful appeals)
Afghanistan: 53% (215 successful appeals)
Sri Lanka: 45% (354 successful appeals)
Iran: 43% (253 successful appeals)
Iraq: 35% (68 successful appeals)
Albania: 33% (96 successful appeals).²⁴⁶

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 2014, there were 1,175 grants of refugee status to Syrians, and the overall rate of rejection was 12%. In the first two quarters of 2015 the respective figures were 799 and 16%. Those refused refugee status normally have a right of appeal (the exception being the 2 Syrians in 2014 and 1 so far in 2015 whose applications were treated as clearly unfounded); 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.

On 29 January 2014, the Home Secretary announced that the UK Government would establish a programme to offer resettlement in the UK to some of the most vulnerable Syrian refugees: the “vulnerable person relocation (VPR) scheme.” The Home Secretary said that it would prioritise cases involving victims of sexual violence, the elderly, victims of torture, and the disabled. Those resettled are granted five years Humanitarian Protection and have access to public funds and the labour market. There was said to be no quota.²⁴⁷ Press reports suggested that the scheme would cater for around 500 refugees.²⁴⁸ Up to the end

²⁴⁴ Channel 4 News, *Sri Lanka: high court blocks Tamil deportations*, 27 February 2013, accessible at <http://bit.ly/1Gw3DCM>.

²⁴⁵ ECtHR, *R.J. v France*, Application No. 10466/11, Judgment of 19 September 2013.

²⁴⁶ Home Office Research and Statistics Directorate, *Immigration Statistics*, Table 14q Q3 2015.

²⁴⁷ United Kingdom, House of Commons Standard Note (2014) *In Brief: Syrian refugees and the UK*, Standard Note: SNIA/6805, 30 July 2014, Ben Smith and Melanie Gower, International Affairs and Defence Section and Home Affairs Section, accessible at: <http://bit.ly/1ChawUp>.

²⁴⁸ United Kingdom, Guardian News (2014) *UK agrees to take up to 500 of the most traumatised Syrian refugees*, 28 January 2014, accessible at: <http://bit.ly/1dN2XXL>.

of September 2015, 252 people had been resettled on the VPR scheme.²⁴⁹ In response to public pressure following the drowning of Aylan Kurdi and the mass movement of refugees from the Middle East to Europe, on 7 September 2015 the UK government announced a relaxation of the criteria for the VPR and an increased target of 20,000 Syrian refugees over five years.²⁵⁰

The EU Commission proposed for a non-binding recommendation for an EU-wide resettlement scheme offering 20,000 places for people with a clear protection need. This was to be allocated among 28 Member States on the basis of a distribution key over two years. The UK's commitment was to take 2,200.²⁵¹ The UK did not opt into the EU agreement to receive first 40,000 then 120,000 refugees. Instead the UK government increased its commitment to the Syrian Vulnerable Persons Resettlement Programme to 20,000 over five years.²⁵²

²⁴⁹ See <http://bit.ly/1MRR3PY>, 8.10 Resettlement.

²⁵⁰ <http://bit.ly/1VJezE1>.

²⁵¹ Council of the European Union, *Conclusions of the representatives of the governments of the Member States meeting within the Council on resettling through multilateral and national schemes 20 000 persons in clear need of international protection*, 11130/15 ASIM 62 RELEX 633, 22 July 2015. See AIDA Annual Report 2014/15.

²⁵² <http://bit.ly/1KyGijN>.

Reception Conditions

A. Access and forms of reception conditions

1. Criteria and restrictions to access reception conditions

Indicators: Criteria and Restrictions to Reception Conditions

1. Does the law make material reception conditions to asylum seekers in the following stages of the asylum procedure?

❖ Regular procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Dublin procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Admissibility procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Border procedure ²⁵³	<input type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Accelerated procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ First appeal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Onward appeal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Subsequent application	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No

2. Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> 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).²⁵⁴ 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.²⁵⁵ 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 section 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.²⁵⁶ 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.²⁵⁷ The entitlement to section 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.²⁵⁸ 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.²⁵⁹ 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.

²⁵³ Not applicable. The only procedure at the border is one whereby the individual is screened. This does not entail a substantive examination of a claim.

²⁵⁴ Immigration, Asylum and Nationality Act 1999 s.98.

²⁵⁵ Application for asylum support: Form ASF 1, accessible at <http://bit.ly/1RfS1qt>.

²⁵⁶ Independent Chief Inspector of Borders and Immigration: An Inspection of Asylum Support July 2014

²⁵⁷ Immigration, Asylum and Nationality Act 1999 s.95.

²⁵⁸ Asylum Support Regulations 2000 SI 704 reg.6.

²⁵⁹ Asylum Support Regulations 2000 SI 704 reg. 20 as amended.

Obstacles to claiming support include that the application form is 27 pages long, has 4 annexes for additional information, is in English only and from 1st April 2014 is only available online. From 1st April 2014 applications may be made by calling the Asylum Support Application UK Service run by the charity Migrant Help. Access to this is via a phone number which is free to most mobile phone companies, and using the new online application system. Supporting documentation must be sent in a freepost envelope for verification. Asylum seekers in initial accommodation centres are assisted to make this application and face to face advice is 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.²⁶⁰

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, section 95 support stops, except for families with children. In August 2015 the government launched a consultation proposing to stop the support of families also when claims are refused.²⁶¹ 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 the 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.²⁶²

Support may be available (accommodation and £39.50 (approx. €55) 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.²⁶³ 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 minority²⁶⁴ of refused asylum seekers qualify for no-choice accommodation and a form of non-cash support from the Home Office called an Azure card (section 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 (approx. €50) per person but cannot be used to obtain

²⁶⁰ Nationality, Immigration and Asylum Act 2002 s.57, accessible at <http://bit.ly/1TAHzxu>.

²⁶¹ <http://bit.ly/1KUtVAq>

²⁶² British Red Cross and Boaz Trust, *A Decade of Destitution: Time to Make a Change* 2013

²⁶³ Care Act 2014 s. 9

²⁶⁴ 3,318 households were living on s.4 support at the end of June 2015 *Home Office Statistics table 18q Q2 2015*. The numbers of refused asylum seekers in the UK are unknown, but the proportion on s.4 is small. See the *Still Human Still Here* submission to Home Affairs Select Committee inquiry on Asylum, 2013.

cash or to pay any living expenses not incurred at the designated shops, e.g. not bus fares. This is so even if the 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.²⁶⁵ 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.

From 1st 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 or at an outreach centre where these exist.

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. An estimate of 50,000 to 100,000 is made in a report *How to Improve Support and Services for Destitute Migrants*.²⁶⁶ It is estimated that in Greater Manchester alone NGOs are supporting 2,000 destitute refused asylum seekers.²⁶⁷

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.²⁶⁸ 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*,²⁶⁹ 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.

Quality of decision making on support applications has been 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.²⁷⁰

²⁶⁵ Immigration and Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005.

²⁶⁶ Heather Petch, Sue Lukes and John Perry, Joseph Rowntree Foundation 2015, accessible at <http://bit.ly/1Wyf5bG>.

²⁶⁷ British Red Cross and Boaz Trust, *A Decade of Destitution: Time to Make a Change* 2013.

²⁶⁸ Nationality, Immigration and Asylum Act 2002 s.55 and *Limbuela v SSHD* [2005] UKHL 66.

²⁶⁹ *Limbuela v SSHD* [2005] UKHL 66.

²⁷⁰ Sophie Wickham and Rossen Roussanov, *UKBA decision making audit one year on: still no credibility*. Asylum Support Appeals project, 2013, accessible at <http://bit.ly/1H3h00u>.

The Chief Inspector found that decision quality was reasonable, but that there were problems with delay in making decisions. Guidelines were that applications should be decided within 2 days where the person was homeless and otherwise within five days. However, these were not being met in a significant number of cases.²⁷¹ Between 1 September 2014 and 28 February 2015, the Asylum Support Tribunal allowed 44% of the appeal cases it decided and remitted a further 12% back to the Home Office to retake the decision. If cases in which the Home Office withdrew prior to the hearing are included, then a total of 61% of appeal cases received in this period were either allowed, remitted or acknowledged by the Home Office to be flawed before the hearing.²⁷²

2. Forms and levels of material reception conditions

Indicators: Forms and Levels of Material Reception Conditions

1. Amount of the monthly financial allowance/vouchers granted to asylum seekers as of 31 December 2015 (in £ and in €):

❖ Section 95 support per person:	£160.12 / €218.18
❖ Section 4 Azure card support per person:	£153.35 / €208.97

Section 95 Cash support amounts to £160.12 (218.18€) per calendar month per person. Prior to August 2015 there were different rates, depending on the claimants' ages and household compositions, but this is no longer the case.²⁷³

The amounts of section 95 support are set by regulations, while section 4 rates are a matter of policy.²⁷⁴ 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.²⁷⁵ 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.

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.²⁷⁶ 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.²⁷⁷

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.²⁷⁸ Where further support has been refused this can

²⁷¹ Independent Chief Inspector of Borders and Immigration: An Inspection of Asylum Support July 2014

²⁷² Asylum Support Tribunal statistics, 1 September 2014 to 28 February 2015, per Still Human Still Here response to 2015 consultation on reform of support to refused asylum seekers and other destitute migrants.
²⁷³ *Asylum support: accommodation and financial support for asylum seekers*, House of Commons briefing paper no.1909.

²⁷⁴ Currently Asylum Support (Amendment No.2) Regulations 2015, SI 2015/944.

²⁷⁵ Asylum Process Guidance – additional services or facilities under the 2007 Regulations.

²⁷⁶ Melanie Gower, *Asylum: Financial Support for Asylum Seekers*, House of Commons note SN/HA/1909, 2013.

²⁷⁷ Asylum Support Appeals Project, Factsheet 15.

²⁷⁸ Asylum Support Policy Bulletins Instructions para 1.1.2 <http://bit.ly/1LjSzbh>.

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.²⁷⁹

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 remained static until August 2015 when the rates for children and single parents were reduced to a flat rate the same as single people aged 18 or over. Asylum support is now 52% of the rate for a UK national. 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.²⁸⁰ A Parliamentary Inquiry stated that even on the pre-August 2015 rates children were living in poverty.²⁸¹ The inquiry 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.

Before the reduction in asylum support rates the adequacy of s.95 support was the subject of a court challenge. Judgment was given in the High Court on 9th April 2014.²⁸² 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 for 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.

The Secretary of State was required to remake the decision in the light of the court's guidance. Following review the government 'concluded that families were receiving more cash support to meet their essential living needs than they need, because the existing rates do not reflect the possibility of economies of scale within households'.²⁸³

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

²⁷⁹ Home Office, *Asylum Support Bulletin 73: Access to Support*.

²⁸⁰ Sile Reynolds, *Your inflexible Friend: the cost of living without cash*, Asylum Support Partnership 2010, accessible at <http://bit.ly/1LqREKU>.

²⁸¹ Sarah Teather MP (chair), *Report of the Parliamentary Enquiry into Asylum Support for Children and Young People*, 2013, accessible at <http://bit.ly/1GkFMUp>.

²⁸² *R (On the Application Of Refugee Action) v The Secretary of State for the Home Department* [2014] EWHC 1033 (Admin), accessible at <http://bit.ly/1iweLSx>.

²⁸³ *Asylum support: accommodation and financial support for asylum seekers*, House of Commons briefing paper no.1909.

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.²⁸⁴

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.²⁸⁵

3. Types of accommodation

Indicators: Types of Accommodation

1. Number of reception centres:²⁸⁶ 6
2. Total number of places in the reception centres: 1,000 approx.
3. Total number of places in private accommodation: 30,000 approx.
4. Type of accommodation most frequently used in a regular procedure:
☒ Reception centre ☐ Hotel or hostel ☐ Emergency shelter ☒ Private housing ☐ Other
5. Type of accommodation most frequently used in an accelerated procedure:
☒ Reception centre ☐ Hotel or hostel ☐ Emergency shelter ☐ Private housing ☐ Other

Initial accommodation centres

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 property is given permission by the local authority.²⁸⁷ Accommodation in the initial accommodation centres is usually 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.²⁸⁸ Asylum seekers should not stay in initial accommodation for any longer than 19 days, but there can be 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

²⁸⁴ House of Commons Home Affairs Committee, *Asylum, Seventh Report of Session 2013-14*. HC71.

²⁸⁵ Asylum Support Partnership, *Response to the Home Office consultation Reforming Asylum Support: effective support for those with protection needs*, 2010.

²⁸⁶ Both permanent and for first arrivals.

²⁸⁷ National Audit Office, *COMPASS contracts for the provision of accommodation for asylum seekers*, 2014 at <http://bit.ly/1TB7uFx>.

²⁸⁸ Information provided by Refugee Action.

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.²⁸⁹ Rooms are usually shared with one other person, and beds may be bunk beds.²⁹⁰ 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.²⁹¹

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.

Accommodation after initial accommodation centres

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.

The contract between the Home Office and the private companies requires that families shall be housed in self-contained accommodation.²⁹² 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.²⁹³ Accommodation frequently fails to meet the needs of supported persons, particularly those with children or mobility and health needs.²⁹⁴ Asylum

²⁸⁹ Refugee Council and Maternity Action, *When Maternity Doesn't Matter*, 2013, accessible at: <http://bit.ly/1d692pA>.

²⁹⁰ 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.

²⁹¹ Refugee Council and Maternity Action, *When Maternity Doesn't Matter*, 2013 p.30.

²⁹² Home Office, *Compass Project: Schedule 2, Accommodation and Transport, Statement of Requirements*, B.8. Evidence given to the Parliamentary Enquiry on Asylum Support for Children and Young People.

²⁹³ 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, accessible at <http://ind.pn/1Sw1kos>.

accommodation has been repeatedly criticised for failing to provide security, respect for privacy and basic levels of hygiene and safety, particularly for women.²⁹⁵

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

Indicators: Conditions in Reception Facilities

1. Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places? ☒ Yes²⁹⁶ ☐ No
2. What is the average length of stay of asylum seekers in the reception centres?
Average is not available although the standard is 19 days
3. Are unaccompanied children ever accommodated with adults in practice? ☒ Yes²⁹⁷ ☐ No

As said above 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.²⁹⁸

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

²⁹⁵ Christel Querton, *I feel like as a woman I'm not welcome: a gender analysis of UK law, policy and practice*, Asylum Aid, 2012, accessible at <http://bit.ly/1ChGbFh>. National Audit Office, *COMPASS contracts for the provision of accommodation for asylum seekers*, 2014 accessible at <http://bit.ly/1TB7uFx>.

²⁹⁶ As described above, asylum seekers may be placed in Bed and Breakfasts or hotels for a few nights before being placed in reception accommodation.

²⁹⁷ If the Home Office makes an initial assessment that the UASC is an adult.

²⁹⁸ Refugee Council and Maternity Action, *When Maternity Doesn't Matter*, 2013, accessible at <http://bit.ly/1d692pA>.

provided. Although nuclear families are housed together, two single parent families may be placed in one house together, and this has caused significant problems.²⁹⁹

Although UK VI'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.³⁰⁰ Financial pressures to obtain large stocks of low cost accommodation quickly to meet the COMPASS contract³⁰¹ 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.³⁰² 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.³⁰³

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'.³⁰⁴

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: Reduction or Withdrawal of Reception Conditions

1. Does the law provide for the possibility to reduce material reception conditions?
☐ Yes ☒ No
2. 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:

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

²⁹⁹ See Refugee Council, *Submission to the parliamentary inquiry into asylum support for children and young people*, 2012, accessible at <http://bit.ly/1fmr9Jp>.

³⁰⁰ *Ibid*; National Audit Office, 2014.

³⁰¹ The allocation to private companies of asylum accommodation provision see section on the Provision of Information.

³⁰² National Audit Office, *COMPASS contracts for the provision of accommodation for asylum seekers*, 2014, accessible at <http://bit.ly/1Lk1A9a>.

³⁰³ Home Affairs Select Committee, *Asylum Seventh Report of Session 2013-14*, HC 71.

³⁰⁴ Refugee Council submission to the parliamentary inquiry into asylum support for children and young people, 2012, accessible at <http://bit.ly/1fmr9Jp>.

- (g) Not complied within a reasonable period, (no less than 10 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.³⁰⁵

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.³⁰⁶ 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.³⁰⁷ According to Home Office published figures, the power to withdraw support has not been used since 2010.³⁰⁸

Asylum seekers can appeal to the First Tier Tribunal (Asylum Support) in London against a decision to withdraw their support.³⁰⁹ On application the Home Office sends travel tickets to attend the hearing.³¹⁰

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. Previously, users of the Azure card (excluding families and pregnant women) could only carry forward a maximum weekly sum of £5. This restriction was abolished in February 2015.

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 the section on Types of Accommodation above, there has been some overcrowding.

6. Access to reception centres by third parties

Indicators: Access to Reception Centres

1. 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 advisers.) Advice and guidance on the asylum process, asylum support applications, welfare and life in the UK is delivered free by the charity Migrant Help through its Asylum Help service, funded by the Home Office. Advice is generally available in person at the initial accommodation centres. There is usually access to an initial health screening, often provided by a local enhanced primary care service, homeless

³⁰⁵ Asylum Support Regulations 2000 reg. 20.

³⁰⁶ Asylum Support Partnership, *Response to the UKBA consultation Reforming Asylum Support: effective support for those with protection needs*, 2010.

³⁰⁷ Asylum Support Appeals Project, *Factsheet 1*: s.95, accessible at <http://bit.ly/1y7RlWd>.

³⁰⁸ Home Office, *Immigration Statistics*, Q4, 2013, Table 16, accessible at <http://bit.ly/1AZ1v79>.

³⁰⁹ Immigration and Asylum Act 1999 s. 103.

³¹⁰ Asylum Appeals Support Project, *Factsheet 3*, accessible at <http://bit.ly/1y7RlWd>.

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 for the asylum seeker to find their own way there.

7. Addressing special reception needs of vulnerable persons

Indicators: Special Reception Needs

1. Is there an assessment of special reception needs of vulnerable persons in practice?

☒ Yes

☒ No³¹¹

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.³¹² 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.³¹³ 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 he or she has a pre-existing condition or is in need of an urgent General Practitioner review.³¹⁴

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 the section on Access to reception centres by third parties. 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.³¹⁵

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.³¹⁶

³¹¹ See text for further details.

³¹² Healthcare needs and pregnancy dispersal guidance v1.0, Home Office Asylum Process Guidance accessible at <http://bit.ly/1QLAlmb>.

³¹³ Asylum Seeker (Reception Conditions) Regulations SI 2005/7.

³¹⁴ *Ibid*, Home Office Asylum Process Guidance.

³¹⁵ Information provided by Refugee Action.

³¹⁶ Refugee Council and Maternity Action, *When Maternity Doesn't Matter*, 2013, accessible at <http://bit.ly/1d692pA>.

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 of the Immigration Rules is the only provision in law on information concerning reception conditions (see section on Accelerated Procedure). Para 344C³¹⁷ 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.

From 1 April 2014 the charity Migrant Help has been providing the Asylum Support Applications UK and Asylum Advice and Guidance services renamed Asylum Help. They provide general information, advice and guidance through a Telephone Advice Centre, or face to face appointments at the initial accommodation centres or outreach sessions. Multilingual information is given via Migrant Help's website in different forms: web/video presentations, audio briefings and written briefings. These are in 15 languages and may be downloaded.³¹⁸

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 restrictions 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, although section 4 decision-making has now become a specialism of the Leeds regional office as part of the asylum decision restructuring exercise. Information has been provided by voluntary sector advisers, but this ceased from 1 April 2014 when a telephone-only application and advice system has been in place for s.4.

9. Freedom of movement

Indicators: Freedom of Movement

1. Is there a mechanism for the dispersal of applicants across the territory of the country?
☒ Yes ☐ No
2. Does the law provide for restrictions on freedom of movement? ☐ Yes ☒ No

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.³¹⁹

³¹⁷ Immigration Rules Part 11 Para 344C, accessible at <http://bit.ly/1JRSeKu>.

³¹⁸ Accessible at asylumhelpuk.org.

³¹⁹ Refugee Council and Maternity Action, *When Maternity Doesn't Matter*, 2013, accessible at <http://bit.ly/1d692pA>.

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 the availability of space, but the Home Office's current change process includes an intention to create 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.³²⁰ 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 six months) at a regional Home Office reporting centre.

B. Employment and education

1. Access to the labour market

Indicators: Access to the Labour Market

1. Does the law allow for access to the labour market for asylum seekers? ☒ Yes ☐ No
 ❖ If yes, when do asylum seekers have access the labour market? 1 year
2. Does the law allow access to employment only following a labour market test? ☒ Yes ☐ No
3. Does the law only allow asylum seekers to work in specific sectors? ☒ Yes ☐ No
 ❖ If yes, specify which sectors: listed shortage occupations
4. Does the law limit asylum seekers' employment to a maximum working time? ☐ Yes ☒ No
 ❖ If yes, specify the number of days per year
5. Are there restrictions to accessing 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.³²¹ The same applies when further submissions have been outstanding for a year, whether or not they have been recognised as a fresh claim.³²² 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.³²³

³²⁰ Researcher conversation with NGO.

³²¹ Immigration rules Part 11 B Para 360, accessible at <http://bit.ly/1G7pcHm>.

³²² *ZO (Somalia) v SSHD* [2009] EWCA Civ 442.

³²³ Immigration rules Part 11 B Para 360D, accessible at <http://bit.ly/1G7pcHm>.

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 below.

2. Access to education

Indicators: Access to Education

- | | |
|------------------------------------------------------------------------------|---------------------------------------------------------------------|
| 1. Does the law provide for access to education for asylum-seeking children? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. Are children able to access education in practice? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

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.

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. Indeed, the UK maintains different provisions for 'home' students and 'overseas' students for further and higher education. Regulations permit universities to charge higher fees to overseas students than to home students.³²⁴ 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. However, there has been a judicial 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.³²⁵

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.³²⁶

If a person is eligible under the regulations to pay 'home' fees, it is worth checking the relevant student support regulations. Student support is governed by ordinary residence in the country where they have

³²⁴ The Education (Fees and Awards) (England) Regulations 2007 SI 779 reg.4; The Education (Fees and Awards) (Wales) Regulations 2007 SI 2310 reg.4. The residence requirements in England are mitigated by Supreme Court judgment in *R (on the application of Tigere) v Secretary of State for Business, Innovation and Skills* UKSC [2015] 57 which held that the English requirement for the applicant to be settled (i.e. have indefinite leave to remain) was discriminatory and unlawful. Other residence requirements remain in place.

³²⁵ *R (Kebede) v Newcastle City Council* [2013] EWCACiv 960.

³²⁶ The Higher Education (Fees) (Scotland) Regulations 2011 SI 389 Reg. 4 and Schedule 1.

been living, not where the educational institution is. So someone could be a 'home' fee payer if studying in Wales, Northern Ireland or Scotland, but if ordinarily resident in England before moving to undertake their course, they would not be eligible for any student support at all when they claim it (from Student Finance England) in England.³²⁷ Even where a university agrees to treat an asylum seeker as a home student, that person may still need finances to pay the fees. The UK Council for International Student Affairs gives advice and information on student finance and fee status.³²⁸

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 18th 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.³²⁹

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.³³⁰ 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 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: Health Care			
1. Is access to emergency healthcare for asylum seekers guaranteed in national legislation?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
2. Do asylum seekers have adequate access to health care in practice?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Limited	<input type="checkbox"/> No
3. Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Limited	<input type="checkbox"/> No
4. If material conditions are reduced or withdrawn, are asylum seekers still given access to health care?	<input type="checkbox"/> Yes	<input type="checkbox"/> Limited	<input checked="" type="checkbox"/> 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.³³¹ 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

³²⁷ The residence requirements for access to student loans in England are mitigated by Supreme Court judgment in *R (on the application of Tigere) v Secretary of State for Business, Innovation and Skills* UKSC [2015] 57 which held that the English requirement for the applicant to be settled (i.e. have indefinite leave to remain) was discriminatory and unlawful. Other residence requirements remain in place.

³²⁸ Accessible at <http://bit.ly/1xWsqix>.

³²⁹ STAR, *How to Campaign for Equal Access: a Guide*, accessible at <http://bit.ly/1Lv3DUQ>.

³³⁰ Department of Employment and Learning, Circular FE 15/12.

³³¹ HM Government (2015) National Health Service (Charges to Overseas Visitors) Regulations 2015 No. 238, Part 4.

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.³³²

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.³³³

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 the far higher infant and mother mortality rate which there is among asylum seekers.³³⁴ 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.³³⁵ 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.

Charges for those with limited leave to remain in the UK were introduced in April 2015.³³⁶ Respondents to a government consultation which preceded these charges voiced concerns that to introduce charges for migrants which are not fully understood would result in more loss of care for very vulnerable asylum seekers and refused asylum seekers.³³⁷

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.³³⁸

In Wales, regulations which entailed charging refused asylum seekers were introduced, but after lobbying these charges were revoked.³³⁹

³³² Department for Health, Guidance on implementing the Hospital Charging Regulations 2015, para 7.51.

³³³ British Medical Association, *Access to health care for asylum seekers and refused asylum seekers – guidance for doctors*, April 2012, accessible at: <http://bit.ly/1CqjDIN>.

³³⁴ Refugee Council and Maternity Action, *When Maternity Doesn't Matter*, 2013.

³³⁵ Refugee Council and Maternity Action, *When Maternity Doesn't Matter*, 2013.

³³⁶ Immigration Act 2014 s.38 and National Health Service (Charges to Overseas Visitors) Regulations 2015 No. 238

³³⁷ Department of Health: *Migrant Access to the NHS: Consultation*, July 2013, accessible at, <http://bit.ly/1Jdl3Xw>.

³³⁸ Scottish Government Healthcare Policy & Strategy Directorate, April 2010, CEL 9 (2010) Overseas Visitors' Liability to Pay Charges for NHS Care and Other Services.

³³⁹ NHS (Charges to Overseas Visitors) (Amendment) (Wales)(Regulations 2009).

In Northern Ireland, exemptions for refugees and asylum seekers are similar to those in England except that refused asylum seekers are able to obtain free health care while they remain in Northern Ireland.³⁴⁰

³⁴⁰ Provision of Health Services to Persons Not Ordinarily Resident Regulations (Northern Ireland) 2015 SI No. 27 reg. 9, accessible at <http://bit.ly/1PcmHMJ>.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention

1. Total number of asylum seekers detained in 2015 (January-September): ³⁴¹	11,146
2. Number of asylum seekers in detention at the end of September 2015:	1,557
3. Number of detention centres: ³⁴²	14
4. Total capacity of detention centres: ³⁴³	c.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, 49 to 51% of whom have sought asylum in the UK at some time. In 2014, a total of 14056 people who had sought asylum had been detained and there were 1698 in detention at the end of the year. Up until September 2015 a total of 11,146 persons seeking asylum had been detained and 1,557 were in detention. The centres consist of 10 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. At the end of the second quarter of 2015 there were 373 immigration detainees in prisons. It is not known how many of those people had claimed asylum.

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 accelerated procedures. 3,865 people were detained in the detained fast track in 2014, but this procedure was suspended in July 2015. 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 the 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 this section therefore refers to asylum seekers who are detained in preparation for removal, after final refusal of their claim.

In April 2014 the government withdrew the option of Assisted Voluntary Return from people in detention. This involved a financial contribution to getting re-established in their home country if the asylum seeker decides to go back. Now those who are in detention will only be able to opt for voluntary departure. This

³⁴¹ Includes applicants detained in the course of the asylum procedure and persons lodging an application from detention before the data collection date. The largest number of detained asylum seekers are those who have been refused, pending removal. The figures are an under-recording because they record only those detained solely under Immigration Act powers and exclude those in police cells, Prison Service establishments, short term holding rooms at ports and airports (for less than 24 hours), and those recorded as detained under both criminal and immigration powers and their dependants. *Immigration Statistics* Q3 2015 Tables dt 1 and dt 13 and see notes to detention tables.

³⁴² Including short-term holding facilities.

³⁴³ There is an agreement for 600 immigration detention places in prisons.

affects the length of ban they receive on returning to the UK, since it is less than for a forced removal, but does not involve any financial assistance to reintegrate.

In the year January to September 2015, there were 2,570 enforced removals of people who had unsuccessfully sought asylum. 643 people who had unsuccessfully sought asylum took Assisted Voluntary Return. 514 others were confirmed to have departed voluntarily.³⁴⁴

In December 2015 the Home Office will take over administration of the AVR programme, thus ending independent advice about this option.

B. Legal framework of detention

1. Grounds of detention

Indicators: Grounds for Detention

- | | | |
|-------------------------------------------------------------------------|------------------------------------------------|----------------------------------------|
| 1. In practice, are most asylum seekers detained | | |
| ❖ on the territory: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ❖ at the border: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 2. Are asylum seekers detained in practice during the Dublin procedure? | <input checked="" type="checkbox"/> Frequently | |
| | <input type="checkbox"/> Rarely | |
| | <input type="checkbox"/> Never | |
| 3. Are asylum seekers detained during a regular procedure in practice? | <input type="checkbox"/> Frequently | |
| | <input checked="" type="checkbox"/> Rarely | |
| | <input type="checkbox"/> Never | |

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 that:

- (a) 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.³⁴⁵

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.

³⁴⁴ Immigration Statistics *Removals* Q3 2015 table 1.

³⁴⁵ Home Office, *Enforcement Instructions and Guidance*, Detention 55.1.1.

2. Alternatives to detention

Indicators: Alternatives to Detention

1. Which alternatives to detention have been laid down in the law?
☒ Reporting duties
☐ Surrendering documents
☒ Financial guarantee
☒ Residence restrictions
☒ Other: Tagging
2. Are alternatives to detention used in practice?
☒ Yes ☐ No

Alternatives to detention are permitted by legislation but not required. Permitted are: electronic tagging;³⁴⁶ regular reporting;³⁴⁷ bail with sureties;³⁴⁸ residence restrictions.³⁴⁹ 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.

3. Detention of vulnerable applicants

Indicators: Detention of Vulnerable Applicants

1. Are unaccompanied asylum-seeking children detained in practice?
☐ Frequently
☒ Rarely
☐ Never
❖ If frequently or rarely, are they only detained in border/transit zones? ☐ Yes ☒ No
2. Are asylum seeking children in families detained in practice?
☐ Frequently
☒ Rarely
☐ Never

Domestic 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 same in relation to detention generally as in the Detained Fast Track.³⁵⁰ In practice vulnerable individuals are detained. The most recent inspection of Yarl's Wood, the detention centre for women, found that 99 pregnant women had been detained during 2014.³⁵¹ The most recent inspection of Dungavel House IRC (detention centres are called 'Immigration Removal Centres' IRCs) found that a documented victim of torture and a woman with serious health problems had been detained.³⁵² A Report by the Detention Forum found both the policy and its application inadequate. Of their sample of 31 detainees, 77% had experienced poor mental health.³⁵³

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%,

³⁴⁶ AITOCA 2004 s.36.

³⁴⁷ Immigration Act 1971 Schedule 2 para 21 (2).

³⁴⁸ Immigration Act 1971 Schedule 2 paras 22 and 29 -34.

³⁴⁹ Immigration Act 1971 Schedule 2 para 21(2).

³⁵⁰ See Enforcement Instructions and Guidance chapter 55 para 55.10

³⁵¹ HM Inspector of Prisons, *Report on an Unannounced Inspection of Yarl's Wood Immigration Removal Centre*, 13 April – 1 May 2015, accessible at <http://bit.ly/1jcXlkH>.

³⁵² HM Inspector of Prisons, *Report on an Unannounced Inspection of Dungavel House Immigration Removal Centre*, 9 -20 February 2015, accessible at <http://bit.ly/1CXuYdk>.

³⁵³ *Rethinking 'Vulnerability' in Detention: a Crisis of Harm Report by the Detention Forum's Vulnerable People Working Group* July 2015.

had been subjected to other forms of torture, most by state officials. Over 80% had been either raped or otherwise tortured.³⁵⁴ A smaller sample in a further study in 2014 made similar findings. Of the 34 women who disclosed their experiences of persecution to the researchers, 19 said they had been raped; 21 had experienced other sexual violence; 28 said that they had experienced gender-related persecution consisting of rape, sexual violence, forced marriage, forced prostitution, or female genital mutilation. 21 women said that they had been tortured in their home countries.³⁵⁵ Research for Medical Justice found that only 5% of pregnant women detained were in fact removed from the UK, the ground for which they were placed in detention.³⁵⁶

The High Court has found a number of breaches of Article 3 ECHR 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.³⁵⁷ Torture survivors continue to be detained even after Rule 35³⁵⁸ reports (see section on Special Procedural Guarantees).³⁵⁹ A report for the Home Office by the Tavistock Institute concluded that vulnerable detainees could deteriorate in detention, partly because of antagonism between different agencies and the conflicted aims of detention. This could only be remedied by a culture change.³⁶⁰ The Home Secretary in February 2015 announced an independent review into the welfare of those in immigration detention.³⁶¹ Members of Parliament who conducted an inquiry into immigration detention found that people suffering from mental health conditions were detained for prolonged periods and that it was not possible to treat mental health conditions in IRCs. They recommended that at the very least the policy around mental health should be changed to that which was in place before August 2010, which stated that individuals with a mental health condition should only be detained under exceptional circumstances.³⁶²

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. In 2014 the Refugee Council secured the release from detention of 25 children, 17 of whom had been accepted to be under 18 at the time of their end of year report, with eight assessments pending.³⁶³ 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

³⁵⁴ Women for Refugee Women, *Detained: Women Asylum Seekers Locked up in the UK*, 2014, accessible at <http://bit.ly/1db63fw>.

³⁵⁵ Women for Refugee Women, *I am Human: Refugee Women's Experiences of Detention in the UK* 2015, accessible at <http://bit.ly/1WChYDI>.

³⁵⁶ Natasha Tsangarides and Jane Grant, *Expecting Change: The Case for Ending the detention of pregnant women*, Medical Justice, 2013, accessible at <http://bit.ly/1H8tt30>.

³⁵⁷ 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, *R (on the application of MD) v SSHD* [2014] EWHC 2249 (Admin). 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.

³⁵⁸ Home Office, Detention Centre Rules, Rule 35 accessible at <http://bit.ly/1N8GLM7>.

³⁵⁹ Independent Chief Inspector of Borders and Immigration and Chief Inspector of Prisons, *The effectiveness and impact of immigration detention casework*, 2012, accessible at <http://bit.ly/1BGKAH8> and Natasha Tsangarides, *The Second Torture: immigration detention of torture survivors*, Medical Justice, 2012, accessible at <http://bit.ly/1GC9Yq2>.

³⁶⁰ *Review of Mental Health Issues in Immigration Removal Centres* Immigration & Border Policy Directorate, The Home Office A report prepared for Home Office by Dr David Lawlor, Dr Mannie Sher and Dr Milena Stateva, 2014, published 2015

³⁶¹ <http://bit.ly/1Gw1Hbo>

³⁶² *The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom* A Joint Inquiry by the All Party Parliamentary Group on Refugees & the All Party Parliamentary Group on Migration 2015, accessible at <http://bit.ly/1GLjtbG>

³⁶³ Refugee Council *Age Dispute Project End of year Report 2014*. . 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.

in their leaving the UK,³⁶⁴ and this is the purpose of the Cedars detention centre. However, statistics showed that of 126 child detainees in the year up to December 2014, 63 were released and only 55 were removed from the UK.³⁶⁵ 89 of the 128 child detainees had sought asylum at some time (as claimants or dependants), but the figures do not show how whether children who had sought asylum were released or removed. The figures fluctuate considerably from one quarter to another so that there is no clear trend apart from the reduction in child detainees when the present policy was instituted in 2010. In the in the second quarter of 2015 4 child detainees out of 39 were removed and in the third quarter 12 out of 31 were removed.³⁶⁶

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.³⁶⁷ However, the centres are not equipped for elderly people and those with disabilities and few Immigration Removal Centres (IRCs) have 24 hour health care. The policy has been criticised by the UN Committee against Torture³⁶⁸ by the All Party Parliamentary inquiry into Immigration Detention,³⁶⁹ and by the Detention Forum.³⁷⁰

Until 2013 healthcare in IRCs was provided by private companies contracted to the UK Border Agency. In 2013, health care in England was transferred to the National Health Service commissioning provisions. This was a change which had been argued for by medical professionals, Parliamentarians and others. However, the NHS has contracted the healthcare in IRCs to commercial companies which have been running detention and escort services and not to specialist health providers. As a result, staff and facilities for identifying and treating mental illness and distress vary greatly between IRCs.³⁷¹ 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 111 in the second quarter of 2015, with 554 individuals at risk. 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.³⁷² The courts have held that even someone who is so severely ill as to be hospitalised may remain in immigration detention in hospital.

4. Duration of detention

Indicators: Duration of Detention

- | | |
|----------------------------------------------------------------------------|---------------|
| 1. What is the maximum detention period set in the law (incl. extensions): | None |
| 2. In practice, how long in average are asylum seekers detained? | Not available |

³⁶⁴ *Enforcement Instructions and Guidance Chapter 45 Families and Children, , Family Returns Process operational Guidance*

³⁶⁵ 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, accessible at <http://bit.ly/1AZ1v79>.

³⁶⁶ Home Office, *Immigration statistics: detention table 9* Q3 2015.

³⁶⁷ UK Visas and Immigration, *Enforcement Instructions and Guidance*, Chapter 55.10, accessible at <http://bit.ly/1FwiCIP>.

³⁶⁸ UNCAT, *Concluding observations on the fifth periodic report of the United Kingdom*, adopted by the Committee at its fiftieth session, 6-31 May 2013.

³⁶⁹ *The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom* A Joint Inquiry by the All Party Parliamentary Group on Refugees & the All Party Parliamentary Group on Migration 2015 <http://bit.ly/1GLjtbG>

³⁷⁰ *Rethinking 'Vulnerability' in Detention: a Crisis of Harm Report by the Detention Forum's Vulnerable People Working Group* July 2015

³⁷¹ Ali McGinley and Adeline Trude, *Positive duty of care? The mental health crisis in immigration detention*, AVID and BID, 2012, accessible at <http://bit.ly/1BGukWG>.

³⁷² Ali McGinley and Adeline Trude, *Positive duty of care? The mental health crisis in immigration detention*, AVID and BID, 2012.

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 Procedure](#)). There is no maximum period set in law. While data on length of immigration detention is now available for the last six years, the figures do not distinguish between asylum seekers and other immigration detainees. The percentage of people in immigration detention who have sought asylum at some stage is around 50%. Periods of immigration detention including asylum seekers and other foreign nationals vary enormously from a few days to several years. During 2014, 29,674 people left immigration detention. Of these, 18,797 (63%) had been in detention for less than 29 days, 5,148 (17%) for between 29 days and two months and 3,789 (13%) for between two and four months. Of the 1940 (6.5%) remaining, 134 had been in detention for between one and two years and 27 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.

C. Detention Conditions

1. [Place of detention](#)

Indicators: Place of Detention

1. Does the law 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
2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure? ☐ Yes ☒ No

In 2014, the Home Office, for the first time, published the number of immigration detainees held in prisons: 373 was the snapshot figure published for the end of June 2015. It is not recorded whether any and if so how many of these people had at any point claimed asylum. 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 of holding immigration detainees in prison 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 (presently 600) to be held in the prison estate. 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.³⁷³ Again, it is not known how many of these people have at any time claimed asylum. It was accepted by the High Court in December 2014 that there was a blanket policy of holding foreign nationals who have served their prison sentence in prison pending deportation, and not transferring them to IRCs.³⁷⁴ A 'blanket policy', i.e. one that applies in all circumstances, is not lawful. The government is entitled to have a policy which generally applies, but must consider individual circumstances in the light of that policy, so the practice is unlawful to the extent that a blanket policy is applied. Detention policy specifies the criteria for detaining a person in a prison for immigration reasons after they have served their criminal sentence, but the policy allows for people to be detained in prison 'before' consideration is given to transferring them to an IRC – thus allowing continued detention in prison without an obligation promptly to transfer to an IRC. It also expressly provides that, if prison beds available for immigration detention are not filled by those in the risk categories, those beds should be filled by immigration detainees who do not meet the criteria for detention in prison.³⁷⁵

Detention Centre	Capacity
Harmondsworth	661 men
The Verne	580 men
Yarl's Wood	410 mainly women. One family unit, and small short term holding facility for single men detained as clandestine migrants on freight lorries
Dungavel House	249, mainly men. Unit for up to 14 women
Tinsley House	254 mainly adult men, also a family suite
Campfield House	276 men
Cedars	Families. 44 people
Brook House	448 men
Morton Hall	392 men
Colnbrook	420, including an open unit for 8 women, Remainder men

2. Conditions in detention facilities

Indicators: Conditions in Detention Facilities

- Do detainees have access to health care in practice?
 - ❖ If yes, is it limited to emergency health care?
- Is access to detention centres allowed to
 - ❖ Lawyers:
 - ❖ NGOs:
 - ❖ UNHCR:
 - ❖ Family members:

☒ Yes ☐ No
☐ Yes ☒ No

☐ Yes ☒ Limited ☐ No
☐ Yes ☒ Limited ☐ No
☐ Yes ☒ Limited ☐ No
☐ Yes ☒ Limited ☐ No

The purpose built IRCs (Colnbrook, Brook House and the later 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.³⁷⁶ Dover, The Verne and Morton Hall are also converted prisons, albeit with lower security.

³⁷³ *Denial of justice: the hidden use of UK prisons for immigration detention Evidence from BID's outreach, legal & policy teams* Bail for Immigration Detainees September 2014.

³⁷⁴ *R (on the application of Idira) v SSHD* [2014] EWHC 4299 (Admin).

³⁷⁵ *Enforcement Instructions and Guidance* Ch 55.10.1

³⁷⁶ 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, accessible at <http://bit.ly/1THGggs>.

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.³⁷⁷ 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 condition appears to require it. The charity Medical Justice has documented the denial of crucial medical care.³⁷⁸ The All Party Parliamentary Group and the Tavistock Institute are among those who have recently reported on failings in medical care in detention. The Independent Monitoring Board for Harmondsworth (the largest IRC) has reported serious shortcomings in medical provision, with a situation described as 'chaotic'.³⁷⁹ The prison inspector had previously 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'.³⁸⁰ The IMB noted that in 2014 there were plans to improve health services following the 2013 report, although the improvements had not yet happened. 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.'³⁸¹ 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). In The Verne the inspector reported that health services were adequate but there were significant problems of access.³⁸²

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 section on Guarantees for Vulnerable Groups). The effectiveness of rule 35 is questioned in inspection reports and most of the independent reports cited in this section.

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,³⁸³ but had become more difficult in Harmondsworth where there was a range of activities available,³⁸⁴ but only a three hour period during the day when detainees were expected to carry out any activity. In The Verne the inspector observed very good access to supervised fitness and sports activities.³⁸⁵ 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

³⁷⁷ *The Detention Centre Rules 2001* SI No. 238, accessible at <http://bit.ly/1iFchXN>.

³⁷⁸ Medical Justice, *Detained and Denied: the clinical care of detainees living with HIV/AIDS*, 2011, accessible at <http://bit.ly/1QLSKoq>.

³⁷⁹ Independent Monitoring Board, Harmondsworth IRC, *Annual Report 2014*, accessible at <http://bit.ly/1PRbX74>.

³⁸⁰ HM Inspector of Prisons, *Report on an unannounced inspection of Harmondsworth Immigration Removal Centre, 5-16 August 2013*, accessible at <http://bit.ly/1JdRITq>.

³⁸¹ HM Chief Inspector of Prisons, *Report on an announced inspection of Morton Hall Immigration Removal Centre, 4-8 March 2013*, accessible at <http://bit.ly/1LvKFqJ>.

³⁸² *Report on an unannounced inspection of The Verne Immigration Removal Centre*, HM Chief Inspector of Prisons 2 – 13 March 2015, p. 15.

³⁸³ *Ibid.*

³⁸⁴ HM Inspector of Prisons, *Report on unannounced inspection of Harmondsworth Immigration Removal Centre, 5-16, August 2013*, accessible at <http://bit.ly/1IZxB2M>.

³⁸⁵ *Report on an unannounced inspection of The Verne Immigration Removal Centre*, HM Chief Inspector of Prisons 2 – 13 March 2015, 48.

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,³⁸⁶ and includes some facilities for children but these do not include education. 128 children were detained in 2014, and 79 in the first two quarters of 2015. In 2014 96 were detained for 3 days or less, 16 for 4 to 7 days. 7 were detained for a month or more.³⁸⁷ In the first two quarters of 2015, 24 children were detained for more than 3 days.³⁸⁸

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).³⁸⁹ 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 Yarl's 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.³⁹⁰ After a legal battle the High Court compelled disclosure of a report showing that the allegations were not properly investigated.³⁹¹ Women for Refugee Women's report on detention in Yarl's Wood revealed that there was a culture of inappropriate sexual conduct in the centre, which included unwanted contact and exploitation by centre staff.³⁹² An undercover documentary filmed for Channel 4 also revealed abuse in Yarl's Wood.³⁹³

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.³⁹⁴ Some visitors groups engage in policy and advocacy work and research.³⁹⁵ Bail for Immigration Detainees (BID) provides advice and information for detainees generally including self-help packs to make bail

³⁸⁶ Nick Hardwick, *Report on an announced inspection of Cedars Pre-Departure Accommodation*, 30 April – 25 May 2012, HM Chief Inspector of Prisons, 2012, accessible at <http://bit.ly/1dZcZwR>.

³⁸⁷ Home Office Research and Statistics Directorate, *Immigration Statistics: Detention*, Q2, 2015.

³⁸⁸ Home Office Research and Statistics Directorate, *Immigration Statistics: Detention*, Table dt 09 Q2 2015.

³⁸⁹ HM Chief Inspector of Prisons, *Report on an unannounced inspection of Colnbrook Immigration Removal Centre*, 28 January – 8 February 2013, accessible at <http://bit.ly/1Rpc8m8>.

³⁹⁰ HM Inspector of Prisons, *Report on unannounced inspection of Yarl's Wood Immigration Removal Centre*, 17-28 June and 30 Sept – 1 Oct 2013, accessible at <http://bit.ly/1Lfx1R8>.

³⁹¹ MPs to investigate Serco over sex assault claim at Yarl's Wood centre, *The Guardian* 17 May 2014, accessible at <http://bit.ly/1jGXUeB>.

³⁹² Women for Refugee Women, *I am Human: Refugee Women's Experiences of Detention in the UK* 2015 p. 14 <http://bit.ly/1WChYDI>.

³⁹³ <http://bit.ly/1E6X4pz>

³⁹⁴ See <http://www.aviddetention.org.uk/>

³⁹⁵ E.g. Detention Action, <http://detentionaction.org.uk/>.

applications.³⁹⁶ 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.³⁹⁷ UNHCR does not have the capacity to represent people in detention and in practice detainees rarely seek help from the UNHCR.

The NGO BID has carried out surveys twice a year since 2010 and found, in relation to immigration detainees held in IRCs, that usually between 43% and 69% of detainees had legal representatives. The latest figure, in May 2015, was 50%. Around a quarter to a third are paying a solicitor privately. 11% at the time of the last survey had never had a legal representative while they were in detention.³⁹⁸ 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.³⁹⁹

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 House⁴⁰⁰ and lacking cultural diversity at Yarl's Wood.⁴⁰¹

Detainees have access to the detention centre library and to the internet. Facilities normally include a fax machine. Following a Channel 4 TV programme exposing an abusive culture in Yarl's Wood detention centre, detainees reported that access to the website for the NGO Habeas Corpus was blocked, as well as access to other sites.⁴⁰² Access to social media and skype are prevented.⁴⁰³ The All Party Parliamentary Group inquiry into detention found that 'in practice, detainees are often blocked from accessing sites that appear to have no security risk. These include the websites of Amnesty International, the BBC, IRC visitors groups, foreign language newspapers and other NGOs. The panel were particularly alarmed by reports that areas of the inquiry's own website were not accessible in some IRCs.'⁴⁰⁴ Facilities at The Verne were said by the inspector not to meet demand, a particular issue at that centre because of its remoteness and thus the difficulty of visiting.⁴⁰⁵ In common with Morton Hall, The Verne has a poor mobile phone signal.

³⁹⁶ Bail for Immigration Detainees, <http://www.biduk.org/>.

³⁹⁷ See Medical Justice, <http://www.medicaljustice.org.uk/>.

³⁹⁸ Bail for Immigration Detainees, *Immigration Detainees' Experiences of Getting Legal Advice Across the UK Detention estate: summary results for surveys 1 – 10, 2015*, accessible at <http://bit.ly/1WA5Fcj>

³⁹⁹ HM Inspector of Prisons, *Report on unannounced inspection of Harmondsworth Immigration Removal Centre, 5-16 August 2013*, accessible at <http://bit.ly/1I9wbV5>.

⁴⁰⁰ HM Chief Inspector of Prisons, *Report on an unannounced inspection of Brook House Immigration Removal Centre, 28 May – 7 June 2013*, accessible at <http://bit.ly/1JdWXqW>.

⁴⁰¹ HM Inspector of Prisons, *Report on unannounced inspection of Yarl's Wood Immigration Removal Centre, 13 April -1 May 2015*, accessible at <http://bit.ly/1IQVwQe>.

⁴⁰² <http://bit.ly/1Gw1KEj>

⁴⁰³ HM Inspector of Prisons, *Report on unannounced inspection of Yarl's Wood Immigration Removal Centre, 13 April -1 May 2015*, accessible at <http://bit.ly/1IQVwQe> and *Report on an unannounced inspection of The Verne Immigration Removal Centre*, HM Chief Inspector of Prisons 2 – 13 March 2015.

⁴⁰⁴ The APPG Inquiry into the Use of Immigration Detention in the United Kingdom, 43.

⁴⁰⁵ *Report on an unannounced inspection of The Verne Immigration Removal Centre*, HM Chief Inspector of Prisons 2 – 13 March 2015.

D. Procedural safeguards

1. Judicial review of the detention order

Indicators: Judicial Review of Detention

1. Is there an automatic review of the lawfulness of detention? ☐ Yes ☒ No
2. If yes, at what interval is the detention order reviewed?

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.⁴⁰⁶

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 FTT (IAC). Since the decision to detain was made by the Home Office, it is not common for bail to be granted by the CIO.

Since July 2014, a Tribunal is prevented from granting bail if removal directions are in force for a date less than 14 days from the application, unless the Secretary of State consents to bail. The Immigration Act 2014 also prohibits the Tribunal from granting bail at a hearing within 28 days of a previous refusal of bail unless there is a proven change of circumstances.⁴⁰⁷

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.⁴⁰⁸ 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.⁴⁰⁹

⁴⁰⁶ *Kambadzi v SSHD* [2011] UKSC 23.

⁴⁰⁷ S.7 Immigration Act 2014.

⁴⁰⁸ Adeline Trude, *The Liberty Deficit*, Bail for Immigration Detainees, 2012, accessible at <http://bit.ly/1L2oUai>; Bail Observation Project, second report, 2013.

⁴⁰⁹ *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.⁴¹⁰ BID has reported delays in providing a bail address.⁴¹¹

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.⁴¹² 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.⁴¹³

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 (see section on Grounds for Detention.) 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.⁴¹⁴ 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.'⁴¹⁵ 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.'⁴¹⁶ However, if the matter goes to court the court will consider all the circumstances.⁴¹⁷

⁴¹⁰ Adeline Trude, *The Liberty Deficit, Bail for Immigration Detainees*, 2012, accessible at <http://bit.ly/1L2oUai>.

⁴¹¹ *No Place to Go: delays in Home Office provision of s.4 (1)(c) bail accommodation*, accessible at <http://bit.ly/1OXSoZQ>.

⁴¹² *Kambadzi v SSHD* [2011] UKSC 23.

⁴¹³ Independent Chief Inspector of Borders and Immigration and Chief Inspector of Prisons, *The effectiveness and impact of immigration detention casework*, 2012, accessible at <http://bit.ly/1BGKAH8>.

⁴¹⁴ *R (Hardial Singh) v Governor of Durham Prison* [1983] EWHC 1 (QB)

⁴¹⁵ Home Office Enforcement Instructions and Guidance, Ch55, para 55.3.2.4.

⁴¹⁶ 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, accessible at <http://bit.ly/1BGLblM>.

⁴¹⁷ See for instance for a recent application of the policy, *Xue v SSHD* [2015] EWHC 825 (Admin) in which claimant was unlawfully detained for 11 months.

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.

2. Legal assistance for review of detention

Indicators: Legal Assistance for Review of Detention

1. Does the law provide for access to free legal assistance for the review of detention?
☒ Yes ☐ No
2. 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,⁴¹⁸ and BID's survey showed that 69% had to wait more than a week.⁴¹⁹ Notice of removal may be as short as 72 hours, and five days is common. In one of the more recent inspections of an IRC, The Verne, the inspectorate found that 'Many detainees did not have legal representation and could wait up to 10 days for a legal surgery appointment'.⁴²⁰

The All Party Parliamentary Inquiry into Detention recorded a lot of discontent and distress from detainees about the quality of representation in detention and being left without information.⁴²¹

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 a message for them.

⁴¹⁸ Independent Monitoring Board, *Harmondsworth IRC, Annual Report, 2011*, accessible at: <http://bit.ly/1K6hZvY>.

⁴¹⁹ Bail for Immigration Detainees, *Immigration Detainees' Experiences of Getting Legal Advice Across the UK Detention estate: summary results for surveys 1 – 6*, 2013.

⁴²⁰ *Report on an unannounced inspection of The Verne Immigration Removal Centre*, HM Chief Inspector of Prisons 2 – 13 March 2015, 13.

⁴²¹ The APPG Inquiry into the Use of Immigration Detention in the United Kingdom, 46.