

# Country Report: United Kingdom



**2018  
Update**



## Acknowledgements & Methodology

The preparation of the first report and subsequent four updates was prepared by Gina Clayton on a consultancy basis, under the coordination of Asylum Aid. The 2016, 2017 and 2018 updates were prepared by Judith Dennis of the Refugee Council, and edited by ECRE.

Information was obtained through a combination of desk-based research and consultation with relevant stakeholders. The author relied heavily on information and analysis provided by a variety of sources, in particular the Immigration Law Practitioners' Association (ILPA) and Bail for Immigration Detainees (BID).

The information in this report is up-to-date as of 31 December 2018, unless otherwise stated.

## The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is coordinated by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information on asylum practice in 23 countries. This includes 20 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, SI, UK) and 3 non-EU countries (Serbia, Switzerland, Turkey) which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website [www.asylumineurope.org](http://www.asylumineurope.org). The database also 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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# Table of Contents

<b>Glossary .....</b>	<b>6</b>
<b>List of Abbreviations .....</b>	<b>7</b>
<b>Statistics .....</b>	<b>9</b>
<b>Overview of the legal framework .....</b>	<b>11</b>
<b>Overview of the of the main changes since the previous update .....</b>	<b>12</b>
<b>Asylum Procedure .....</b>	<b>13</b>
<b>A. General .....</b>	<b>13</b>
1. Flow chart .....	13
2. Types of procedures .....	14
3. List of authorities intervening in each stage of the procedure .....	14
4. Number of staff and nature of the first instance authority .....	14
5. Short overview of the asylum procedure .....	15
<b>B. Access to the procedure and registration .....</b>	<b>17</b>
1. Access to the territory and push backs .....	17
2. Registration of the asylum application .....	17
<b>C. Procedures .....</b>	<b>20</b>
1. Regular procedure .....	20
2. Dublin .....	27
3. Admissibility procedure .....	35
4. Border procedure (border and transit zones) .....	37
5. Accelerated procedure .....	39
<b>D. Guarantees for vulnerable groups .....</b>	<b>44</b>
1. Identification .....	44
2. Special procedural guarantees .....	46
3. Use of medical reports .....	48
4. Legal representation of unaccompanied children .....	49
<b>E. Subsequent applications .....</b>	<b>52</b>
<b>F. The safe country concepts .....</b>	<b>54</b>

1.	Safe country of origin .....	54
2.	Safe third country .....	55
3.	First country of asylum .....	57
<b>G.</b>	<b>Information for asylum seekers and access to NGOs and UNHCR .....</b>	<b>57</b>
<b>H.</b>	<b>Differential treatment of specific nationalities in the procedure .....</b>	<b>59</b>
	<b>Reception Conditions.....</b>	<b>61</b>
<b>A.</b>	<b>Access and forms of reception conditions .....</b>	<b>61</b>
1.	Criteria and restrictions to access reception conditions .....	61
2.	Forms and levels of material reception conditions .....	65
3.	Reduction or withdrawal of reception conditions .....	66
4.	Freedom of movement .....	67
<b>B.</b>	<b>Housing .....</b>	<b>68</b>
1.	Types of accommodation .....	68
2.	Conditions in reception facilities .....	70
<b>C.</b>	<b>Employment and education .....</b>	<b>72</b>
1.	Access to the labour market .....	72
2.	Access to education .....	72
<b>D.</b>	<b>Health care .....</b>	<b>74</b>
<b>E.</b>	<b>Special reception needs of vulnerable groups .....</b>	<b>76</b>
<b>F.</b>	<b>Information for asylum seekers and access to reception centres .....</b>	<b>78</b>
1.	Provision of information on reception .....	78
2.	Access to reception centres by third parties .....	79
<b>G.</b>	<b>Differential treatment of specific nationalities in reception .....</b>	<b>79</b>
	<b>Detention of Asylum Seekers .....</b>	<b>80</b>
<b>A.</b>	<b>General .....</b>	<b>80</b>
<b>B.</b>	<b>Legal framework of detention .....</b>	<b>81</b>
1.	Grounds of detention .....	81
2.	Alternatives to detention .....	82
3.	Detention of vulnerable applicants .....	83
4.	Duration of detention .....	86
<b>C.</b>	<b>Detention conditions .....</b>	<b>87</b>

1.	Place of detention.....	87
2.	Conditions in detention facilities .....	89
3.	Access to detention facilities .....	92
<b>D.</b>	<b>Procedural safeguards .....</b>	<b>92</b>
1.	Judicial review of the detention order.....	92
2.	Legal assistance for review of detention .....	94
<b>E.</b>	<b>Differential treatment of specific nationalities in detention .....</b>	<b>95</b>
	<b>Content of International Protection .....</b>	<b>96</b>
<b>A.</b>	<b>Status and residence .....</b>	<b>96</b>
1.	Residence permit.....	96
2.	Civil registration .....	96
3.	Long-term residence.....	97
4.	Naturalisation.....	97
5.	Cessation and review of protection status .....	97
6.	Withdrawal of protection status .....	98
<b>B.</b>	<b>Family reunification .....</b>	<b>99</b>
1.	Criteria and conditions.....	99
2.	Status and rights of family members .....	100
<b>C.</b>	<b>Movement and mobility .....</b>	<b>100</b>
1.	Freedom of movement .....	100
2.	Travel documents .....	101
<b>D.</b>	<b>Housing .....</b>	<b>101</b>
<b>E.</b>	<b>Employment and education .....</b>	<b>102</b>
1.	Access to the labour market.....	102
2.	Access to education .....	103
<b>F.</b>	<b>Social welfare .....</b>	<b>103</b>
<b>G.</b>	<b>Health care .....</b>	<b>103</b>

## Glossary

<b>Country guidance case</b>	Decision by the Upper Tribunal (Immigration and Asylum Chamber) on a specific country, with binding effect on other cases
<b>Discretionary leave to enter/remain</b>	Residence granted on humanitarian grounds
<b>Dubs amendment</b>	Section 67 of the Immigration Act 2016 introduces obligations on the Secretary of State for the Home Department to make arrangements to relocate a specified number of unaccompanied children to the UK from other European countries. Named after a peer, Lord Dubs, who first introduced the amendment to the then Immigration Bill.
<b>Humanitarian protection</b>	Subsidiary protection in the meaning of the Qualification Directive
<b>Rule 35 report</b>	Relevant to <a href="#">Detention</a> . Rule 35 of the Detention Centre Rules provides that, where there is evidence that a detainee has been tortured, or for any other reason their health would be injuriously affected by detention, a report should be made to the caseworker for release to be considered
<b>Section 4 support</b>	Relevant to <a href="#">Reception Conditions</a> . Section 4 of the Immigration and Asylum Act 1999 provides support to a former asylum seeker, now appeal rights exhausted, on the basis that the individual (and their dependants) have a temporary legal or medical reason for being unable to return to their country of origin. Conditions are set out in regulations (secondary legislation).
<b>Section 95 support</b>	Relevant to <a href="#">Reception Conditions</a> . Section 95 of the Immigration and Asylum Act 1999 provides that support is given to adults and their dependants with an outstanding asylum claim or appeal and who are accepted to be destitute or will be destitute within the next 14 days.
<b>Section 98 support</b>	Relevant to <a href="#">Reception Conditions</a> . Section 98 of the Immigration and Asylum Act 1999 provides mainly for non-cash assistance to applicants during the asylum procedure.

## List of Abbreviations

<b>APPG</b>	All Party Parliamentary Group/s
<b>ARE</b>	Appeal Rights Exhausted
<b>ASAP</b>	Asylum Support Appeals Project
<b>AIU</b>	Asylum Intake Unit
<b>ASU</b>	Asylum Screening Unit
<b>AVID</b>	Association of Visitors to Immigration Detainees
<b>BID</b>	Bail for Immigration Detainees
<b>CAGS</b>	Consolidated Advice and Guidance Service
<b>CASAS</b>	Consolidated Asylum Support Application Services
<b>CIO</b>	Chief Immigration Officer
<b>CJEU</b>	Court of Justice of the European Union
<b>DFT</b>	Detained Fast Track System
<b>DNSA</b>	Detained Non-Suspensive Appeal
<b>EASO</b>	European Asylum Support Office
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>EWCA</b>	England and Wales Court of Appeal
<b>EWHC</b>	England and Wales High Court
<b>FOI</b>	Freedom of Information
<b>FFT</b>	Freedom From Torture
<b>FTT (IAC)</b>	First-Tier Tribunal Immigration and Asylum Chamber
<b>IMB</b>	Independent Monitoring Board
<b>ILR</b>	Indefinite Leave to Remain
<b>IRC</b>	Immigration Removal Centre
<b>JCWI</b>	Joint Council for the Welfare of Immigrants
<b>NAAU</b>	National Asylum Allocation Unit
<b>NGO</b>	Non-Governmental Organisation
<b>NHS</b>	National Health Service
<b>NSA</b>	Non-Suspensive Appeal
<b>OLCU</b>	Older Live Cases Unit
<b>OSS</b>	One Stop Services
<b>PTSD</b>	Post-Traumatic Stress Disorder
<b>STHF</b>	Short-Term Holding Facility
<b>UKBF</b>	United Kingdom Border Force
<b>UKCISA</b>	United Kingdom Council for International Student Affairs
<b>UKHL</b>	United Kingdom House of Lords (highest appellate court, now UKSC)
<b>UKRP</b>	United Kingdom Resident Permit
<b>UKSC</b>	United Kingdom Supreme Court
<b>UKVI</b>	United Kingdom Visas and Immigration

**UT (IAC)**

Upper Tribunal Immigration and Asylum Chamber

**VPR/VPRS**

Vulnerable Person Relocation Scheme



## Statistics

### Overview of statistical practice

Statistics on asylum are published as part of a package of immigration statistics on a quarterly basis by the National Statistics authority,<sup>1</sup> using Home Office administrative sources. Where statistics are not made available, they are requested directly from the Home Office using a Parliamentary Question.<sup>2</sup> Difficulties have also been encountered with regard to Home Office responses to freedom of information (FOI) requests.<sup>3</sup>

### Applications and granting of protection status at first instance in 2018

	Applicants in 2018	Pending at end 2018	Asylum status	Humanitarian Protection	Discretionary leave	Rejection	Asylum rate	Hum. Prot. rate	Dis. Leave rate	Rejection rate
<b>Total</b>	37,453	35,855	7,636	1,292	165	16,053	30.4%	5.1%	0.7%	63.8%

Breakdown by countries of origin of the total numbers

Iran	3,962	3,129	1,118	18	2	1,187	48.1%	0.8%	0.1%	51%
Iraq	3,598	3,227	359	66	29	1,650	17.1%	3.1%	1.4%	78.4%
Pakistan	2,582	2,381	416	1	2	1,791	18.8%	0.04%	0.08%	81.08%
Albania	2,384	4,041	28	0	5	1,085	2.5%	0%	0.4%	97.1%
Eritrea	2,193	1,769	838	1	0	62	93%	0.1%	0%	6.9%
Afghanistan	2,087	2,250	639	23	8	806	43.3%	1.6%	0.5%	54.6%
Sudan	1,774	1,642	608	2	3	308	66%	0.2%	0.3%	33.5%
India	1,632	1,599	1	0	11	772	0.1%	0%	1.4%	98.5%
Bangladesh	1,440	1,365	84	2	3	1,316	6%	0.1%	0.2%	93.7%
Vietnam	1,238	1,544	233	17	5	404	35.4%	2.6%	0.8%	61.2%
Syria	919	685	651	0	1	50	92.7%	0%	0.1%	7.2%

Source: Home Office. Recognition rate columns may not add up to 100% as other forms of leave may be granted.

<sup>1</sup> National Statistics Authority, available at: <https://www.statisticsauthority.gov.uk/>. See also Home Office, *Immigration Statistics*, available at: <https://bit.ly/2EAWesj>.

<sup>2</sup> Parliament, *Parliamentary Questions*, available at: <http://bit.ly/2kL0oIB>.

<sup>3</sup> See e.g. Information Commissioner, Decision FS50646722, 12 January 2017, available at: <http://bit.ly/2kQ5TiU>.

### Gender/age breakdown of the total number of applicants: 2018

	Number	Percentage
<b>Total number of applicants</b>	35,855	-
Men	:	:
Women	:	:
Children	:	:
Unaccompanied children	2,872	8%

Source: Home Office.

### Comparison between first instance and appeal decision rates: 2018

	First instance		Appeal	
	Number	Percentage	Number	Percentage
<b>Total number of decisions</b>	21,119	-	11,422	-
Positive decisions	6,246	29.3%	:	:
• <i>Refugee status</i>	5,558	26%	4,379	38%
• <i>Humanitarian protection</i>	584	2.8%	:	:
• <i>Discretionary leave</i>	104	0.5%	:	:
Negative decisions	14,186	67%	6,510	57%

Source: Home Office. Statistics excluding dependants for comparison purposes. Recognition rate columns may not add up to 100% as other forms of leave may be granted.

## Overview of the legal framework

### Main legislative acts relevant to asylum procedures, reception conditions, detention and content of protection

Title (EN)	Abbreviation	Web Link
Immigration Act 1971	IA 1971	<a href="http://bit.ly/1JKaigx">http://bit.ly/1JKaigx</a>
Immigration and Asylum Act 1999	IAA 1999	<a href="http://bit.ly/1C2MkVQ">http://bit.ly/1C2MkVQ</a>
Nationality Immigration and Asylum Act 2002	NIAA 2002	<a href="http://bit.ly/1Sat0PR">http://bit.ly/1Sat0PR</a>
Asylum and Immigration (Treatment of Claimants etc.) Act 2004	AITOCA 2004	<a href="http://bit.ly/1Sat3Lt">http://bit.ly/1Sat3Lt</a>
Borders Citizenship and Immigration Act 2009	BCIA 2009	<a href="http://bit.ly/1L4XIOC">http://bit.ly/1L4XIOC</a>
Immigration Act 2014	IA 2014	<a href="http://bit.ly/1cPORMc">http://bit.ly/1cPORMc</a>
Immigration Act 2016	IA 2016	<a href="http://bit.ly/2jqhiEv">http://bit.ly/2jqhiEv</a>

### Main implementing decrees and administrative guidelines and regulations relevant to asylum procedures, reception conditions, detention and content of protection

Title (EN)	Abbreviation	Web Link
Statement of Changes in Immigration Rules HC 395 Part 11	Immigration Rules	<a href="http://bit.ly/1FY1JYi">http://bit.ly/1FY1JYi</a>
Statement of Changes in Immigration Rules HC 395 Part 11B	Immigration Rules	<a href="http://bit.ly/1KKr1zi">http://bit.ly/1KKr1zi</a>
Statement of Changes in Immigration Rules HC 395 Part 12	Immigration Rules	<a href="http://bit.ly/1MOpgjX">http://bit.ly/1MOpgjX</a>
Asylum Seekers (Reception Conditions) Regulations 2005 SI 7	Reception Conditions Regs 2005	<a href="http://bit.ly/1L52LsU">http://bit.ly/1L52LsU</a>
Asylum Support Regulations 2000 SI 704	Asylum Support Regs 2000	<a href="http://bit.ly/1C2R7GQ">http://bit.ly/1C2R7GQ</a>
Asylum Support (Amendment) Regulations 2005 SI 11	Asylum Support Regs 2005	<a href="http://bit.ly/1Fd2wUj">http://bit.ly/1Fd2wUj</a>
Transfer for Determination of an Application for International Protection (Detention) (Significant Risk of Absconding Criteria) Regulations 2017	Dublin Retention Regs 2017	<a href="http://bit.ly/2jTZ6lr">http://bit.ly/2jTZ6lr</a>
The Detention Centre Rules 2001 SI 238	Detention Centre Rules	<a href="http://bit.ly/1GBXGY2">http://bit.ly/1GBXGY2</a>
Detention Service Orders	DSOs	<a href="http://bit.ly/1MOpYr7">http://bit.ly/1MOpYr7</a>
Asylum Process Guidance and Asylum Policy Instructions	APG/API	<a href="http://bit.ly/1BaVlvv">http://bit.ly/1BaVlvv</a>
The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 (S.I. 2014 No.2604 (L.31))	Procedural Rules	<a href="http://bit.ly/1eawcw7">http://bit.ly/1eawcw7</a>
Statement of Changes in Immigration Rules 2018	Immigration Rules	<a href="https://bit.ly/2weGiYf">https://bit.ly/2weGiYf</a>

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

The report was previously updated in **March 2018**.

### *Asylum procedure*

- ❖ **Admissibility:** Revised guidance in relation to inadmissibility, including the safe third country concept, policy and practice was published in October 2018.

### *Reception conditions*

- ❖ **Financial support:** No substantive differences in relation to the overall support available although significant developments include a successful legal challenge to the level of financial support given to people who are recognised as likely victims of modern slavery (trafficking).

### *Detention of asylum seekers*

- ❖ **Detention of vulnerable applicants:** Several detention policies were amended following the change in definition of torture used by the UK government.

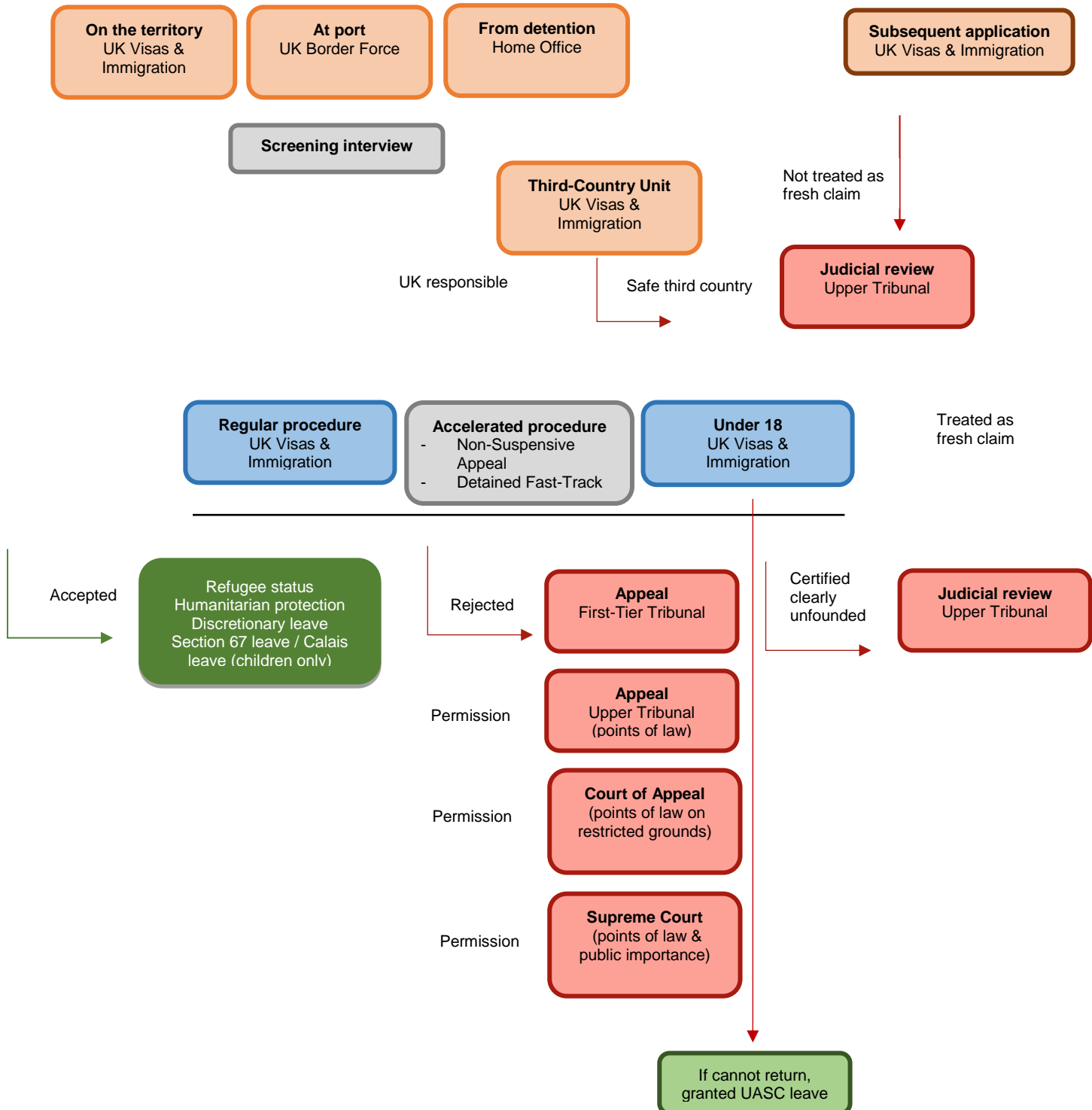
### *Content of international protection*

- ❖ Two new policies were introduced in relation to unaccompanied children brought by the UK government from other EU Member States. The first states that children transferred under Section 67 of the Immigration Act 2016 ('Dubs Amendment') would be granted leave even if they do not qualify for refugee or subsidiary protection. The second provides for similar leave to be granted to children transferred here when the Calais camp was cleared in October 2016.

# 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: <sup>4</sup> | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| ▪ Fast-track processing: <sup>5</sup>   | <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: <sup>6</sup>   | <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 (EN)
Application at the border ❖ At the border ❖ On the territory	Home Office UK Border Force (UKBF) 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 ❖ Second (onward) appeal	First Tier Tribunal, Immigration and Asylum Chamber (FTT (IAC)) 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?
Home Office Visas and Immigration (UKVI), Asylum Casework Directorate	485	Home Office	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Source: Home Office.

<sup>4</sup> For applications likely to be well-founded or made by vulnerable applicants.

<sup>5</sup> Accelerating the processing of specific caseloads as part of the regular procedure.

<sup>6</sup> Labelled as "accelerated procedure" in national law.

## 5. Short overview of the asylum procedure

Responsibility for the asylum process rests with the Secretary of State for the Home Department, 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 Intake and 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 been renamed the Asylum Intake Unit (AIU), but this name is not yet used in all guidance.

### First instance procedure

In most 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. Children making a claim in their own right are not screened; if they are already in the care of the local authority their claim is registered with the Home Office at a scheduled interview. If the Home Office encounters them first, the child will be subject to a 'welfare interview'. 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 specially trained decision maker; accelerated procedure (Detained Fast Track<sup>7</sup> or clearly unfounded with Non-Suspensive Appeal); safe third country procedure or general casework which is the regular procedure. In all cases the procedure deals with both refugee status and subsidiary protection.

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.<sup>8</sup> 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 operated 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.<sup>9</sup> The current guidance for applications considered whilst the applicant is detained was updated in September 2017.<sup>10</sup>

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

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<sup>7</sup> Currently suspended but remains in the description of the procedure.

<sup>8</sup> Section 16 Tribunals Courts and Enforcement Act 2007.

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

<sup>10</sup> Home Office, *Detention: Interim instruction for cases in detention who have claimed asylum, and for entering cases who have claimed asylum into detention*, 9 September 2017, available at: <http://bit.ly/2kPK16s>.

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**

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 unless certified otherwise 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.

## **Rules and guidance**

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 laid before Parliament in a procedure that does not routinely 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](http://www.gov.uk), including information about countries of origin used in asylum decision-making and guidance for staff on how to make asylum decisions.



## B. Access to the procedure and registration

### 1. Access to the territory and push backs

#### Indicators: Access to the Territory

1. 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 UK government has made several statements on the clearance of the unofficial Calais camps outlining its position and actions, including a statement by the Home Secretary on 24 October 2016.<sup>11</sup>

Juxtaposed border controls in France and Belgium allow the UK to limit access to the territory. On 18 January 2018 the two governments reiterated their commitment to juxtaposed controls in the Sandhurst Agreement, although no new measures were introduced relating to the operation of those controls.<sup>12</sup>

An increase in the number of individuals attempting to enter the UK having travelled across the Channel using small unregulated vessels led to the Home Secretary making statements in relation to border control and declaring the issue a 'major incident'. According to the statement, over 500 people attempted to enter the UK by sea last year.<sup>13</sup> The statement appeared not to introduce any new regulations or practice other than a commitment to ensure that the [Safe Third Country](#) guidance is followed and an increase in capacity of border control vessels to monitor the situation.

A further statement was made on 24 January 2019 following an agreement between the Home Secretary and French Interior Minister announcing more cooperation and funding building on what is described as successful interventions aimed at preventing these crossings.<sup>14</sup>

### 2. 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?

The Secretary of State for the Home Department is responsible in law for registering asylum applications.<sup>15</sup> 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.<sup>16</sup>

Where a couple or family claim asylum, the children normally apply as dependants on the claim of one of their parents. Also one partner may apply as the dependant of the other. This means that the outcome of their claim will depend upon that of the main applicant. It is policy to inform women separately that they

<sup>11</sup> Government, 'Home Secretary's statement on the transfer of unaccompanied minors from Calais camp', 24 October 2016, available at: <http://bit.ly/2kmugr8>.

<sup>12</sup> Secretary of State for the Home Department, 'Statement to Parliament', HCWS415, 19 January 2018, available at: <http://bit.ly/2DokzPb>.

<sup>13</sup> Secretary of State for the Home Department, 'Statement: migrant crossings', 7 January 2019, available at: <https://bit.ly/2RVnOZ0>. See also Refugee Council, 'Refugee Council responds to Home Secretary's Ministerial comment on Channel crossings', 8 January 2019, available at: <https://bit.ly/2Mg8qRC>.

<sup>14</sup> Home Office, 'UK and France sign action plan to tackle small boat crossings', 24 January 2019, available at: <https://bit.ly/2UvQSUM>.

<sup>15</sup> Section 113 Nationality, Immigration and Asylum Act (NIAA) 2002.

<sup>16</sup> Para 328 Immigration Rules Part 11.

may claim separately from their partner,<sup>17</sup> although there is no recent research or regular auditing to check that this is routinely done.

There is no specific time limit for asylum seekers to lodge their application. A claim may be refused if the applicant 'fails, without reasonable explanation, to make a prompt and full disclosure of material facts.'<sup>18</sup> However, 'applications for asylum shall be neither rejected nor excluded from examination on the sole ground that they have not been made as soon as possible.'<sup>19</sup> In practice, where someone is present in the UK in another capacity, e.g. as a student or worker, and then claims asylum after some years, whether or not they have overstayed their immigration leave, this may be treated as evidence that they are not in fear. Financial support and accommodation can be refused if the person did not claim 'as soon as reasonably practicable',<sup>20</sup> but not if this would entail a breach of human rights (see [Reception Conditions](#)).<sup>21</sup>

First applications made from inside the UK must be registered by appointment at the Asylum Intake Unit (AIU) – formerly Asylum Screening Unit (ASU) – in **Croydon** in the South East of England unless the asylum seeker is in detention. This includes all applications not made at the port of entry, even if only hours after arrival 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 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.<sup>22</sup> 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.<sup>23</sup> In practice, this is only permitted exceptionally. There is no government funding for fares to the AIU. 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 for accommodation.

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 a 2017 inspection showed that screening officers struggle to meet their targets.<sup>24</sup> 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

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<sup>17</sup> Home Office, *Gender issues in the asylum claim*, September 2010, available at: <http://bit.ly/1CbiHBK>, para 7.1; Home Office, *Dependants and former Dependants*, May 2014, available at: <http://bit.ly/2Bjz5G8>.

<sup>18</sup> Para 339M Immigration Rules Part 11.

<sup>19</sup> Para 339MA Immigration Rules Part 11.

<sup>20</sup> Section 55 NIAA 2002.

<sup>21</sup> House of Lords, *Limbuela v Secretary of State for the Home Department* [2005] UKHL 66.

<sup>22</sup> Home Office, *Asylum Process Guidance: Registering an asylum application in the UK*, available at: <http://bit.ly/1BkfXXq>, para 7.1.

<sup>23</sup> Home Office, *Asylum Process Guidance: Postal claims*, available at: <http://bit.ly/1CbntPG>, paras 3.4 and 4.1.

<sup>24</sup> Independent Chief Inspector of Borders and Immigration, *An inspection of asylum intake and casework*, November 2017, available at: <http://bit.ly/2hZAIBC>.

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. Although confidential space is now provided for interviewing at the **Croydon** screening unit, there is no supervised child care for this first stage of the process.<sup>25</sup> The lack of child care 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.

The government published new guidance relating to this stage of the process in 2018.<sup>26</sup> Although details of the asylum claim should not be required at this stage, the decision as to which kind of procedure the application will be routed through, including inadmissibility (on [Safe Third Country](#) grounds) and suitability for detention.

There is no provision for legal assistance at the screening interview except for unaccompanied children. 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 a Legal Adviser](#)' which enables a search for contact details of legal representatives listed by subject matter and by region. The officer can search in the region where the asylum seeker is going to be sent for initial accommodation (see [Reception Conditions](#)). There is no obligation on screening offices to help in finding legal representation.

### **Registration of unaccompanied children**

The policy is to treat unaccompanied children differently and this system is now the norm.<sup>27</sup> The policy guidance, first issued in July 2016 and updated in October 2017 reflects the practice that had emerged following a report by the Office of the Children's Commissioner for England,<sup>28</sup> and a judgment of the Court of Appeal.<sup>29</sup> Children encountered prior to them being cared for by a local authority are interviewed by an immigration officer in a 'welfare interview' which is designed to elicit information about the safety of the child and enable a referral to be made. If the child is already in the care of the local authority the appointment with an immigration officer is to register the claim. At both types of interview the child's biometrics are taken. If under 16, the process requires a responsible adult (independent of the Home Office) to be present for the biometrics.

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<sup>25</sup> See Joint Committee on Human Rights, *Violence against Women and Girls Sixth report of session 2014-15*, HL Paper 106 HC 594, recommendation 37.

<sup>26</sup> Home Office, *Asylum Screening and Routing*, October 2018, available at: <https://bit.ly/2AHc9D1>.

<sup>27</sup> Home Office, *Processing children's asylum claims*, October 2017, available at: <http://bit.ly/2jtz4uD>.

<sup>28</sup> Adrian Matthews, Office of the Children's Commissioner, *Landing in Dover: The Immigration process undergone by unaccompanied children arriving in Kent*, 2012, available at: <http://bit.ly/1MjwYn>.

<sup>29</sup> Court of Appeal, *R (AN and FA) v Secretary of State for the Home Department* [2012] EWCA Civ 1636.

## C. Procedures

### 1. Regular procedure

#### 1.1. 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:     | None  |
| 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 at first instance as of 31 December 2018   | 35,855  |

The Home Office has responsibility for all aspects of immigration, and is directly responsible for policy development. The department dealing with the processing of asylum claims is the UK Visas and Immigration (UKVI). Within the UKVI the directorate dealing with asylum claims is known as the Immigration and Protection Directorate; Asylum Intake and Casework is within that directorate. Responsibility for border control lies with the UK Border Force, an executive agency of the Home Office which combines immigration, policing and customs functions. Subjects covered by the publicly available guidance for case workers include making an asylum decision.<sup>30</sup>

There is no enforceable time limit for deciding asylum applications, but the immigration rules say that the decision must be taken 'as soon as possible'.<sup>31</sup> The target to deal with 'straightforward' applications was six months, or 182 days, although in February 2019 the government announced that this strict target had been abandoned,<sup>32</sup> and discussions during early 2019 will result in a decision of how best to replace it. Statistics were regularly published as to the performance of the UKVI against the six month target and how many cases were pending after being in the system for more than six months. At the end of December 2018, it had reached a record level of 12,213.

If a decision is not taken within six months, a caseworker should inform the applicant of the delay. This is common in cases designated as 'non-straightforward'; in 2017 the internal guidance on non-straightforward cases was contained in a report by the Independent Chief Inspector of Borders and Immigration and much criticism made of the processing of such claims.<sup>33</sup> Criticisms include lack of attention to a case once it has been designated 'non-straightforward' and some reports of designation as 'non-straightforward' simply on the basis that the 182-day deadline was fast approaching. Most legal challenges relating to delays, even of unaccompanied minors, do not succeed unless it can be shown that the delay was deliberate, which was the case in one case, *TM v Secretary of State for Home Department*, during 2018 where it was found that the case was unlawfully put on hold.<sup>34</sup>

The aforementioned Independent Chief Inspector report also reveals that a cohort of applicants are routed into casework without having had a screening interview; this is likely to delay the process as elements of the screening process must be conducted prior to a substantive interview being completed e.g. security checks. There is anecdotal evidence only of delays in applicants having their substantive interviews

<sup>30</sup> Home Office, *Asylum decision making guidance (asylum instructions)*, 23 February 2015, available at: <http://bit.ly/1Q7pK5Z>.

<sup>31</sup> Para 333A Immigration Rules Part 11.

<sup>32</sup> Immigration Minister, Reply to Asylum: Applications: Written question – 220305, 18 February 2019, available at: <https://bit.ly/2VBYXre>.

<sup>33</sup> Independent Chief Inspector of Borders and Immigration, *An inspection of asylum intake and casework*, November 2017, available at: <http://bit.ly/2hZAIBC>.

<sup>34</sup> Upper Tribunal, *TM v Secretary of State for Home Department* [2018] UKUT 299 (IAC), 23 August 2018, available at <https://bit.ly/2SUhU6R>.

scheduled, as no statistics are collected on this issue and the Independent Chief Inspector's report did not cover it. The author is aware of many unaccompanied child applicants who have been waiting more than six months for a substantive interview and several cases of up to two years delay.

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 pending for less than six months – 15,043 at the end of 2018 – and for more than six months – 12,213 at the end of 2018.

## 1.2. Prioritised examination and 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 was the Detained Fast Track, which has been suspended since 2015.

## 1.3. 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?  
❖ If so, are interpreters available in practice, for interviews?  
☒ Yes ☐ No  
☒ 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,<sup>35</sup> 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.<sup>36</sup> In this case they may be refused an interview. Applicants under 12 years old are not normally interviewed, though they can be if they are willing and it is deemed appropriate.<sup>37</sup> In summary, it is very rare for an asylum applicant over 12 years of age on their first application in the regular procedure not to have an interview.

Personal interviews are conducted by the authority responsible for taking the decisions, i.e. by the Home Office caseworkers, although it will not always be the same individual. Asylum seekers are entitled to have a legal representative with them at the personal interview, but there is no public funding for this for adult claimants, save in the case of lack of mental capacity,<sup>38</sup> 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.

<sup>35</sup> Para 339NA Immigration Rules Part 11.

<sup>36</sup> Home Office, *Asylum Process Guidance: Routing Asylum Applications*, para.3.9.

<sup>37</sup> Home Office, *Children's Asylum Claims*, available at <http://bit.ly/2Bcs1Le>.

<sup>38</sup> The Civil Legal Aid (Immigration Interviews) (Exceptions) Regulations 2012, available at: <http://bit.ly/2BbxjH6>.

The guidelines on gender issues require provision of child care so that parents do not have to have their children present while being interviewed about possibly traumatic experiences.<sup>39</sup> This is now formally in place in every location (other than offices with no interview facility) although there have been some gaps due to a change of provider or location.

## **Videoconferencing**

Increasingly, substantive interviews may take place through video conferencing facilities, to accommodate an interviewing officer or interpreter being located in a different area from the applicant. The guidance, including the invitation to interview letter template, has not, at the time of writing, been amended to reflect this increasing practice.

## **Interpretation**

Interpreters are required by the Immigration Rules and are provided by the Home Office. There is a code of conduct for these interpreters,<sup>40</sup> 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. 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.<sup>41</sup> Home Office caseworkers are not always familiar with this, and it can be difficult for problems of interpretation to be raised and rectified at the time they occur. Asylum seekers are allowed to take an interpreter of their own choosing to the interview, but there is no public funding for this in most adult cases, so taking one's own interpreter is unusual.

Normal good practice is that asylum seekers are asked at the screening interview whether they wish to be interviewed by a man or a woman, and the policy and practice is to respect this preference, subject to availability of staff.<sup>42</sup> This policy also applies to interpreters. Concerns have been raised as to what understanding applicants have of the purpose of this, given that such requests do not appear to be common.<sup>43</sup>

## **Recording and transcript**

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 audio recording if the asylum seeker has not requested it in advance, and need not ask again when the asylum seeker arrives for interview.<sup>44</sup> The recording must be provided to the applicant after the interview. Verbatim transcripts of the interview are provided to the applicant shortly after the interview and five working days are allowed to make comments or corrections before the first instance decision is taken.

The UKVI is currently rolling out digital recording of interviews to all locations although no public information is available on this and the guidance still refers to the policy stated above.

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<sup>39</sup> Home Office, *Asylum Policy Instruction, Gender issues in the asylum claim*, para 7.1.

<sup>40</sup> Home Office, *Asylum Policy Instruction: Asylum Interviews Section 8: Interpreters*.

<sup>41</sup> Home Office, *Asylum Policy Instruction: Asylum Interviews Section 7.3 Professional conduct*.

<sup>42</sup> Home Office, *Asylum Policy Instruction, Gender issues in the asylum claim*, para 7.1, available at: <http://bit.ly/1CbiHBK>.

<sup>43</sup> Independent Chief Inspector of Borders and Immigration, *An inspection of asylum intake and casework*, November 2017, available at: <http://bit.ly/2hZAIBC>.

<sup>44</sup> Home Office, *Asylum Policy Instruction, Asylum Interviews*, March 2015, Section 6.1 Recording policy.



## 1.4. Appeal

### Indicators: Regular Procedure: Appeal

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

<ul style="list-style-type: none"><li>❖ If yes, is it</li><li>❖ If yes, is it suspensive</li></ul>	<table border="0"><tr><td><input checked="" type="checkbox"/> Yes</td><td><input type="checkbox"/> No</td></tr><tr><td><input checked="" type="checkbox"/> Judicial</td><td><input type="checkbox"/> Administrative</td></tr><tr><td><input checked="" type="checkbox"/> Yes</td><td><input type="checkbox"/> No</td></tr></table>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Judicial	<input type="checkbox"/> Administrative	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No						
<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: 42 weeks

### 1.4.1. Appeal to the First Tier Tribunal

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.<sup>45</sup> Lodging an appeal suspends removal from the UK, unless the case is certified as 'clearly unfounded'.

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 (€159) is required for an oral hearing of an asylum appeal in the regular procedure. Applicants need not pay if they are receiving asylum support (see [Reception Conditions](#)) or if they have public funding to be represented.<sup>46</sup> It is also possible to apply to have the fee waived, and destitute asylum seekers without asylum support would qualify for this, but may not have the advice or information to make the application. In practice most asylum seekers are not liable to pay the fee because most are receiving asylum support 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. Research published in 2016 warns that asylum seekers face a 'lottery' in terms of access to legal advice.<sup>47</sup> Tribunal rules require all evidence to be translated into English where relevant and sent to all parties in advance of the hearing.<sup>48</sup> 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.

There is no public information routinely made available by government sources, including Courts and Tribunals service, on processing times specific to asylum cases as the data refers to immigration hearings. A Parliamentary Question answered in January 2019 indicated that the average waiting time for asylum appeals from lodging to hearing was 42 weeks, during the period January-September 2018.<sup>49</sup>

<sup>45</sup> Rule 19 The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.

<sup>46</sup> HM Courts and Tribunals Service, *Immigration and Appeals Tribunal Fees Guidance*, available at: <http://bit.ly/1d19Fk0>.

<sup>47</sup> Andrew Burrige and Nick Hill, University of Exeter, 'Conveyor-Belt Justice: Precarity, Access to Justice, and Uneven Geographies of Legal Aid in UK Asylum Appeals', 2016.

<sup>48</sup> Rule 12 The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.

<sup>49</sup> Lucy Frazer MP, Reply to Immigration: Appeals: Written question - 206300, 18 January 2019, available at: <https://bit.ly/2NMoDPd>.

The BBC used Freedom of Information Act requests to reveal the variance in appeal success rates by hearing centre,<sup>50</sup> although other factors may influence the outcome of appeals.

Research by Asylum Aid and the National Centre for Social Research in 2017 looked at the way women experienced the asylum appeals process, what are the factors contributing to successful cases at appeal and how the guidance for Immigration Judges is implemented in practice.<sup>51</sup>

Asylum seekers give evidence in person at the appeal hearing, and the Tribunal provides interpreters on request. Hearings are public. Decisions are in theory public documents, but decisions of the FTT (IAC) are not published.

#### 1.4.2. Onward appeal to the Upper Tribunal

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.<sup>52</sup> 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.<sup>53</sup>

Lodging an appeal or an application for permission to appeal against an asylum refusal suspends removal from the UK, unless the case has been certified under Section 94 NIAA as clearly unfounded.<sup>54</sup>

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 is now in the Upper Tribunal's jurisdiction.

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<sup>50</sup> BBC, 'Asylum seekers face appeals "lottery"', 29 November 2017, available at: <http://bbc.in/2AiFm66>.

<sup>51</sup> Asylum Aid and NatCen, 'Through her eyes; enabling women's best evidence in asylum appeals', 2017, available at: <http://bit.ly/2BpN0KN>.

<sup>52</sup> Rule 33 Procedure Rules.

<sup>53</sup> Rule 54.7A Civil Procedure Rules.

<sup>54</sup> Home Office, *Section 94 guidance*, 12 April 2017, available at: <http://bit.ly/2DfyJIK>.



## 1.5. 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,<sup>55</sup> access to this is not guaranteed. Statistics on applications for legal aid at first instance were not made available by the Home Office in response to parliamentary questions.<sup>56</sup>

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 (€114) 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 (€471).<sup>57</sup> Exceptions include unaccompanied children applicants, and where the representative can evidence that they have undertaken work that equates to over 3 times the value of the fixed fee. An hourly rate can then be paid if the Legal Aid Agency, which assesses the claim for costs, accepts that 3 times the level of work was done and warranted.<sup>58</sup>

The low fixed fee and the significant jump to achieve an hourly rate both put pressure on conscientious representatives. The low fixed fee at these pre-appeal stages also makes it difficult to conduct a thorough examination of a complex case. The grant of legal aid for appeal depends on this assessment by the lawyer, and the award of legal aid contracts by the Legal Aid Agency depends on performance indicators including success at appeals. From December 2013 the rates paid for 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.<sup>59</sup>

Legal assistance is not provided at the AIU 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

<sup>55</sup> Para 333B Immigration Rules Part 11.

<sup>56</sup> Lucy Frazer MP, Reply, Legal Aid Scheme: Asylum: Written question, 202741, 21 December 2018, available at: <https://bit.ly/2G09IzX>.

<sup>57</sup> Schedule 1, Table 4(a) Civil Legal Aid (Remuneration) Regulations 2013, available at: <http://bit.ly/1fiODPA>.

<sup>58</sup> Immigration Specification to the 2013 Standard Civil Contract, available at: <http://bit.ly/1QFm9jO>.

<sup>59</sup> Julie Gibbs and Deri Hughes-Roberts, *Justice at Risk: Quality and Value for Money in Asylum Legal Aid*, Runnymede Trust, 2012, and see Christel Querton, *I feel like as a woman I'm not welcome: a gender analysis of UK law, policy and practice*, Asylum Aid 2012.

interview. This may include making additional written representations to the Home Office, which as a matter of usual policy are only allowed within five days after the interview. With some exceptions (including unaccompanied children and people who lack capacity), there is no public funding for a legal representative to attend the asylum interview.<sup>60</sup>

The pressures described above do not apply in **Scotland**, where fees are not fixed, and there is no merits test for representing at a first appeal. For an appeal to the 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. In **Scotland**, supply is more closely matched with demand, although there are also measures to contain costs.<sup>61</sup> The Scottish Legal Aid Board mentioned in a 2015 monitoring report, covering the period 2011-2012, that only about 5% of appellants do not have legal representation in asylum cases, and this percentage has remained stable over the past decade.<sup>62</sup> This monitoring does not appear to have been repeated since.

The amount that is payable per case in England and Wales has been reduced steadily over a period of years. Prior to 2011, two large non-governmental organisations offered free legal advice, but both had closed by 2011. Additionally, the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012 took immigration advice out of scope for all except asylum and trafficking. A legal challenge in regulation to children in immigration proceedings was settled before it reached the court and the government confirmed in its response to the review of LASPO that it would reinstate legal aid for separated migrant children.<sup>63</sup> The difficulties and constrictions applied by the system of contracted providers by region, based on historical data, result in a general feeling that there is insufficient supply to meet the demand. Concerns are also raised at the decline in good quality legal advice in asylum, for the above and other reasons.<sup>64</sup>

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%.<sup>65</sup> 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. 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. The government considers that this change has reached its policy aim of reducing unmeritorious judicial reviews, although acknowledges that this change was not the only factor.<sup>66</sup>

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<sup>60</sup> Legal Aid, Sentencing and Punishment of Offenders Act 2012, Schedule 1 Part 1 (30), available at: <http://bit.ly/1J5vmy0>.

<sup>61</sup> Scottish Legal Aid Board, *Best Value Review: Immigration And Asylum* 2011, available at: <http://bit.ly/1LgW2fE>.

<sup>62</sup> Scottish Legal Aid Board, *Monitoring the availability and accessibility of legal services: Fourth monitoring report*, February 2016, available at: <http://bit.ly/2jQcU4E>, 21.

<sup>63</sup> Ministry of Justice, *Legal Support: The Way Ahead*, February 2019, available at: <https://bit.ly/2XII29i>.

<sup>64</sup> MigrationWork, *Quality of legal services for asylum seekers*, January 2016, available at: <http://bit.ly/2jzcw7V>.

<sup>65</sup> The Civil Legal Aid (Merits Criteria), (Amendment) Regulations 2014 No. 131, available at: <http://bit.ly/1epJg0S>.

<sup>66</sup> Ministry of Justice, *Post-implementation review of Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)*, February 2019, available at: <https://bit.ly/2UoIK8v>.

## 2. Dublin

### 2.1. General

#### Dublin statistics: 2018

Outgoing procedure			Incoming procedure		
	Requests	Transfers		Requests	Transfers
<b>Total</b>	5,510	209	<b>Total</b>	1,940	1,215
Italy	1,840	22	Greece	752	946
Germany	939	26	France	518	92
France	646	51	Ireland	196	9

Source: Home Office: <http://bit.ly/2BIZ2Tg>.

In February 2018, the government published up-to-date Dublin statistics for the first time, having previously referred enquirers to Eurostat figures, even as recently as in responses to parliamentary questions in January 2018.<sup>67</sup>

The Court of Justice of the European Union (CJEU) recently ruled that the UK's notification of intention to leave the EU does not entail an obligation on other Member States to make use of the sovereignty clause or to take into consideration the best interests of the child and to examine asylum applications themselves.<sup>68</sup>

#### Application of the Dublin criteria

The UK issued outgoing 5,510 requests and received 1,940 on the following grounds in 2018:

Outgoing and incoming Dublin requests by criterion: 2018		
Dublin III Regulation criterion	Outgoing	Incoming
Family provisions: Articles 8-11	229	810
Regular entry: Articles 12 and 14	87	137
Irregular entry: Article 13	1,177	4
Dependent persons: Article 16	0	17
Humanitarian clause: Article 17(2)	0	106
"Take back": Articles 18 and 20(5)	4,017	866
<b>Total outgoing and incoming requests</b>	<b>5,510</b>	<b>1,940</b>

Source: Home Office

The Home Office finally issued guidance in November 2017 on the operation of the Dublin III Regulation,<sup>69</sup> following a consultation period with key stakeholders in September 2016.

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

<sup>67</sup> See e.g. Minister for Immigration, Reply, Asylum: Written question, 121419, 11 January 2018, available at: <http://bit.ly/2FDVnGs>.

<sup>68</sup> CJEU, Case C-661/17 M.A., Judgment of 23 January 2019.

<sup>69</sup> Home Office, *Dublin III Regulation*, November 2017, available at: <http://bit.ly/2rmazo9>.

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.

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 third country to take charge of the claim if the applicant indicates that he or 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 the Dublin III Regulation have lapsed.

If the applicant wishes to be transferred out of the UK, a referral is made to the Third Country Unit (TCU) and the Home Office will not normally object. However, if the applicant wishes to have his or her claim substantively considered in the 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.

### *The family criteria*

The Upper Tribunal detailed in the case of *MS* the state's duty to "act reasonably" and to take "reasonable steps" in discharging the duty to investigate the basis of a "take charge" request sent by another country. This includes the option of DNA testing in the sending country or, if not, in the UK.<sup>70</sup>

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 or she has family members in the UK at an early stage, normally the Home Office 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.

During 2016 concerted efforts were made in the UK by lawyers and activists to encourage the government to use the family unity clauses, with particular focus on unaccompanied children in Northern **France** who have family members in the UK. The particular problems and delays for unaccompanied children trying to enter the asylum system in France on order to have their claim transferred to the UK were highlighted in a case in the Upper Tribunal in January 2016.<sup>71</sup> Whilst this case was later overturned by the Court of Appeal,<sup>72</sup> it resulted in the government making more of a concerted effort to process 'take charge' requests relating to this cohort of children more promptly. Several statements were made by the Home Secretary to this effect.<sup>73</sup> Immediately prior to the clearance of the Calais camp in October 2016, the process was expedited on a temporary basis.<sup>74</sup> The Sandhurst Treaty committed the UK and French governments to specific timescales relating to the consideration of Dublin requests from France: 25 days for children and 30 days for adults.<sup>75</sup>

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<sup>70</sup> Upper Tribunal, *MS v Secretary of State for the Home Department* [2019] UKUT 9 (IAC), 19 July 2018.

<sup>71</sup> Upper Tribunal, *R (ZAT) v Secretary of State for the Home Department* [2016] UKUT 61 (IAC), 22 January 2016, available at: <http://bit.ly/2jq9zLr>.

<sup>72</sup> Court of Appeal, *Secretary of State for the Home Department v ZAT* [2016] EWCA Civ 810, 2 August 2016, available at: <http://bit.ly/2kmEwiw>.

<sup>73</sup> Government, 'Joint press release by the governments of France and the United Kingdom', 30 August 2016, available at: <http://bit.ly/2bxKcEp>.

<sup>74</sup> Government, 'Home Secretary's statement on the transfer of unaccompanied minors from Calais camp', 24 October 2016, available at: <http://bit.ly/2kmugr8>.

<sup>75</sup> Sandhurst Treaty, 18 January 2018, available at: <http://bit.ly/2FU7w9T>.

In November 2017 the government published statistics relating to the children transferred to the UK when the Calais camp was cleared. The one-off publication gives a breakdown by reason for transfer, gender and child's country of origin.<sup>76</sup> In 2017, 151 requests were made to transfer unaccompanied children to the UK under Article 8(1), of which 94 resulted in the child's arrival into the UK. 165 requests were made and 81 children brought to the UK under Article 8(2) of the Regulation. Most of the media focus on Dublin has related solely to the issue of unaccompanied children.

With regard to Article 9, the Upper Tribunal clarified in April 2018 that a family member acquiring citizenship in the UK after having received international protection remains a "family member who is a beneficiary of international protection" for the purposes of the Dublin Regulation.<sup>77</sup>

### **The discretionary clauses**

Lawyers say that the UK rarely applies the discretionary clauses of the Dublin Regulation, and that the only exception which the UK regularly makes to the issuing of a certificate in Dublin cases is where the applicant has a spouse, parents or children who are refugees in the UK.<sup>78</sup> Details of family members are routinely requested during the screening interview, but the applicant is not advised of the possibility of asking for the humanitarian 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.

In a case in the Upper Tribunal known as *RSM*, an application had been made for the UK to use its powers under Article 17 to expedite the transfer of a boy from Italy, where he had no family (the only family having been lost at sea crossing the Mediterranean) to the care of a relative. The UK had refused to use these powers, arguing that they were only permitted so to do if there was no eligibility under Article 8 (of the same regulation). The court held that the UK government did have the power to use its discretion and that in this case the boy's best interests determined that he should be transferred without waiting for the process under Article 8.<sup>79</sup>

More recently, the Upper Tribunal held in *SM* that, in the case of a "particularly vulnerable person", failure to consider whether to apply the "sovereignty clause" is likely to render the transfer decision unlawful.<sup>80</sup>

As regards the processing of requests under Article 17(2), the Upper Tribunal held in *HA* that there is a wide discretion available to the country receiving a "humanitarian clause" request under Article 17(2), but it is not untrammelled. It was therefore for the Home Office to take into account Article 7 of the EU Charter / Article 8 ECHR and the best interests of the child when assessing whether a "humanitarian clause" request should be accepted.<sup>81</sup>

Statistics show that in 2018, 106 requests were made for the UK to take in an applicant under the humanitarian clause, while 25 people were transferred under this article in the same period. No requests were made by the UK under that clause.

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<sup>76</sup> Government, *Transfers of children to the UK from the Calais Operation: November 2017*, available at: <http://bit.ly/2FSWh1x>.

<sup>77</sup> Upper Tribunal, *HA v Secretary of State for the Home Department* [2018] UKUT 297 (IAC), 19 April 2018.

<sup>78</sup> Following CJEU, Case C-648/11 *R (MA, BT, DA) v Secretary of State for the Home Department*, Judgment of 6 June 2013, the UK is not able to apply the Dublin Regulation to unaccompanied minors.

<sup>79</sup> Upper Tribunal, *R (RSM) v Secretary of State for the Home Department* [2017] UKUT 124 (IAC), 12 April 2017, available at: <http://bit.ly/2gZap0W>.

<sup>80</sup> Upper Tribunal, *R (SM) v Secretary of State for the Home Department (Dublin Regulation – Italy)* [2018] UKUT 429 (IAC), 4 December 2018.

<sup>81</sup> Upper Tribunal, *HA v Secretary of State for the Home Department* [2018] UKUT 297 (IAC), 19 April 2018.

## 2.2. 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 European Convention on Human Rights (ECHR).<sup>82</sup> In relation to a person who can be removed to one of these countries, the Dublin Regulation is applied.

Whether the person can be removed to one of these countries is determined in the first instance by whether they can be shown to have travelled through that country. Fingerprinting is a routine part of the screening process, carried out in all cases, and fingerprints are sent to the Immigration Fingerprint Bureau (IFB) which automatically runs a fingerprint check on the Eurodac database.<sup>83</sup>

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.<sup>84</sup> It can also contribute to a decision to detain.<sup>85</sup>

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.<sup>86</sup> During the period of healing the person should be 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.'<sup>87</sup>

Enquiries as to the route of travel are also a routine part of the screening process in all cases. Together with the results of a Eurodac search, the asylum seeker's account of their route of travel will determine whether the application is referred to the Third Country Unit.

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](#).

<sup>82</sup> Schedule 3 Part 2, First List AITOCA.

<sup>83</sup> Home Office, *Dublin III Regulation*, November 2017, available at: <http://bit.ly/2rmazo9>.

<sup>84</sup> Para 339M Immigration Rules.

<sup>85</sup> Para 55.6.3 Enforcement Instructions and Guidance, available at: <http://bit.ly/2FR3miU>.

<sup>86</sup> Home Office, *Asylum Instruction: Applicants with Poor Quality Fingerprints* para 1.3.

<sup>87</sup> *Ibid*, para 8.1.



## 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)*,<sup>88</sup> referring to the ECtHR 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 Court of Appeal judgment on the case, now referred to as *NA (Sudan)*,<sup>89</sup> broadly maintained this position. It decided that *Tarakhel* did not extend to other vulnerable persons and was only ever intended to apply to families with children. And the two appellants in *NA (Sudan)* were extremely vulnerable, suffering a range of health problems including severe depressive disorder, and the risk of suicide, with one appellant suffering a history of rape and sexual abuse in Italy.

In coming to this conclusion, the Court relied on the decision of several cases decided since *Tarakhel* involving individuals suffering from serious PTSD, health problems, and the risk of suicide. In some, children were involved, and it decided that general, rather than specific, assurances were sufficient, representing a further rollback of *Tarakhel*.

In line with the Supreme Court's ruling in *EM (Eritrea)*,<sup>90</sup> the Court of Appeal reaffirmed the fundamental question as being whether, in assessing all the circumstances of an individual's case, substantial grounds have been shown for believing that the person concerned faces a real risk of being subjected to treatment meeting the Article 3 threshold. But the starting point is always going to be the presumption, labelled as a 'significant evidential presumption' by the Court, that Member States will comply with their obligations.<sup>91</sup> The Court decided in the case of Italy that the presumption was not rebutted, taking the opportunity to remind us all that: 'the situation in Italy is in no way comparable to that in Greece and that a general ban on returns to Italy cannot be justified.'<sup>92</sup>

UK policy states that with regard to Greece and Hungary, returns under the Dublin Regulation are currently suspended, except in cases where there is evidence that the applicant is already a beneficiary of international protection in one of those states. In these cases, advice must be sought from senior staff as to whether or not to proceed with a take back request.<sup>93</sup>

## 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 as inadmissible on third country grounds without its substance being considered in the UK.

In general, applicants are detained when the proposed receiving state has accepted, or by default, deemed to have accepted, the UK's request. Applicants are generally detained until removal, which

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<sup>88</sup> High Court, *R (NA) v Secretary of State for the Home Department* [2015] EWHC 1095 (Admin), 22 April 2015, available at: <http://bit.ly/2jqTmFD>.

<sup>89</sup> Court of Appeal, *NA (Sudan) v Secretary of State for the Home Department* [2016] EWCA Civ 1060, 1 November 2016, available at: <http://bit.ly/2kLNdAY>.

<sup>90</sup> Supreme Court, *EM (Eritrea) v Secretary of State for the Home Department* [2014] UKSC 12, 19 February 2014, available at: <http://bit.ly/1dM83eJ>.

<sup>91</sup> Court of Appeal, *NA (Sudan) v Secretary of State for the Home Department* [2016] EWCA Civ 1060, paras 107 and 156.

<sup>92</sup> *Ibid*, para 110.

<sup>93</sup> Home Office, *Dublin III Regulation*, November 2017, available at: <http://bit.ly/2rmazo9>.

usually happens under escort. A judgment relating to earlier Dublin policy and the circumstances in which applicants could be detained was promulgated in 2018.<sup>94</sup> It referred to earlier policy and practice now replaced with the Dublin guidance published in 2017.

The Home Office was not able to provide figures on the average duration of the Dublin procedure in recent parliamentary questions.<sup>95</sup>

### 2.3. Personal interview

#### Indicators: Dublin: Personal Interview

☐ Same as regular procedure

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

No personal interview takes place specifically relating to 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.”

### 2.4. 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.<sup>96</sup> The one ground of appeal available against a Dublin removal (i.e. a removal to a First List country) is that the person's ECHR rights would be breached *in* the receiving country.<sup>97</sup> 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.<sup>98</sup> The two Dublin states that fall outside of the First List are Croatia and Liechtenstein; in these cases if an appeal is made under the ECHR as outlined above, the case must be discussed with a senior caseworker to establish if it is appropriate to certify as clearly unfounded.<sup>99</sup>

<sup>94</sup> Court of Appeal, *Hemmati v Secretary of State for the Home Department* [2018] EWCA Civ 2122, 4 October 2018, available at: <https://bit.ly/2S1EtLk>.

<sup>95</sup> Minister for Immigration, Reply, Asylum: EU Countries: Written question, 202853, 25 January 2019, available at: <https://bit.ly/2S0vCt3>.

<sup>96</sup> Schedule 3, Part 2 AITOCA.

<sup>97</sup> Para 5, Schedule 3 Part 2 AITOCA.

<sup>98</sup> *Ibid.*

<sup>99</sup> Home Office, *Dublin III Regulation Guidance*, available at: <http://bit.ly/2rmazo9>.



In some cases in 2016, courts have also referred to the risk of breach of an individual's right to asylum under Article 18 of the EU Charter as grounds for suspending a transfer, albeit not demonstrated on the facts in question.<sup>100</sup>

In cases where an appeal is available, an out of country appeal must be brought within 28 calendar days (where the human rights appeal is certified clearly unfounded); an in-country appeal (where the human rights appeal is not certified) must be brought within 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.

There have been challenges before the courts in relation to conditions of return in Cyprus, Italy, Malta, Hungary and Italy among others.

On the Second List, see section on [Admissibility Procedure](#).

With regard to judicial review against the refusal to accept a "take charge" request, the Upper Tribunal held in 2018 that the principle of fairness requires the applicant to be given an opportunity to know the 'gist' of what is submitted against him or her in respect of the application of the Dublin criteria. Therefore in judicial review against the rejection of a "take charge" request by the UK, it is for the court or tribunal to decide whether the Dublin criteria have been correctly applied.<sup>101</sup>

## 2.5. 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
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  - ❖ 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 in judicial review against a Dublin decision in practice? <sup>102</sup>

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> With difficulty	<input type="checkbox"/> No
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  - ❖ Does free legal assistance cover
 

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

<sup>100</sup> See e.g. on **Austria**, High Court, *Abdulkadir and Mohammed v Secretary of State for the Home Department* [2016] EWHC 1504 (Admin), 28 June 2016, available at: <http://bit.ly/2jz6p32>; on **Malta**, Upper Tribunal, *R (Hassan) v Secretary of State for the Home Department* [2016] UKUT 452 (IAC), 28 September 2016, available at: <http://bit.ly/2jqXDsl>.

<sup>101</sup> Upper Tribunal, *MS v Secretary of State for the Home Department* [2019] UKUT 9 (IAC), 19 July 2018.

<sup>102</sup> The ticked box concerning appeals refers to judicial review since there is no appeal.

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.

## 2.6. 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? ☒ Yes ☐ No  
 ❖ If yes, to which country or countries? Greece, Hungary

**Greece:** Transfers to Greece were generally suspended as a matter of practice following the European Court on Human Rights (ECtHR) judgment in *M.S.S. v. Belgium and Greece*,<sup>103</sup> and in anticipation of the Court of Justice of the European Union (CJEU) decision in *NS*.<sup>104</sup> This was an executive decision applying to all potential transfers to Greece, and is kept under review in conjunction with the European Asylum Support Office (EASO) and UNHCR.<sup>105</sup> However, decisions can still be made to return asylum seekers to Greece under the Dublin procedure, even if they are not implemented. There is no automatic legal mechanism to prevent such returns actually being carried out. Challenges must be made in individual cases, and practitioners say that some returns to Greece have been made since the decisions in *M.S.S. v. Belgium and Greece*.

**Hungary:** In the case of *Ibrahimi and Abasi*,<sup>106</sup> two Iranians challenged their removal to Hungary on the basis that they were at risk of *refoulement*, referred to in the case as ‘chain *refoulement*’ i.e. along a succession of unsafe countries including Serbia, Macedonia, Greece and Turkey. The High Court, in its ruling of 5 August 2016, referred to AIDA and UNHCR reports in its judgment and criticised the UK government for its “broad and sweeping generalisations about presumptions of compliance.”<sup>107</sup>

**Italy:** In the *NA (Sudan)* ruling of 1 November 2016, the Court of Appeal upheld a transfer to Italy on the basis that no risk of treatment contrary to Article 3 ECHR was demonstrated. The High Court has also dismissed appeals challenging transfers to Italy earlier in the year.<sup>108</sup> In *SM*, however, the Upper Tribunal found that the circumstances before it, relating to a vulnerable person, were “markedly different” from established High Court case law on transfers to Italy.<sup>109</sup>

**Bulgaria:** The High Court found in *Khaled (No 1)* that the deficiencies of the Bulgarian asylum system were not such as to warrant a suspension of Dublin transfers.<sup>110</sup> In its assessment, the Court took into consideration elements such as the fact that UNHCR has not issued any position relating to returns to Bulgaria.<sup>111</sup> Despite the Court of Appeal’s dismissal of the appeal in *HK (Iraq)*,<sup>112</sup> all Dublin transfers to

<sup>103</sup> ECtHR, *M.S.S. v Belgium and Greece*, Application No. 30696/09, Judgment of 21 January 2011.

<sup>104</sup> The Parliamentary Under-Secretary of State, Home Office House of Lords, 25 Oct 2011: Column WA121, available at: <http://bit.ly/1LkBg0>.

<sup>105</sup> Parliamentary Under Secretary of State for the Home Office, House of Lords, 23 January 2013, col. WA 209, available at: <http://bit.ly/1fjjeFT>.

<sup>106</sup> High Court, *Ibrahimi and Abasi v Secretary of State for the Home Department* [2016] EWHC 2049 (Admin), 5 August 2016, available at: <http://bit.ly/2bbliWq>.

<sup>107</sup> *Ibid*, para 16.

<sup>108</sup> High Court, *R (BG) v Secretary of State for the Home Department* [2016] EWHC 786 (Admin), 12 April 2016, available at: <http://bit.ly/1NooJV8>; *R (Adam) v Secretary of State for the Home Department* [2016] EWHC 1352 (Admin), 9 June 2016, available at: <http://bit.ly/2jQTq07>.

<sup>109</sup> Upper Tribunal, *R (SM) v Secretary of State for the Home Department (Dublin Regulation – Italy)* [2018] UKUT 429 (IAC), 4 December 2018.

<sup>110</sup> High Court, *Khaled (No 1) v Secretary of State for the Home Department* [2016] EWHC 857 (Admin), 18 April 2016, available at: <http://bit.ly/2jr7pLv>.

<sup>111</sup> *Khaled (No 1)*, para 94.

<sup>112</sup> Court of Appeal, *R (HK) v Secretary of State for the Home Department* [2017] EWCA Civ 1871, 23 November 2017, available at: <http://bit.ly/2sZu7PV>.

Bulgaria were suspended until 15 July 2018, stayed behind a case known as *JA (Iraq)*, heard in June 2018. No transfers to Bulgaria took place in 2018.

**Cyprus:** The case of *Pour*,<sup>113</sup> challenging return to Cyprus on the basis of an argument that Cyprus would fail to admit a fresh claim from a refused asylum seeker, was unsuccessful.

**Austria:** In *Abdulkadir and Mohammed*, the High Court decided on 28 June 2016 that a transfer to Austria was lawful, on the ground that there was no evidence of ‘systemic failure’ in the Austrian legal system to amount to an Article 3 ECHR violation or infringe upon Article 18 of the EU Charter. No update is available and returns to Austria have not recommenced.

The UK does not automatically assume responsibility for examining asylum applications where transfers are suspended. If discussions with the receiving country become protracted so that it appears there is no realistic prospect of the transfer taking place, the asylum seeker may be released from detention. Once released from detention in these circumstances, asylum seekers may be granted accommodation and cash support. An asylum seeker who is the subject of a Dublin decision qualifies for reception conditions on the same conditions as those in the regular procedure.<sup>114</sup>

## 2.7. The situation of Dublin returnees

There are no reported issues regarding the situation of people returned to the UK under the Dublin regulation. Children reunited with family under Article 8 are not considered to be unaccompanied even if they are not dependants on a family member’s asylum claim. Concerns have been raised about the support they receive and the difficulties arising from them being part of families e.g. many do not qualify for legal aid and are not routinely assisted through the asylum procedure.<sup>115</sup>

## 3. Admissibility procedure

### 3.1. General (scope, criteria, time limits)

An asylum application will be declared inadmissible where the applicant:<sup>116</sup>

1. Has been granted refugee status in another EU Member State;
2. Comes from a **First Country of Asylum**;
3. Comes from a **Safe Third Country**;
4. Has been granted a status equivalent to refugee status in the UK; or
5. Is allowed to remain in the UK and is protected from *refoulement* pending the outcome of a safe third country procedure.

UK law also reflects the Protocol on Asylum for Nationals of the EU and in December 2015 the policy guidance was issued stating that applications from such nationals are to be treated as inadmissible save in exceptional circumstances.<sup>117</sup>

The only admissibility procedure in the UK strictly speaking is the safe third country procedure, either removal to an EU country using the **Dublin** Regulation or another **Safe Third Country**. There is no

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<sup>113</sup> High Court, *Pour v Secretary of State for the Home Department* [2016] EWHC 401 (Admin), High Court, 1 March 2016, available at: <http://bit.ly/2jfuZXj>.

<sup>114</sup> Information provided by ASAP. See also CJEU, Case 179/11 *Cimade & GISTI v Ministre de l’interieur*, 27 September 2012.

<sup>115</sup> Greater Manchester Immigration Aid Unit, *Briefing paper on the experiences of children from the Calais camp in the north west of England*, March 2017, available at: <https://bit.ly/2rWEiD8>.

<sup>116</sup> Para 345A Immigration Rules.

<sup>117</sup> Home Office, *Asylum Policy Instruction: EU/EEA Asylum Claims*, 9 December 2015, available at: <http://bit.ly/2jQSoRG>.

screening for admissibility on the basis of the merits of the case (see [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 (see [Safe Third Country](#)).<sup>118</sup> Additionally, there is a presumption that claims from non-nationals to be removed to the same list of countries will be unfounded, unless stated otherwise, meaning a human rights claim against removal to that country would usually be non-suspensive.<sup>119</sup>

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.

There is no time limit for taking a decision but in practice third country decisions often tend to be taken rather quickly. Revised guidance in relation to inadmissibility, including [Safe Third Country](#) (other than Dublin), policy and practice was published in October 2018.<sup>120</sup>

The Home Office dismissed 2,449 asylum applications on third country grounds in 2018.

### 3.2. 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 in relation to [Dublin: Personal Interview](#), there is no provision for a personal interview in safe third country cases.

### 3.3. 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 unless the decision maker is satisfied that they are not unfounded.<sup>121</sup> 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

<sup>118</sup> Parts 3 and 4 Schedule 3 AITOCA.

<sup>119</sup> Part 3 Schedule 3 AITOCA.

<sup>120</sup> Home Office, *Inadmissibility: EU grants of asylum, first country of asylum and safe third country concepts*, October 2018, available at: <https://bit.ly/2RzPsv0>.

<sup>121</sup> Parts 3 and 4 Schedule 3 AITOCA.

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.<sup>122</sup>

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

### 3.4. 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 reviews, this is broadly speaking only if the court grants permission for the judicial review or the Home Office retracts the decision.

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

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 UKVI (see [Regular Procedure](#)). The substance of the claim is not examined at the border.

<sup>122</sup> House of Lords, *R v Secretary of State for the Home Department ex p Daly* [2001] UKHL 26, available at: <http://bit.ly/1lbyKpJ>.

If a person claims asylum, immigration officers grant temporary admission or, since January 2018, immigration bail,<sup>123</sup> to enable the claim to be made. It 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 (STHF) in airports are not subject to the usual rules which govern immigration detention, but are inspected by the government's Prison Inspectorate.<sup>124</sup>

The Equality Act 2010 permits immigration officers to discriminate on grounds of nationality if they do so in accordance with the authorisation of a minister.<sup>125</sup> This discrimination may include subjecting certain groups of passengers to a more rigorous examination. Ministerial authorisations are made on the basis of statistical information of a higher number of breaches of immigration law or of adverse decisions in relation to people of that nationality. The statistical basis is not published. Immigration officers have the power to refuse entry at the border unless the passenger has a valid entry clearance or claims asylum. It is not known whether and if so how many people sent back from the border wished to claim asylum but did not say so to immigration officers or were *de facto* not given an opportunity to do so. In 2018, 20,434 people were refused entry at the UK port of whom 7,151 were at the juxtaposed controls (see below) and were denied access to the UK.<sup>126</sup>

The UK also operates juxtaposed controls in France and Belgium. In the control zones in France and Belgium, no asylum claim can be made to UK authorities,<sup>127</sup> and the acknowledged purpose of these agreements with France and Belgium was to stop people travelling to the UK to claim asylum.<sup>128</sup> This was reiterated by the statement from the Home Secretary following talks between the leaders of France and the UK on 18 January 2018.<sup>129</sup> Of the 7151 people turned back in control zones in 2018,<sup>130</sup> it is not known how many wished to claim asylum. There is little or no information about any attempted claims, and whether those who attempt to claim are referred to the authorities of the state of departure, as the regulations require.

During an investigation by the Children's Commissioner for England in 2012, the Home Office officials disclosed the 'Gentleman's Agreement'.<sup>131</sup> This operates in relation to people intercepted on landing in the UK who are considered to have made an illegal entry and who do not say that they wish to claim asylum. The agreement is between the UK and France and obliges France to accept the return of such passengers if this can be effected within 24 hours. Returns under the Gentleman's Agreement are 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. The 2003 Le Touquet Treaty states that anyone claiming asylum at the juxtaposed controls will be dealt with by the French authorities.<sup>132</sup>

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<sup>123</sup> Immigration Bail replaced temporary admission on 15 January 2018 (see Home Office guidance document, available at: <http://bit.ly/2FTmf50>). Many guidance and policy documents still refer to Temporary Admission.

<sup>124</sup> See reports from the HM Inspectorate of Prisons on the Ministry of Justice, available at: <http://bit.ly/1Blx77p>.

<sup>125</sup> Section 29 and Schedule 3, Part 4 Equality Act 2010.

<sup>126</sup> Home Office, *Immigration Statistics admission tables, Quarter 4 2018*.

<sup>127</sup> In the case of France, this is stated in Article 4 of the Additional Protocol CM 5015 to the Protocol between the United Kingdom of Great Britain and Northern Ireland and the French Republic concerning Frontier Controls and Policing, Co-operation in Criminal Justice, Public Safety and Mutual Assistance relating to the Channel Fixed Link, Cm 2366, signed at Sangatte on 25 November 1991. It is not explicit in the Belgian agreement.

<sup>128</sup> Independent Chief Inspector of Borders and Immigration, *An Inspection of Juxtaposed Controls*, 2013, available at: <http://bit.ly/1ImrYsF>.

<sup>129</sup> Secretary of State for the Home Department, 'Statement to Parliament', 19 January 2018, available at: <http://bit.ly/2DokzPb>.

<sup>130</sup> Home Office, *Immigration Statistics: Q4 2018, Removals*.

<sup>131</sup> Adrian Matthews, *Landing in Dover: The Immigration process undergone by unaccompanied children arriving in Kent*, 2012, Children's Commissioner.

<sup>132</sup> Article 9 Le Touquet Treaty, available at: <http://bit.ly/2BSdpVx>.



The ministerial authorisation to discriminate in refusing leave to enter also takes effect in control zones.<sup>133</sup>

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

## 5. Accelerated procedure

### 5.1. 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). The Detained Fast Track Procedure is currently suspended rather than ceased.

#### Non-Suspensive Appeal (NSA)

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). 1,285 claims, about 4% of the total, were certified clearly unfounded in 2018.<sup>134</sup> Albania, India, Nigeria and Pakistan were the most common nationalities, between them accounting for 70% of those people whose claims were certified unfounded during 2018.<sup>135</sup>

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 NIAA or in the Act itself (see [Safe Country of Origin](#)).<sup>136</sup>

There is no time limit for a decision to be made in such a case, although the Home Office guidance states that the aim is to decide within 14 calendar days. The Home Office is responsible for making the decision. The policy is that all decisions on a potential NSA case must be made by a caseworker who is trained to make NSA decisions, and must be looked at by a second 'accredited determining officer' who decides whether to accept the first officer's recommendation.<sup>137</sup> 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.<sup>138</sup> Guidance to decision makers advises that where the claim is for asylum and human rights protection, both or neither should be certified as unfounded, since any appeals of the two issues must be heard together. The guidance also states that when the asylum seeker comes from a designated state the refusal should not normally be based on the credibility of the individual applicant but on objective country material.<sup>139</sup> This is general practice and is unlike the regular procedure where no

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<sup>133</sup> Para 17(4)(A) Ministerial Authorisation, para 4; Schedule 3, Part 4 Equality Act 2010.

<sup>134</sup> Home Office, *Immigration Statistics: Q4 2018, Asylum Table AS03*.

<sup>135</sup> *Ibid.*

<sup>136</sup> Section 94 NIAA.

<sup>137</sup> Home Office, *Asylum decision-making guidance: Non-Suspensive Appeals (NSA): Certification under s.94*, October 2014, available at: <http://bit.ly/1CfhMAf>, para. 2.3.

<sup>138</sup> 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, available at: <http://bit.ly/1Bq4LIW>.

<sup>139</sup> Home Office, *Asylum decision-making guidance: Non-Suspensive Appeals (NSA): Certification under s.94*, para. 2.2.

such guidance is given and refusal is commonly based on credibility. The guidance on certification of claims under Section 94 NIAA has been amended and reissued to reflect the necessity to distinguish the decision to certify from the decision to refuse and to underline the need to explain both decisions. This was done following a case in the Upper Tribunal known as *FR and KL*.<sup>140</sup> In 2018 the Tribunal determined that individualised decisions must be made as to the necessity in out of country appeal hearings of hearing directly from the applicant.<sup>141</sup>

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. This should only be done where the caseworker considers that the claim is incapable of succeeding before an independent tribunal.<sup>142</sup> On that basis, 395 cases were individually certified in 2018.<sup>143</sup>

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.<sup>144</sup>

### **Detained-Fast Track (DFT)**

The DFT procedure was suspended in July 2015, following a series of successful legal challenges relating to the safety and fairness of the procedure, but hasn't been formally abandoned.<sup>145</sup> The Detained Fast Track procedure (DFT) applied where the Home Office considered that the claim could be decided quickly. In theory the two procedures are very different in that NSA implies that there is no merit, whereas DFT is based on speed. However, informally the DFT also appeared to operate as an 'unfounded' procedure.

The defining characteristics of the DFT procedure were speed and detention throughout the decision process. The criteria for being routed into the DFT only required that the case was considered after the screening interview to be capable of being decided quickly and that the asylum seeker was not excluded from the DFT.

The DFT has not been reinstated nor abandoned. The final 'nail in the coffin' leading to the suspension was the appeals part of the process.<sup>146</sup> The Ministry of Justice consulted on the Tribunal Procedure Rules for the DFT in autumn 2016 proposing that new rules be laid to enable these expedited appeals to comply with the law.<sup>147</sup> Plans were then outlined in April 2017,<sup>148</sup> but the new procedure has not yet been approved by the Tribunal Procedure Committee.

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<sup>140</sup> Court of Appeal, *FR and KL v Secretary of State for the Home Department* [2016] EWCA Civ 605, 26 June 2016, available at: <http://bit.ly/2mRtYs6>.

<sup>141</sup> Upper Tribunal, *AJ (s. 94B Kiarie and Byndloss questions) v Secretary of State for the Home Department* [2018] UKUT 115 (IAC), 28 February 2018, available at: <https://bit.ly/2HiNEQV>.

<sup>142</sup> Court of Appeal, *NA (Iran) v Secretary of State for the Home Department* [2011] EWCA Civ 1172.

<sup>143</sup> Home Office, *Immigration Statistics, Q4 2018, Asylum Table AS03*.

<sup>144</sup> 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.

<sup>145</sup> House of Commons, Written Statement (HCWS83) Home Office Written Statement made by: The Minister of State for Immigration, 2 July 2015, available at: <http://bit.ly/1H3ig0l>.

<sup>146</sup> Detention Action, 'The legal challenge', available at: <http://bit.ly/2jlTAYA>.

<sup>147</sup> Ministry of Justice, *Expedited immigration and asylum appeals for detained appellants*, available at: <http://bit.ly/217kEBS>.

<sup>148</sup> Ministry of Justice, *Expedited immigration and asylum appeals for detained appellants*, 18 April 2017, available at: <http://bit.ly/217kEBS>.



## 5.2. 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 Appeal Procedure

The same immigration rules apply to the interview as in the regular procedure (see [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.<sup>149</sup> 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.

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

## 5.3. Appeal

### Indicators: Accelerated Procedure: Appeal

☐ Same as regular procedure

1. Does the law provide for an appeal against the decision in the accelerated procedure?  
☒ Yes ☐ No  
❖ If yes, is it ☒ Judicial ☐ Administrative  
❖ If yes, is it suspensive  
NSA ☐ Yes ☒ No  
DFT ☒ Yes ☐ No

### Non-Suspensive Appeal Procedure

In the NSA the appeal is non-suspensive, i.e. it may not be made from within the UK. Appeals must be made within 28 calendar days of leaving the UK.<sup>150</sup> The scope of the appeal is the same as for in-country appeals, but in practice it is very difficult to appeal from outside the UK.

<sup>149</sup> Independent Chief Inspector of Borders and Immigration, *Asylum: A Thematic Inspection of the Detained Fast Track*, ICIBI, 2012, available at: <http://bit.ly/1JXaARf>.

<sup>150</sup> The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 SI 2604 rule 19.

## Detained-Fast Track Procedure

In the DFT no removal would take place until the appeal had been decided, but the appeals took place in a building adjoining the detention centre, and detention was maintained until the case was 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.<sup>151</sup>

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;<sup>152</sup> The Home Office must respond within two days, the hearing is required to take place three days later,<sup>153</sup> and the decision should be given two days after the hearing.<sup>154</sup> 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 between centres from 33 days to 16.<sup>155</sup>

The Court of Appeal held that:

“[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.”<sup>156</sup>

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.<sup>157</sup>

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

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<sup>151</sup> Court of Appeal, *R (on the application of Detention Action) v Secretary of State for the Home Department* [2014] EWCA Civ 1634.

<sup>152</sup> The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 SI 2406 Schedule rule 5.

<sup>153</sup> The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 SI 2406 Schedule rules 7 and 8.

<sup>154</sup> The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 SI 2406 rule 10.

<sup>155</sup> High Court, *Detention Action v Secretary of State for the Home Department Equality and Human Rights Commission intervening* [2014] EWHC 2245 (Admin) para 83.

<sup>156</sup> Court of Appeal, *The Lord Chancellor v Detention Action* [2015] EWCA Civ 840, para 45.

<sup>157</sup> *Detention Action, The Detained Fast Track: the end of the road*, 12 November 2015, available at: <http://bit.ly/1MCHLKh>.

on 4 August 2015.<sup>158</sup> The President provided a standard letter for appellants to apply to the FTT to have their appeal decision set aside and reheard.

In a judgment that was promulgated on 20 January 2017,<sup>159</sup> the High Court found that the unlawful policy had been in operation from 2005 to 2014, affecting many more asylum seekers. However, it refused to quash the appeals. This decision was upheld by the Court of Appeal in December 2018.<sup>160</sup>

#### 5.4. 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?  
☐ Yes ☒ With difficulty ☐ No  
❖ Does free legal assistance cover:  
☒ Representation in interview (in the DFT only)  
☒ 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

The following information relates to the Detained Fast Track Procedure as it operated immediately prior to its suspension in 2015. Unlike in the regular procedure, fast track detainees were entitled to have a publicly funded legal adviser present at their initial interview. However, the judge commented in the 2014 *Detention Action* case 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.”<sup>161</sup>

Asylum seekers in the DFT were not guaranteed legal representation before the tribunal. Research in 2011 revealed that 63% of asylum seekers were unrepresented at their DFT appeal,<sup>162</sup> and Freedom of Information requests showed that in 2012, 59% asylum-seekers in **Harmondsworth** were unrepresented at the first appeal. 1% won their appeals, compared to 20% of those with a representative.<sup>163</sup>

To obtain publicly funded legal advice in making their claim they were limited to a representative from a solicitors firm with a contract to do DFT work and who was available. There is substantial dissatisfaction among asylum seekers with the quality of legal representation available in detention. 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.

<sup>158</sup> Upper Tribunal, Appeal ref. AA/09953/2014; 10216/2014; 04846/2015; PA 00087/2015; AA/ 03971/2015; 05737/2015; 02797/2015; 03692/2015.

<sup>159</sup> High Court, *R (TN) v Secretary of State for the Home Department* [2017] EWHC 59 (Admin), 20 January 2017, available at: <http://bit.ly/2kPYike>. See also *Detention Action*, ‘High Court rules asylum-seekers denied justice in detention for 10 years’, 20 January 2017, available at: <http://bit.ly/2kfJNGQ>.

<sup>160</sup> Court of Appeal, *TN (Vietnam) v Secretary of State for the Home Department* [2018] EWCA Civ 2838, 19 December 2018, available at: <https://bit.ly/2RzKtKP>.

<sup>161</sup> High Court, *Detention Action v Secretary of State for the Home Department* [2014] EWHC 2245 (Admin), para 96.

<sup>162</sup> Tamsin Alger and Jerome Phelps, *Fast Track to Despair*, *Detention Action*, 2011, available at: <http://bit.ly/1Lhrll6>.

<sup>163</sup> *Detention Action*, *DFT Briefing*, 2013, available at: <http://bit.ly/1JX05NV>.

## D. Guarantees for vulnerable groups

### 1. Identification

#### Indicators: Identification

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. Does the law provide for an identification mechanism for unaccompanied children? ☒ Yes ☐ No

#### 1.1. Screening of vulnerability

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 in [Registration](#) and [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 was no effective mechanism to identify them.<sup>164</sup> The concern remains regarding the use of detention, albeit not in an accelerated procedure, and the lack of safeguards. Of particular concern has been the definition used by the Adults at Risk policy, which is a more restricted definition of torture than was previously stated. This definition has been ruled unlawful.<sup>165</sup> A new definition was introduced in 2018 but has been criticised.<sup>166</sup>

#### 1.2. Age assessment of unaccompanied children

The procedure for identifying unaccompanied children is governed by guidance and case law. At the screening stage, where a person appears to an Immigration Officer or the Home Office caseworker to be under 18, policy guidance is that they are to be treated as a child. In case of doubt, the person should be treated as though they are under 18 until there is sufficient evidence to the contrary.<sup>167</sup> Where their appearance strongly suggests to the officer that they are significantly over 18, a second opinion must be sought from a senior officer. If they agree that the person is over 18, the asylum seeker is treated as an adult. In this case, an age assessment can be triggered by the young person or any third party referring to the local authority for an age assessment. However, the result of immediate treatment as an adult while this process is ongoing means that people who are in fact under 18 are at risk of being detained.

In June 2016 the High Court ruled that the Home Office had acted unlawfully in detaining a young asylum applicant under this policy without establishing as a matter of fact whether his claim was true i.e. the decision to detain cannot be based on an officer's 'reasonable belief' that the claimant was adult.<sup>168</sup> This decision was upheld in the Court of Appeal in February 2017.<sup>169</sup> The Home Office policy guidance on assessing age was amended on 26 February 2018 and now reflects this judgment.<sup>170</sup>

<sup>164</sup> See e.g. Independent Chief Inspector of Borders and Immigration, *Asylum: A Thematic Inspection of the Detained Fast Track*, ICIBI, 2012; Tamsin Alger and Jerome Phelps, *Fast Track to Despair*, Detention Action, 2011.

<sup>165</sup> The definition was changed earlier than the final court hearing, upon order from the court during the proceedings, available at: <http://bit.ly/2n0ACN4>.

<sup>166</sup> Medical Justice, *Putting Adults at Risk*, September 2018, available at: <https://bit.ly/2Hi46Rp>.

<sup>167</sup> Home Office, *Processing children's asylum claims*, 12 July 2016, available at: <http://bit.ly/2iO8XKe>.

<sup>168</sup> High Court, *R (AA) v Secretary of State for the Home Department* [2016] EWHC 1453 (Admin), 20 June 2016, available at: <http://bit.ly/29enloB>.

<sup>169</sup> Court of Appeal, *Awed Ali v Secretary of State for the Home Department* [2017] EWCA Civ 138, 9 March 2017, available at: <http://bit.ly/2mScM67>.

<sup>170</sup> Home Office, *Assessing age*, February 2018, available at: <http://bit.ly/2EZ98y5>.

The newly revised guidance also contains changes that NGOs have called for in recent years; unless the claimant is being treated as adult under the 'significantly over 18' policy outlined above, the authorities are required to record the stated age given by the child until a final assessment has concluded differently; also clearer guidance on how a decision on age affects credibility in an asylum claim.

If the Home Office has referred to a local authority because they felt there was doubt about the claimed age, the social worker responsible for an assessment must assure the Home Office that they have considered the age and this would usually be communicated a child through an agreed template.<sup>171</sup> A stand-alone assessment is not necessary but the Home Office must be satisfied that the areas listed on the template have been considered by the social worker. The Home Office must also be satisfied that any assessment complies with case law – often referred to as 'Merton compliant' as *Merton* was the first piece of case law dealing with the lawful procedure for age assessments. It would then be usual for the Home Office to adopt the age decided by the social worker but more detail is given in guidance.<sup>172</sup>

Social workers conducting age assessments must comply with all case law which includes the need to be registered social workers, trained in conducting age assessments, adhere to correct procedures including taking into account all relevant information. Assessments must be conducted in the presence of an 'appropriate adult' and a written record made. Guidance issued by the Association of Directors of Children's Services (ADCS) in October 2015 gives more detail about lawful procedure and good practice.<sup>173</sup>

It remains the case that judicial review is the sole remedy to resolve a complaint that the age assessment was conducted unlawfully or failed to reach the correct conclusion.<sup>174</sup> The quality of age assessments has been heavily criticised for several years.<sup>175</sup> It is not easy to determine whether or not practice is improving although judicial reviews still take place and result in some social work decisions being overturned.<sup>176</sup> Many such decisions are not reported and many do not have a bearing on other cases, as they are finding of fact cases. A summary of some cases can be found on the website 'Independent Age Assessment'.<sup>177</sup>

The Strategic Migration Partnership in **Wales** issued its own guidance in 2015.<sup>178</sup> In **Scotland**, the Scottish Refugee Council and Glasgow City Council have collaborated to produce a good practice guide as an aid to achieving consistency of practice.<sup>179</sup>

A tribunal is also entitled to decide a person's age as a question of fact in the context of an asylum claim, where age is relevant to the claim, for instance because it has a bearing on other findings such as the credibility of the asylum seeker, but the age found is not binding outside that context, and does not bind a local authority. Since the Supreme Court decisions, the child is now able to obtain a binding finding of

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<sup>171</sup> ADCS, *Age assessment guidance and information sharing guidance*, available at: <http://bit.ly/2kpC77s>.

<sup>172</sup> Home Office and ADCS, *Age assessment: Joint working guidance*, June 2015, available at: <http://bit.ly/2k7FIHt>.

<sup>173</sup> ADCS, *Age assessment guidance*, October 2015, available at: <http://bit.ly/1MUduDi>.

<sup>174</sup> Supreme Court, *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, 26 November 2009.

<sup>175</sup> Coram Children's Legal Centre, *Happy Birthday*, 2013, available at: <http://bzfd.it/2jcSct3> and UK section of 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, available at: <http://bit.ly/1lohB7T>.

<sup>176</sup> Peter Yeung, 'Wrongly Classifying Child Asylum-Seekers as Adults Has Cost UK Millions of Pounds', 18 January 2017, available at: <http://bzfd.it/2jcSct3>.

<sup>177</sup> See Independent Age Assessment at: <http://bit.ly/2Dtjp3S>.

<sup>178</sup> Wales Strategic Migration Partnership, *Age assessment of unaccompanied asylum seeking children*, June 2015, available at: <http://bit.ly/2jU3Jhb>.

<sup>179</sup> Karen Dyball, Graham McPhie, Clare Tudor, *Age Assessment Practice Guidance: An Age Assessment Pathway for Social Workers in Scotland* Scottish Refugee Council and Glasgow City Council 2012.

fact from the court. This is important because previously a young person could be in the position where the tribunal, and thus the Home Office, accepted that they were under 18, but the local authority did not. The Home Office has no power to support a child, and the local authority in that situation would not do so, yet the child had no power to obtain a resolution.<sup>180</sup> This judicial review power is now transferred to the Upper Tribunal.<sup>181</sup>

Statistics are available for age assessments ordered by the Home Office, which do not include age assessments ordered by local authorities. In 2018 there were 872 of these. No information is published relating to the resolution of these disputes.

## 2. Special procedural guarantees

### Indicators: Special Procedural Guarantees

1. Are there special procedural arrangements/guarantees for vulnerable people?

- ❖ If for certain categories, specify which: ☐ Yes ☒ For certain categories ☐ No  
People for whom detention is accepted to be damaging; unaccompanied children, torture survivors

The Home Office has recently introduced the notion of “safeguarding leads”, supervised by a senior official as head of the “safeguarding hub”. There is limited information on the work of these hubs, however, as the safeguarding policy is an internal document, although limited detail is available through the funding document.<sup>182</sup> More information about the safeguarding hubs and the Home Office’s approach to vulnerable adults can be found in the 2019 inspection report from the Independent Chief Inspector of Borders and Immigration.<sup>183</sup>

Guidance on gender issues in the asylum claim sets out good practice in recognising gender-specific forms of persecution and the difficulties that women may face in accessing protection.<sup>184</sup> The guidance recognises that discrimination may amount to persecution in countries where serious legal, cultural or social restrictions are placed upon women, and the need to be rigorous in understanding country of origin information when deciding women’s claims.

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

Adult asylum seekers who are already in the UK and who have access to accommodation can submit a written request to register an asylum application if they either have a disability or severe illness (proved by written evidence) and are physically unable to travel, or are imprisoned and unable to make their application in person.<sup>186</sup>

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

<sup>180</sup> Laura Brownlees and Zubier Yazdani, *The Fact of Age*, 2012, Children’s Commissioner.

<sup>181</sup> First Tier Tribunal and Upper Tribunal (Chambers) Order 2010, available at: <http://bit.ly/1fm4pJl>.

<sup>182</sup> Home Office, *Asylum, Migration and Integration Fund: List of Actions allocated funding*, July 2018, available at: <https://bit.ly/2C5Yq9y>.

<sup>183</sup> Independent Chief Inspector of Borders and Immigration, *An inspection of the Home Office’s approach to the identification and safeguarding of vulnerable adults*, January 2019, available at: <https://bit.ly/2NN8fOC>.

<sup>184</sup> Home Office, *Asylum Policy Instruction: Gender Issues in the Asylum Claim: process*, 2010, Section 2 available at: <http://bit.ly/1dK8QNj>.

<sup>185</sup> Home Office, *Asylum Policy Instruction: Asylum Interviews*, March 2015, available at: <http://bit.ly/1BaVlvv>, para 5.7.

<sup>186</sup> Home Office, *Asylum process guidance: registering asylum claims*, para 7.



## Exemption from detention and special procedures

There are no other procedural guarantees in law for vulnerable adult applicants relating to decision-making or application process, except that they should not, according to policy, be detained. Rule 35 of the Detention Centre Rules provides that where there is evidence that a detainee has been tortured, or for any other reason their health would be injuriously affected by detention, a report should be made to the caseworker for release to be considered. Independent evidence of torture or severe mental illness is also a ground for removal from the DFT.<sup>187</sup> However, Rule 35 does not compel release, and in practice Rule 35 reports which substantiate torture have often not brought about release. A Parliamentary Question revealed that of 983 Rule 35 reports made in 2012, only 74 had resulted in the detainee being released.<sup>188</sup> 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’.<sup>189</sup>

After the Home Office conducted its own audit, new guidance was issued in January 2013 on the operation of Rule 35. This guidance advises Home Office caseworkers how to evaluate a Rule 35 medical report to determine whether it constitutes independent evidence of torture so as to warrant release. This guidance has been revised to amend the version of torture as required by the courts in ‘EO and others’ (see below).<sup>190</sup> However, the detention of people with mental illness remains a major source of concern and is covered further in the section on [Detention of Vulnerable Applicants](#).

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.<sup>191</sup> In practice, local authority support is difficult to obtain, and policies vary in different local authority areas.

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<sup>187</sup> Rule 35 Detention Centre Rules.

<sup>188</sup> House of Commons, Hansard, 24 January 2013, col 431W.

<sup>189</sup> Independent Monitoring Board Harmondsworth Immigration Removal Centre, *Annual Report 2014*.

<sup>190</sup> Detention Services Order 9/2016; Rule 35 reports, available at: <http://bit.ly/2ot5sPa>.

<sup>191</sup> Home Office guidance; *Asylum seekers with care needs*, available at: <http://bit.ly/2n6BzU7>.

### 3. 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

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.<sup>192</sup> 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.<sup>193</sup>

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. €458) 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.<sup>194</sup> 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.<sup>195</sup> 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.<sup>196</sup>

Case law requires that medical reports are taken into account in deciding the applicant's credibility.<sup>197</sup> 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

<sup>192</sup> Home Office, Asylum Policy Instruction, *Medico-Legal Reports from the Helen Bamber Foundation and the Medical Foundation Medico Legal Report Service*, July 2015, para 2.4.

<sup>193</sup> Asylum Policy Instruction (non-Medical Foundation cases).

<sup>194</sup> *Asylum Policy Instruction Medico-Legal Reports from the Helen Bamber Foundation and the Medical Foundation Medico-Legal Report Service*, July 2015.

<sup>195</sup> Referrals to The Medical Foundation Medico Legal Report Service, available at: <http://bit.ly/1QG2Pml>.

<sup>196</sup> Rule 34 Detention Centre Rules.

<sup>197</sup> See e.g. Upper Tribunal, *JL (medical reports – credibility) China* [2013] UKUT 145 (IAC), 8 April 2013, available at: <http://bit.ly/2jUess3>.



applicant says.<sup>198</sup> 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.<sup>199</sup> 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.<sup>200</sup> 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 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.<sup>201</sup> Research by Freedom from Torture in 2016 showed evidence of errors by decision makers in deciding claims where there was a FFT medico-legal report. Errors identified included failing to apply the correct legal test and failing to recognise the expertise of those who prepared the reports.<sup>202</sup>

Medical reports may be prepared based on the Istanbul Protocol, and this is regarded as best practice and is standard for experienced practitioners.<sup>203</sup>

The long running case of *KV (Sri Lanka)* progressed to the Supreme Court and judgment was handed down in March 2019.<sup>204</sup> The case concerned the question of the extent to which a medical expert could comment on the likelihood of torture being self-inflicted by proxy, that is, by another person at his invitation. Whilst the Supreme Court remits the case to the Upper Tribunal to reconsider, it invites the Upper Tribunal to note that that very considerable weight should be given to the fact that injuries which are self-inflicted by proxy are likely to be extremely rare.

#### 4. Legal representation of unaccompanied children

##### Indicators: Unaccompanied Children

1. Does the law provide for the appointment of a representative to all unaccompanied children?
 

☒ Yes
 ☐ No

In addition to the social work duty, the Immigration Rules require that the Home Office caseworker takes steps to ensure that an unaccompanied child has a legal representative.<sup>205</sup> 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.

<sup>198</sup> See e.g. Court of Appeal, *Mibanga v Secretary of State for the Home Department* [2005] EWCA Civ 367, 17 March 2005, available at: <http://bit.ly/2kpyrCo>.

<sup>199</sup> Jo Pettit, *Body of Evidence – Treatment of Medico-Legal Reports for Survivors of Torture in the UK Asylum Tribunal*, 2011, Freedom from Torture.

<sup>200</sup> Upper Tribunal, *KV (scarring - medical evidence) Sri Lanka* [2014] UKUT 230 (IAC), 23 May 2014, available at: <http://bit.ly/2kU9Hil>.

<sup>201</sup> See e.g. High Court, *R (Kakar) v Secretary of State for the Home Department* [2015] EWHC 1479 (Admin), 22 May 2015.

<sup>202</sup> Freedom from Torture, *Proving torture: Demanding the Impossible*, November 2016, available at: <http://bit.ly/2gib2OM>.

<sup>203</sup> 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, available at: <http://bit.ly/1DVAApu>.

<sup>204</sup> Supreme Court, *KB (Sri Lanka) v Secretary of State for the Home Department* [2019] UKSC 10, 6 March 2019, available at: <https://bit.ly/2SOVG6a>.

<sup>205</sup> Para 352ZA Immigration Rules, Part 11, available at: <http://bit.ly/1JRSeKu>.

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

The Home Office has a statutory duty to safeguard and promote the welfare of children in the UK who are subject to its procedures.<sup>206</sup> 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.<sup>207</sup> The representative accordingly has a duty to ensure that they take the child's own independent instructions and that these form the basis of their representations.

A report produced by the Refugee Council in 2011 recommended specialist training and accreditation for refugee children's legal advisers.<sup>208</sup> Research conducted by the same organisation for ECRE in 2014 showed that the situation had not improved with regard to quality and availability.<sup>209</sup> Specialist training was provided by the Immigration Law Practitioners Association (ILPA)<sup>210</sup> but attending this is not a requirement to advise refugee children. ILPA has also produced a good practice guide,<sup>211</sup> but use of the guide is not mandatory. In order to receive public funding for representing a refugee child, a solicitor must be accredited at Level 2 of the Immigration and Asylum Accreditation Scheme. The Legal Aid Agency framework for authorising legal aid payment requires that work with refugee children is carried out by a senior caseworker at level 2 or above, who has had an Enhanced Disclosure and Barring Service (often referred to as DBS) check in the previous two years. A publicly funded immigration adviser of a child asylum seeker is under an obligation to refer the child for public law advice where the child has difficulties with the local authority carrying out its duties towards them under the Children Act 1989.<sup>212</sup> A child is entitled to have a publicly funded legal representative at their initial asylum interview, but only where the Home Office does not dispute that the claimant is a child.<sup>213</sup>

Difficulties obtaining good quality legal advice (see [Regular Procedure: Legal Assistance](#)) also apply to unaccompanied children. Research conducted by the Children's Society in 2015 showed that the situation had deteriorated since the coming into force of the legal aid restrictions.<sup>214</sup> This research was updated and a new report published in 2017.<sup>215</sup>

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<sup>206</sup> Section 55 BCIA 2009, available at: <http://bit.ly/1L4XIOC>.

<sup>207</sup> Supreme Court, *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4, 1 February 2011, available at: <http://bit.ly/2juhDe8>.

<sup>208</sup> Laura Brownlees and Terry Smith, *Lives in the Balance*, Refugee Council, 2011, available at: <http://bit.ly/1GV9YsZ>.

<sup>209</sup> ECRE, *Right to Justice: Quality Legal Assistance for unaccompanied children*, July 2014, available at: <http://bit.ly/2iS0rdn>.

<sup>210</sup> ILPA is a voluntary association of practising lawyers, academics and others. Its activities include promoting and developing good practice.

<sup>211</sup> Heaven Crawley, *Working with Children and Young People Subject to Immigration Control, Guidelines for Best Practice*, 2nd edition 2012, available 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.

<sup>212</sup> The Civil Specification 2010, section 8, Immigration, paragraph 8.

<sup>213</sup> The Civil Legal Aid (Immigration Interviews) (Exceptions) Regulations 2012 SI No. 2683, available at: <http://bit.ly/1Bs5dX3>.

<sup>214</sup> The Children's Society, *Cut off from Justice*, June 2015, available at: <http://bit.ly/2jw8U7K>.

<sup>215</sup> The Children's Society, *Cut off from Justice* August 2017, available at: <http://bit.ly/2Gbx9TE>.

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. This leave is referred to as 'UASC leave' – this is granted for 30 months or until the age of 17½, whichever is shorter.<sup>216</sup> Leave can be renewed up to age 17½, but if a further application is made at this stage, 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 Section 55 of the Borders Citizenship and Immigration Act 2009 to have regard to the welfare of children.<sup>217</sup> This does not have a direct impact on the normal practice in the case of unaccompanied children, which is to grant leave until they are 17.5 years, but is an important statement of the impact on children of insecurity of status.

Two new forms of leave were introduced in 2018 relating solely to specific groups of unaccompanied children transferred to the UK from elsewhere in Europe. Those children transferred under section 67 (Dubs' amendment) who do not qualify for leave as a refugee or subsidiary protection will be granted 'section 67 leave',<sup>218</sup> initially for five years. It is described as non-protection based leave but envisaged that a beneficiary will be entitled to settlement after five years.

Children transferred to the UK from Calais to join family members under the Dublin III Regulation, if the transfer took place between 17 October 2016 and 13 July 2017, will similarly be provided with non-protection-based leave if they do not qualify for leave as a refugee or for subsidiary protection. Beneficiaries will be entitled to apply for settlement after ten years.<sup>219</sup>

Policy allows for children's claims to be certified so it is possible that a child's appeal is non-suspensive; however, the general policy applies regarding removal of children, so that a certified claim will only result in a non-suspensive appeal if adequate reception arrangements are in place in the child's country of origin.<sup>220</sup>

2,872 unaccompanied children sought asylum in the UK in 2018.<sup>221</sup>

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<sup>216</sup> Para 352ZE Immigration Rules.

<sup>217</sup> High Court, *R (SM, TM JD and others) v Secretary of State for the Home Department* [2013] EWHC 1144 (Admin), 8 May 2013, available at: <http://bit.ly/2kQ6lgW>.

<sup>218</sup> Home Office, *Section 67 of the Immigration Act 2016 leave*, July 2018, available at: <https://bit.ly/2u3v5bL>.

<sup>219</sup> Home Office, *Calais Leave*, November 2018, available at: <https://bit.ly/2Ulczag>.

<sup>220</sup> Processing children's asylum claims, available at: <http://bit.ly/2Bcs1Le>.

<sup>221</sup> Home Office, *Asylum Statistics Q4 2018*.

## E. 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.<sup>222</sup> 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](#)).

Case law provides that the threshold to be passed for submissions to be treated as a fresh claim is a 'relatively modest' one.<sup>223</sup> 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. Judicial review is the only means to challenge refusal to treat submissions as a fresh claim, and it is only available with the permission of the tribunal. In such a challenge the Court must consider whether the Home Office considered the right question, namely, not whether the caseworker thinks it is a strong case, but whether there is a realistic prospect of an immigration judge, applying 'anxious scrutiny', thinking that the applicant will be exposed to a real risk of persecution or serious harm on return. In so doing, the Home Office caseworker themselves must also use 'anxious scrutiny'. Whether this has been done is a question the court can consider for itself on the basis of the evidence that the Home Office caseworker had.<sup>224</sup>

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

Further representations must be made to the Home Office in **Liverpool**. Where the claimant is over 18, 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.<sup>225</sup> 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

<sup>222</sup> Para 353 Immigration Rules Part 12.

<sup>223</sup> Court of Appeal, *WM (DRC) v Secretary of State for the Home Department* [2006] EWCA Civ 1495, 9 November 2006, available at: <http://bit.ly/2jVIRJ5>.

<sup>224</sup> Court of Appeal, *R (on the application of YH) v Secretary of State for the Home Department* [2010] EWCA Civ 116.

<sup>225</sup> Home Office, *Asylum Policy Instruction: Further Submissions* February 2016, available at: <http://bit.ly/2jweaZ5>.

written submissions and without an interview, but the submissions must be delivered in person at an appointment.

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,<sup>226</sup> 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 Section 4 support while waiting for a decision on whether those further submissions constitute a fresh claim.<sup>227</sup> In effect, this means that people with further submissions may be left destitute.

A person may not be removed before a decision is taken on any submissions they have outstanding.<sup>228</sup> Removal directions (the order to a carrier to take the person on a particular flight or crossing) may remain in place while further submissions are being considered, only to be cancelled if the claimant is successful or if the Home Office decides they need more time to decide. Further submissions may be allowed or refused at any time until the asylum seeker is actually removed. A last-minute refusal may leave no time for any further legal challenge, and there is no obligation for the Home Office to respond in time for the asylum seeker to take advice or challenge a refusal.

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

The procedure for further submissions is different for unaccompanied children who are still under the age of 18 when any leave they have expires. The decision maker must make enquiries as to the situation of the child to ascertain if it has changed since the original grant of leave and conduct a best interest assessment.<sup>229</sup>

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<sup>226</sup> High Court, *MK and AH v Secretary of State for the Home Department* [2012] EWHC 1896 (Admin).

<sup>227</sup> ASAP, *Further submissions and access to asylum support*, 30 July 2010, available at: <http://bit.ly/1GjqdLD>.

<sup>228</sup> Para 353A Immigration Rules.

<sup>229</sup> Home Office, *Processing children's asylum claims*, 9 October 2017, available at: <http://bit.ly/2jtz4uD>.

## 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 checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

### 1. Safe country of origin

Legislation allows for a safe country of origin concept.<sup>230</sup> States are designated safe by order of the Secretary of State for the Home Office. The Secretary of State may make such an order where they are satisfied that ‘there is in general in that State or part no serious risk of persecution of persons entitled to reside’ there, and that removal there ‘will not in general contravene’ the European Convention on Human Rights. In making the order, the statute requires the Home Secretary to have regard to information ‘from any appropriate source (including other member states and international organisations’.

Orders are in force in relation to: Albania, North Macedonia, Moldova, Bolivia, Brazil, Ecuador, South Africa, Ukraine, Kosovo, India, Mongolia, Bosnia-Herzegovina, Mauritius, Montenegro, Peru, South Korea and Serbia. 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 successful challenges **Bangladesh** and **Jamaica** were removed from the list of designated countries.<sup>231</sup>

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 [Accelerated Procedure: Appeal](#)).

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.<sup>232</sup> The general designation as safe is often perceived to be very risky for particular groups who have not been taken into account in the assessment of the country as safe, 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 provision

<sup>230</sup> Section 94 NIAA.

<sup>231</sup> High Court, *R (on the application of Zakir Husain) v Secretary of State for the Home Department* [2005] EWHC 189 (Admin); Supreme Court, *R (on the application of Brown) Jamaica* [2015] UKSC 8, para 36.

<sup>232</sup> Court of Appeal, *MD (Gambia) v Secretary of State for the Home Department* [2011] EWCA Civ 121.



introduced through the Criminal Justice and Courts Act 2015 makes such interventions more risky by establishing a presumption that interveners 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.<sup>233</sup>

Asylum applicants in 2018 from countries designated as safe were as follows:

Country	Asylum applicants
Albania	2,001
India	1,300
Nigeria (men)	826
Ghana (men)	219
Ukraine	198
Kenya (men)	133
South Africa	76
Sierra Leone (men)	73
Gambia (men)	71
Brazil	54
Mauritius	37
Malawi (men)	36
Kosovo	16
Mongolia	15
Bolivia	15
Mali (men)	10
Ecuador	7
Moldova	3
South Korea	1
Peru	1
Bosnia Herzegovina	1
North Macedonia	1
Montenegro	0

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.

## 2. Safe third country

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](#). The concept is used widely in practice.

A “safe third country” is defined in the Immigration Rules as a country where:<sup>234</sup>

- (1) the applicant’s life and liberty will not be threatened on account of race, religion, nationality, membership of a particular social group or political opinion in that country;
- (2) the principle of non-refoulement will be respected in that country in accordance with the Refugee Convention;
- (3) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected in that country;

<sup>233</sup> Section 87 AITOCA.

<sup>234</sup> Para 345C Immigration Rules.



- (4) the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Refugee Convention in that country;
- (5) there is a sufficient degree of connection between the person seeking asylum and that country on the basis of which it would be reasonable for them to go there; and
- (6) the applicant will be admitted to that country.

AITOCA 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 may take place on an individual basis to other countries. The Home Office October 2018 policy also provides for safe third country cases to be dealt with on a case by case basis beyond the Dublin countries, and provides the **United States, Canada and Australia** as examples of such designations.<sup>235</sup>

## 2.1. Safety criteria

As regards the required level of protection available in a third country, the High Court assessed the ratification of the 1951 Refugee Convention in *Ibrahimi and Abasi*, although the case concerned a Dublin transfer to Hungary. The Court found that Turkey 'is considered to be an unsafe country', *inter alia* since it retains discretion to provide asylum seekers with 'limited residence but with a status short of refugee status.'<sup>236</sup>

The latest Home Office policy provides, however, that a country may be deemed as a safe third country if it offers protection 'in accordance with the principles of the 1951 Refugee Convention, regardless of whether a country is a signatory to it.'<sup>237</sup>

## 2.2. Connection criteria

The Immigration Rules set out a number of non-exhaustive criteria for establishing a connection between the individual applicant and a safe third country.<sup>238</sup> These include:

- a. Time spent in the country;
- b. Relations with persons in that country, who may be nationals of that country, habitually resident non-nationals, or family members seeking protection there;
- c. Family lineage, regardless of whether family is present in that country; and
- d. Any cultural or ethnic connections.

Connectivity needs to be sufficient, and sufficiency is to be established based on the facts of the individual case.<sup>239</sup> As regards to cultural or ethnic considerations, speaking a common language or being of the same ethnic group found in another country can be relevant but are not sufficient evidence of a connection *per se*.<sup>240</sup>

<sup>235</sup> Home Office, *Inadmissibility; EU grants of asylum, first country of asylum and safe third country concepts*, October 2018, available at: <https://bit.ly/2RzPsv0>.

<sup>236</sup> High Court, *Ibrahimi and Abasi v Secretary of State for the Home Department* [2016] EWHC 2049 (Admin), paras 136-137 and 176.

<sup>237</sup> Home Office, *Inadmissibility; EU grants of asylum, first country of asylum and safe third country concepts*, October 2018, 13.

<sup>238</sup> Para 345D Immigration Rules Part 11.

<sup>239</sup> Home Office, *Inadmissibility; EU grants of asylum, first country of asylum and safe third country concepts*, October 2018, 13.

<sup>240</sup> *Ibid*.

The Home Office policy requires the Home Office to be satisfied that there is clear evidence of the applicant's admissibility to the third country.

### 3. First country of asylum

The "first country of asylum" concept is defined as a country where an applicant: either (a) has been recognised as a refugee and may still enjoy that protection; or (b) otherwise enjoys sufficient protection including protection from *refoulement*. In both cases, the applicant must be able to be readmitted to that country.<sup>241</sup>

The October 2018 Home Office policy states that 'if the individual has not been granted protection, they may nonetheless be removable to the country if it has an organised and functioning asylum system, if it could be expected to make a valid decision regarding protection status in reasonable timescales, and if it applies the principle of non-refoulement.'<sup>242</sup>

## G. 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
3. Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice? ☐ Yes ☐ With difficulty ☒ No
4. 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.'<sup>243</sup>

Further, they shall be informed in writing and in a language they may reasonably be supposed to understand '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.' In practice, however, the language coverage is unlikely to be comprehensive.

<sup>241</sup> Para 345B Immigration Rules Part 11.

<sup>242</sup> Home Office, *Inadmissibility; EU grants of asylum, first country of asylum and safe third country concepts*, October 2018, 12.

<sup>243</sup> Para 357A Immigration Rules Part 11B.

The Home Office is also required to provide information on non-governmental organisations and persons that provide legal assistance to asylum applicants and which may be able to help or provide information on available benefits and services.<sup>244</sup> The charity Migrant Help provides a service called [Asylum Help](#), under a contract with the Home Office. This contract was renewed in January 2019.<sup>245</sup>

Information on the asylum process is given in the initial accommodation centres, both in person and by video presentation. Information is also available about the asylum process on the Asylum Help website. 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 limited.

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.<sup>246</sup>

At the AIU a Point of Claim leaflet is provided,<sup>247</sup> which explains the next steps if the case is put into the regular procedure, and what it means to be granted or refused asylum. Unaccompanied children are also given a leaflet about the Refugee Council Children's Panel<sup>248</sup> and a specific Point of Claim leaflet aimed at children is currently being developed by the Home Office, in consultation with NGOs. A letter prior to the screening appointment also gives information and the Home Office website explains what documents the asylum seeker needs to bring to the screening interview, and rights and responsibilities throughout the asylum process in English only.<sup>249</sup>

A notice giving the contact details of the AIU and the requirement to claim there for a person already in the UK is linked to the Home Office's website in 15 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 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.

Access to information is affected by the award in 2012 to private companies of the contracts for accommodation and transport (the 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

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<sup>244</sup> Para 358 Immigration Rules Part 11B.

<sup>245</sup> Home Office, 'New asylum accommodation contracts awarded', 8 January 2019, available at: <https://bit.ly/2SUJgdM>.

<sup>246</sup> Independent Chief Inspector of Borders and Immigration, *Asylum: A Thematic Inspection of the Detained Fast Track*, ICIBI, 2012, available at: <http://bit.ly/1JXaARf>.

<sup>247</sup> Point of claim leaflet, available at: <http://bit.ly/2DCwJby>.

<sup>248</sup> The leaflet is not available online but contains contact details, amongst other information. More information available at: <http://bit.ly/2krGHS7>.

<sup>249</sup> Home Office, *How to claim asylum*, available at: <http://bit.ly/1G7rHtp>.

advisers and leisure services.<sup>250</sup> This obligation is interpreted differently by each of the contracted accommodation providers who provide information at varying degrees of quality. Following a tender process beginning at the end of 2017 the new contracts were announced in January 2019.<sup>251</sup> One of the previous providers has not received a contract this time.

## H. Differential treatment of specific nationalities in the procedure

### Indicators: Treatment of Specific Nationalities

1. Are applications from specific nationalities considered manifestly well-founded? ☐ Yes ☒ No  
❖ If yes, specify which:
2. Are applications from specific nationalities considered manifestly unfounded?<sup>252</sup> ☒ Yes ☐ No  
❖ If yes, specify which: Albania, India, Ukraine, South Africa, Mauritius, Jamaica  
Mongolia, Brazil, Bolivia, Ecuador, Bosnia- Herzegovina,  
Macedonia, Moldova, Peru, Serbia, Montenegro.  
**For men only:** Ghana, Nigeria, Gambia, Kenya, Liberia,  
Malawi, Mali and Sierra Leone.

From time to time the Home Office announces that removals of refused asylum seekers to particular countries are suspended. This is rare and there are no such concessions currently in force. The only one in the last ten years was in relation to **Zimbabwe**, but this is no longer in force. When there is such a concession in force, refused asylum seekers from that country become eligible to apply for a specific form of support, known as “Section 4 support” and which covers accommodation and non-cash support (see section on [Reception Conditions](#)).<sup>253</sup>

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.<sup>254</sup> This allows them to extend their leave for a further temporary period in specified ways, but does not in itself permit them to claim asylum. The policy is to manage the situation through temporary immigration measures rather than through inviting asylum claims.

The Upper Tribunal (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.<sup>255</sup> This does not result in a proactive grant of status from the asylum authorities but can be relied on by asylum seekers and refused asylum seekers in making representations to the Home Office.

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

<sup>250</sup> COMPASS Project, Schedule 2: accommodation and transport – statement of requirements.

<sup>251</sup> Home Office, ‘New asylum accommodation contracts awarded’, 8 January 2019, available at: <https://bit.ly/2SUJgdM>.

<sup>252</sup> Section 94 NIAA.

<sup>253</sup> Home Office, *Asylum support, Section 4 policy and support*, available at: <http://bit.ly/1Ht8SBE>.

<sup>254</sup> Home Office, *Concession to the Immigration Rules for Syrian nationals*, 1 March 2018, available at: <https://bit.ly/2DcRJ6A>.

<sup>255</sup> Upper Tribunal, *KB (Syria) v Secretary of State for the Home Department* [2012] UKUT 00426.

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 during 2018 were:

Appeal success rates for key nationalities: 2018		
Country of origin	Successful appeals	Success rate
Sudan	295	71%
Afghanistan	408	54%
Eritrea	43	50%
Iran	687	50%
Vietnam	126	41%
Iraq	549	39%
Albania	166	39%

Source: Home Office.

In 2018, there were 496 grants of refugee status to Syrians, and the overall refugee status rate was 92.7%. Those rejected would normally have a right of appeal, unless the refusal was on the basis that another Dublin state has responsibility for the claim. Although data on disputed nationality are not published, we understand that a proportion of refused applicants from countries with very high refugee recognition rates will include those whose claimed nationality is disputed. Revised guidance on this issue was published in 2017.<sup>256</sup>

The first specific resettlement programme was announced in January 2014; this had no specific quota. In September 2015 the government committed to resettle 20,000 Syrians by the end of the parliament in 2020. By the end of 2018 19,945 of these had arrived in the UK.

In March 2017 the Home Secretary announced that from 1 July 2017 people would be granted Refugee Status and those already here would be allowed to convert their status to recognise them as refugees.<sup>257</sup> In July 2017 the Home Secretary announced that people of any nationality fleeing Syria would be eligible for resettlement, if they fulfilled the other criteria.<sup>258</sup>

The government launched a Community Sponsorship scheme as part of the VPRS programme. There are strict criteria for becoming a sponsor, including the type of organisation that can apply and the need to be approved by the local authority before applying to the Home Office. Guidance was issued at the same time as the scheme was launched.<sup>259</sup>

The government has also committed to resettling an additional 3,000 individuals under a 'children at risk' programme. In partnership with UNHCR, the UK will bring children from the Middle East and North Africa (MENA) region; a minority of whom are expected to be unaccompanied. The government announced the programme in response to calls to bring children from Europe. 1,258 have arrived so far.

<sup>256</sup> Home Office, *Nationality; disputed, unknown and other cases*, October 2017, available at: <http://bit.ly/2F8ky2f>.

<sup>257</sup> Secretary of State for the Home Department, 'Statement to Parliament', 22 March 2017, available at: <http://bit.ly/2DL04QG>.

<sup>258</sup> Secretary of State for the Home Department, 'Resettlement: Written statement', 3 July 2017, available at: <http://bit.ly/2DyHeMZ>.

<sup>259</sup> Home Office, *Community sponsorship*, 19 July 2016, available at: <http://bit.ly/29VQxZI>.

## 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
❖ 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
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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.

#### The assessment of destitution

In practice asylum seekers are required to prove that they are destitute and this is strictly enforced. All assets which are available to them are taken into account, whether in the UK or elsewhere, if they consist of cash, savings, investments, land, cars or other vehicles, and goods held for the purpose of a trade or other business.<sup>260</sup> If relevant assets come to light which were not declared, support can be stopped and payments made can be recovered, although it appears that recovery happens infrequently in practice.<sup>261</sup> Asylum seekers are expected to use the assets they have before being granted asylum support, but once they are assessed as destitute there is no requirement for contributions from them.

At the point at which an asylum support application is made, the applicant completes the form ASF1; they can get help from the voluntary sector to do this. Applicants have to state that they understand the following as part of the form:

“Failure to disclose all necessary information or to provide false information regarding myself or any of my dependants may lead to information being passed to the police or other agencies for investigation. Note that failure to supply the required information may result in your application for support being refused.”

Specific questions are asked about financial resources available to the applicant, on this form.

Quality of decision making on support applications has been a significant obstacle, particularly in relation to the destitution test. Between 1 January and 30 September 2018 the Asylum Support Tribunal allowed 59% of the appeal cases it decided where the client was represented by the Asylum Support Appeals Project (ASAP) (82% of cases) and remitted a further 12% back to the Home Office to retake the decision.<sup>262</sup>

<sup>260</sup> Reg. 6 Asylum Support Regulations 2000, available at: <http://bit.ly/1C2R7GQ>.

<sup>261</sup> Reg. 20 Asylum Support Regulations 2000.

<sup>262</sup> ASAP, *Bulletins and quarterly stats*, available at: <https://bit.ly/2FJ8M11>.



## 1.1. Emergency support: Section 98 Support

During the assessment of a person's eligibility for Section 95 support asylum seekers may receive support on a temporary basis ("Section 98 support").<sup>263</sup> This can only be received once the claim is registered and is mainly non-cash assistance. The application must be made on a prescribed form, and this is the only formal requirement.<sup>264</sup> 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. Despite the policy, during 2016 and 2017, Refugee Action has reported that asylum seekers lodging their claims at the AIU or ports of entry being refused Section 98 support or being told to apply for it at a later stage.<sup>265</sup> This problem continued in 2018, as reported by Refugee Action in 2018.<sup>266</sup>

The assessment of applications for Section 98 support has also been reported to be unduly restrictive. Out of 88 cases the organisation assisted in **Manchester** in 2017, half were deemed to be incorrectly refused support, whereas the vast majority of those who reapplied for support subsequently obtained it.<sup>267</sup>

Home Office guidance provides that asylum seekers may stay in initial accommodation for a short time after their initial support under Section 98 has ended.<sup>268</sup> Where further support has been refused this can be up to 7 days; where leave has been granted, up to 28 days; where leave has been refused, 21 days. If there are children, support can continue.<sup>269</sup>

## 1.2. Section 95 Support

Once the destitution assessment is complete, an asylum seeker who is accepted to be destitute receives what is commonly referred to as Section 95 support. They are considered destitute if they do not have adequate accommodation or any means of obtaining it, or else they do have adequate accommodation but no means of meeting their other essential needs, or else they will be in this position within 14 calendar days.<sup>270</sup> The entitlement to Section 95 support covers the asylum procedure and 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). Support is provided using a card (ASPEN) which works on the visa platform; it can be used as a debit card or to withdraw cash from an ATM.

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.<sup>271</sup> Before the results of the consultation were announced, a Bill was introduced into Parliament to bring these proposals into law. The Immigration Act 2016 outlined the measures,<sup>272</sup> although that part of the Act is yet to be enacted and details will not be known until a month prior to the introduction. 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

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<sup>263</sup> Section 98 IAA 1999.

<sup>264</sup> Home Office, *Application for asylum support: Form ASF 1*, 11 January 2016.

<sup>265</sup> Refugee Action, *Slipping through the cracks: How Britain's asylum support system fails the most vulnerable*, July 2017, available at: <http://bit.ly/2fmRGMv>, 13.

<sup>266</sup> Refugee Action, 'Asylum support delays force people seeking safety into homelessness', 6 July 2018, available at: <https://bit.ly/2RuK1h3>.

<sup>267</sup> Refugee Action, *Slipping through the cracks: How Britain's asylum support system fails the most vulnerable*, July 2017, 12-13.

<sup>268</sup> Para 1.1.2, Asylum Support Policy Bulletins Instructions, available at: <http://bit.ly/1LjSzbh>.

<sup>269</sup> Home Office, *Asylum Support Bulletin 73: Access to Support*.

<sup>270</sup> Section 95 IAA 1999.

<sup>271</sup> Schedule 11 Immigration Act 2016.

<sup>272</sup> *Ibid.*



support by hosting a friend. Many destitute refused asylum seekers rely on charities for food vouchers, food parcels, sometimes accommodation (mainly through voluntary hosting schemes) 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 a common experience and there are people who survive this limbo for periods up to 15 years. Many such charities gave evidence to Parliament during the course of the Bill's passage.<sup>273</sup> A 2017 report by the British Red Cross looked at destitution amongst those refused but who were unable to leave the UK.<sup>274</sup>

Obstacles to claiming support include that the application form is 33 pages long,<sup>275</sup> is in English only and is only available online. A 17-page guidance document gives advice on how to complete it. Telephone advice is also available from the [Asylum Help](#) service, part of the charity Migrant Help. The Asylum Help website also has multilingual guides to claiming asylum support, amongst other issues. Any supporting documentation is also handled by Migrant Help; documents can be scanned and communicated to the Home Office via Migrant Help, avoiding the need to submit original documents. 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. In 2017 the charity Refugee Action looked at instances of this issue amongst their caseload and published a report on the findings.<sup>276</sup> If the applicant fails to satisfy the request for further information, the Home Office can decide not to consider the application under Section 57 and this decision cannot be appealed.<sup>277</sup>

The policy of dispersing asylum seekers round the UK and usually away from the south east may also provide a disincentive to ask for accommodation from the Home Office. 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.

Support may be available (accommodation and subsistence payments, the level determined by need) from local authorities where the person is destitute and in need of care and attention because of physical or mental ill health, but recognition of this statutory provision is very uneven around the country and some local authorities simply do not assess refused asylum seekers, or delay for lengthy periods, despite the statutory duty to do so.<sup>278</sup> Where ill health results from destitution, and not from another condition, local authority support is not available. Thus it does not present any solution for the people whose health is ruined by years in destitution. Revised guidance was published in 2018 reflecting the provisions in the Care Act (applying to England) and similar provisions in devolved administrations and the relationship between local authority duties and Home Office asylum support provision.<sup>279</sup>

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<sup>273</sup> See the legislative process at: <http://bit.ly/2IPMWQP>.

<sup>274</sup> British Red Cross, 'Can't stay can't go', March 2017, available at: <http://bit.ly/2vd56xC>.

<sup>275</sup> Home Office, *Application for asylum support: form ASF1*, 11 January 2016, available at: <http://bit.ly/1RfS1qt>.

<sup>276</sup> Refugee Action, *Slipping through the cracks*, July 2017, available at: <http://bit.ly/2rhIxdj>.

<sup>277</sup> Section 57 NIAA 2002.

<sup>278</sup> Section 9 Care Act 2014.

<sup>279</sup> Home Office, *Asylum Seekers with Care Needs*, August 2018, available at: <https://bit.ly/2DcZBFa>.

There is a provision for support to be refused if asylum has not been claimed as soon as reasonably practicable, unless to do so would breach the person's human rights.<sup>280</sup> This is rarely used for claims made soon after arriving in the UK, but may be used where a person claims asylum after a period of residence in the UK. Human rights protection, following the House of Lords case of *Limbuella*,<sup>281</sup> 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.

### 1.3. Additional support: Section 96(2) Support

In 2017 the Home Office published guidance on how to make applications under Section 96(2) Immigration and Asylum Act 1999.<sup>282</sup> The policy is not new but guidance had never been issued despite the government relying on its existence to ensure that applicants and/or their dependants in particular circumstances would have their needs met. Examples of such circumstances given in the guidance include a person whose medical needs result in higher costs or has their belongings destroyed in a fire.

### 1.4. Section 4 Support for rejected asylum seekers

A minority of refused asylum seekers qualify for no-choice accommodation and a form of non-cash support from the Home Office ("Section 4 support") if they meet one of the qualifying conditions set out in the next paragraph.<sup>283</sup> During 2017 the delivery of Section 4 support changed to the ASPEN card; whilst cash may not be withdrawn recipients of Section 4 support may now use the card as a debit card at any retailer accepting Visa. This card has a weekly value of £35.39 (approximately €42) per person.

Section 4 support is available only if refused asylum seekers can show either that they are not fit to travel, that they have a pending judicial review, that there is no safe and viable route of return, that they are taking all reasonable steps to return to their home country, or that it would be a breach of their human rights not to give this support.<sup>284</sup> In practice this latter category is used mostly where the asylum seeker has further representations outstanding. The principle underlying this is that if a person does not meet one of the other conditions, and does not have further representations outstanding, it is not considered a breach of their human rights to leave them destitute; because it is considered that they can return to their home country. The period of Section 4 support is tied to meeting the condition. So people may submit further representations; obtain Section 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.

Applications for Section 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.

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<sup>280</sup> Section 55 NIAA 2002; House of Lords, *Limbuella v Secretary of State for the Home Department* [2005] UKHL 66.

<sup>281</sup> House of Lords, *Limbuella* [2005] UKHL 66.

<sup>282</sup> Home Office, *Applications for additional support*, March 2017, available at: <http://bit.ly/2G9AD94>.

<sup>283</sup> The numbers of refused asylum seekers in the UK are unknown, but the proportion on Section 4 is small.

<sup>284</sup> Immigration and Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005.

For all refused asylum seekers who cannot fulfil the conditions for Section 4 support, with the exception of families who have retained Section 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. The British Red Cross provides regular updates on the asylum seekers it helps because of destitution. It reported that in the first half of 2017 the charity supported more than 8,800 destitute asylum seekers.<sup>285</sup>

## 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 2018 (in £ and in €):
 

❖ Section 95 support per person:	£163.58 / €185.12
❖ Section 4 (non-cash) support per person:	£153.36 / €173.56

Section 95 cash support amounts to £163.58 (186.28€) per calendar month per person. There are no different rates, depending on the claimants' ages and household compositions.

The amounts of Section 95 support are set by regulations, while Section 4 rates are a matter of policy.<sup>286</sup> Small additional payments are available for pregnant women (£3 per week) if they claim this. They may also claim a maternity allowance of £250 (Section 4) or £300 (Section 95). Home Office guidance makes it explicit that pregnant women can be provided with the cost of a taxi journey when they are or may be in labour.<sup>287</sup> Parents on section 4 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 Section 95.

In practice, families who have dependent children before they have exhausted all appeal rights normally stay on cash support (Section 95) after their claim has been refused for as long as they remain in the UK or until the youngest child turns 18, although this can be removed if they do not abide by conditions.<sup>288</sup>

The amount of support is not adequate to meet basic living needs. Asylum support under Section 95 is now 52% of the rate of welfare benefit for a UK national. People on Section 4 support receive even less, and the restriction to non-cash support means that they may not be able to take advantage of the cheapest options such as local shops and markets.<sup>289</sup> A Parliamentary Inquiry stated that even on the pre-August 2015 rates children were living in poverty.<sup>290</sup> The inquiry called for the end of cashless support. Children of families on Section 95 and Section 98 support receive free school meals, but children of families on Section 4 do not.

Before the reduction in asylum support rates the adequacy of Section 95 support was the subject of a court challenge. Judgment was given in the High Court on 9 April 2014,<sup>291</sup> criticising the methodology

<sup>285</sup> British Red Cross, 'Red Cross supports thousands of refugees and asylum seekers left destitute in first half of 2017', 4 August 2017, available at: <http://bit.ly/2BqIRYj>.

<sup>286</sup> Asylum Support (Amendment No.2) Regulations 2015, SI 2015/944.

<sup>287</sup> Home Office, *Asylum Process Guidance – additional services or facilities under the 2007 Regulations*.

<sup>288</sup> Melanie Gower, *Asylum: Financial Support for Asylum Seekers*, House of Commons note SN/HA/1909, 2013.

<sup>289</sup> Sile Reynolds, *Your inflexible Friend: the cost of living without cash*, Asylum Support Partnership 2010, available at: <http://bit.ly/1LqREKU>.

<sup>290</sup> Sarah Teather MP (chair), *Report of the Parliamentary Enquiry into Asylum Support for Children and Young People*, 2013, available at: <http://bit.ly/1GkFMUp>.

<sup>291</sup> High Court, *R (Refugee Action) v Secretary of State for the Home Department* [2014] EWHC 1033 (Admin), available at: <http://bit.ly/1iweLSx>.

used to calculate the rates. 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.'<sup>292</sup> The rates are reviewed annually and consultation is invited.

Further problems come from faults in the operation of the system, particularly when changes occur, such as moving from Section 95 to Section 4, or getting refugee status. Families may be left for weeks without any form of support through administrative delays and mistakes.<sup>293</sup>

### 3. 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

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;
- 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.<sup>294</sup>

In the past the Home Office relied on checks by a credit check agency, interviews with supported people, and investigations into the existence of bank accounts as a method of determining asylum support fraud. It is not common for support to be withdrawn in practice. Where it does happen, the most common reason is as a sanction for breach of conditions of support, for instance being absent from the accommodation or allowing others to stay in it.<sup>295</sup>

<sup>292</sup> House of Commons, *Asylum support: accommodation and financial support for asylum seekers*, Briefing paper no.1909.

<sup>293</sup> See e.g. British Red Cross, *Still an ordeal*, December 2018, available at: <https://bit.ly/2APRYCW>; Refugee Council, *Refugees without refuge: Findings from a survey of newly recognised refugees*, September 2017, available at: <http://bit.ly/2wNldEz>; *England's forgotten refugees*, May 2016, available at: <http://bit.ly/1U4c3VH>. See also Guardian, "Destitution is routine": refugees face homelessness even after gaining asylum', 8 September 2017, available at: <http://bit.ly/2wOcuAM>.

<sup>294</sup> Reg. 20 Asylum Support Regulations 2000, available at: <http://bit.ly/1C2R7GQ>.

<sup>295</sup> ASAP, *Factsheet 1: Section 95*, available at: <http://bit.ly/2hpwv9s>.

The risk of destitution is assessed when a decision to withdraw asylum support is taken. Destitution is defined as a person 'not having access to adequate accommodation or unable to meet their essential living needs now or in the next 14 days.' As described in [Forms and Levels of Material Reception Conditions](#), refused asylum seekers on cashless support (Section 4) are in practice on lesser conditions than those pursuing a first claim who are on Section 95 cash support.

Asylum seekers can appeal to the First Tier Tribunal (Asylum Support) in **London** against a decision to withdraw their support.<sup>296</sup> On application the Home Office sends travel tickets to attend the hearing.<sup>297</sup>

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](#), there has been some overcrowding and use of hotels to deal with the oversubscription.

#### 4. 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 or bail, 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.

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. 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](#). 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.<sup>298</sup>

<sup>296</sup> Section 103 IAA 1999.

<sup>297</sup> ASAP, *Factsheet 3: Appealing to the Support Tribunal*, available at: <http://bit.ly/2wHmyPo>.

<sup>298</sup> A list of Home Office reporting centres is available at: <http://bit.ly/2ryZGPZ>.

## B. Housing

### 1. Types of accommodation

#### Indicators: Types of Accommodation

1. Number of reception centres: 8
2. Total number of places in the reception centres: Not available
3. Total number of persons in dispersed accommodation: 44,258
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

#### 1.1. 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 asks for support and 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 an interim hostel in **Croydon** while accommodation is found, or in hotels in any region where the initial accommodation is full. Accommodation in the initial accommodation centres is usually full board with no cash provided.

The short-term use of bed and breakfast accommodation has tended to rise in times of an increase in applications, although in its response to the Home Affairs Select Committee the government stated that the accommodation providers had taken measures to lessen the need for this. The drawback is that people accommodated in a hotel, even if only for one or two nights, have limited or no access to many of the reception-related rights granted to asylum seekers, with reported cases of persons having only restricted access to accommodation. The consequence of such temporary ‘emergency’ accommodation is that it additionally delays their access to the support system and other welfare services to which they are entitled, as it may take a couple of days before they access advice and complete an application for asylum support.<sup>299</sup> 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.<sup>300</sup> The consequences of such backlogs are varied, but the January 2017 accommodation report from the Home Affairs Select Committee highlighted its inadequacy for women, particularly pregnant women and new mothers. The lack of appropriately nutritious food was one example of this inadequacy. The report also commented on the lack of women only spaces and the government responded that it will work with providers to provide these where it may be possible. Similar findings were reported in an inspection of asylum support accommodation by the Independent Chief Inspector of Borders and Immigration in 2018.<sup>301</sup>

If the asylum seeker qualifies for Section 95 support he or she is 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 legal representative 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 there is no distinction in the initial accommodation based on the claim or its route.

<sup>299</sup> Information provided by Refugee Action.

<sup>300</sup> Home Affairs Select Committee, *Asylum Accommodation*, January 2017, available at: <http://bit.ly/2n0KUWl>.

<sup>301</sup> Independent Chief Inspector of Borders and Immigration, *Inspection of how the Home Office manages asylum accommodation*, November 2018, available at: <https://bit.ly/2rcqsum>.



Where a person has family and friends with whom they can live they can claim cash support. 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.

At the end of 2018, the initial accommodation centres had 2,129 occupants in total.

## 1.2. Dispersed accommodation

All accommodation for asylum seekers is managed by three large private companies under contract to the Home Office, much of which is provided through sub-contracts to smaller 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. New contracts were approved in January 2019 for a ten-year period.<sup>302</sup>

The contract between the Home Office and the private companies requires that families shall be housed in self-contained accommodation.<sup>303</sup> In practice there is some use of hostel-type accommodation for families with small children, and some lone parent families are housed with unrelated families, though nuclear families are normally kept together.<sup>304</sup> Accommodation frequently fails to meet the needs of supported persons, particularly those with children or mobility and health needs. Asylum accommodation has been repeatedly criticised for failing to provide security, respect for privacy and basic levels of hygiene and safety, particularly for women; in the media and in the latest House of Commons Home Affairs Select Committee report published in December 2018.<sup>305</sup>

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

Section 4 support can only be provided as a package including accommodation, in a location determined by the Home Office, and 'facilities for accommodation' i.e. the ASPEN card with no facility for cash. 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.

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<sup>302</sup> Home Office, 'New asylum accommodation contracts awarded', 8 January 2019, available at: <https://bit.ly/2SUJgdM>.

<sup>303</sup> Home Office, *Compass Project: Schedule 2, Accommodation and Transport, Statement of Requirements*, B.8.  
<sup>304</sup> Evidence given to the Parliamentary Enquiry on Asylum Support for Children and Young People.

<sup>305</sup> House of Commons, *Asylum accommodation: Replacing COMPASS*, December 2018, available at: <https://bit.ly/2A164kM>.



## 2. 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? ☐ Yes ☒ No
2. What is the average length of stay of asylum seekers in the reception centres? Not available
3. Are unaccompanied children ever accommodated with adults in practice?<sup>306</sup> ☒ Yes ☐ No

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

### 2.1. Conditions in initial accommodation centres

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. One of the centres, opened in 2017, provides self-catering accommodation with cooking facilities and vouchers for a local supermarket.

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

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. The Home Affairs select Committee received several reports of women feeling unsafe and made strong recommendations in this regard. It was also critical of the conditions for pregnant women and new born babies.<sup>307</sup>

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.

### 2.2. Conditions in dispersed accommodation

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 provided. Although nuclear families are housed together, two single parent families may be placed in one house together, and this has caused significant problems. Additionally, the Asylum Accommodation report of the Home Affairs Select Committee found in January 2017 that in cases of a shortage of dispersal accommodation 'temporary dispersal accommodation' may be used; usually hotels or hostels. Some people housed in this accommodation do not move in for months; in April 2016 there were 1,500 people living in this type of accommodation. Asylum seekers in **London** and **Manchester** have faced average delays of 2 months before obtaining Section 95 support.<sup>308</sup>

Although UKVI's contract terms with the accommodation providers say that houses and flats should be in good repair, there are frequent reports of slow or inadequate repairs and insanitary conditions.<sup>309</sup> Financial pressures to obtain large stocks of low cost accommodation quickly to meet the COMPASS contract in 2012 appeared to have had an adverse impact on the quality of the accommodation procured, and there

<sup>306</sup> If the Home Office makes an initial assessment that the unaccompanied child is an adult.

<sup>307</sup> Home Affairs Select Committee, *Asylum Accommodation*, January 2017, available at: <http://bit.ly/2n0KUWl>.

<sup>308</sup> Refugee Action, *Slipping through the cracks*, July 2017, 20.

<sup>309</sup> Home Affairs Select Committee, *Asylum Accommodation*, January 2017.

seems to have been inadequate maintenance capacity to compensate for this.<sup>310</sup> Problems include pest infestations, lack of heating or hot water, windows and doors that cannot be locked, lack of basic amenities including a cooker, a shower, a washing machine and a sink and a general lack of cleanliness.<sup>311</sup> The Asylum Accommodation report of January 2017 gives quite a lot of attention to this issue and makes several recommendations in its regard, including relating to complaints. They conclude that:

‘Although standards have improved since 2012, the poor condition of a significant minority of properties leads us to conclude that the current compliance regime is not fit for purpose. Those it is meant to help safeguard have little confidence in it and we do not find that it acts as an adequate deterrent to poor compliance. Home Office inspections are infrequent and the low number of penalties appear at odds with the persistent criticisms of the standard of asylum accommodation.’<sup>312</sup>

The report recommends much closer liaison with local authorities and on some issues, for example inspection, it recommends handing over responsibility to local authorities. The Home Affairs Committee report in 2018 concluded that very little had improved and the relationship between the Home Office and local authorities had deteriorated since its 2017 report.<sup>313</sup>

These findings were broadly supported in a report, published in November 2018, following an inspection of asylum accommodation by the Independent Chief Inspector of Borders and Immigration.<sup>314</sup> The report includes examples of poor standards of accommodation and unsuitable accommodation and photographs of both

As there is no choice of accommodation, 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 new-born baby, and indeed other children in the family, of the opportunity to build a relationship with their father’.

The impact of living on Section 4 support is discussed in the section [Forms and Levels of Material Reception Conditions](#).

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<sup>310</sup> National Audit Office, *COMPASS contracts for the provision of accommodation for asylum seekers*, 2014, available at: <http://bit.ly/1Lk1A9a>.

<sup>311</sup> Home Affairs Select Committee, *Asylum Seventh Report of Session 2013-14*, HC 71.

<sup>312</sup> Home Affairs Select Committee, *Asylum accommodation*, January 2017.

<sup>313</sup> Home Affairs Select Committee, *Asylum Accommodation*, December 2018, available at: <https://bit.ly/2XBNvOh>.

<sup>314</sup> Independent Chief Inspector of Borders and Immigration, *Inspection of how the Home Office manages asylum accommodation*, November 2018, available at: <https://bit.ly/2rcqsum>.

## C. 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.<sup>315</sup> The same applies when further submissions have been outstanding for a year, whether or not they have been recognised as a fresh claim.<sup>316</sup> If permission is granted it is limited to applying for vacancies in listed shortage occupations. These are specialist trades and professions which are in short supply in the UK and are defined very specifically (e.g. consultant in neuro-physiology, electricity substation electrical engineer). Self-employment is prohibited.<sup>317</sup>

A campaign was launched in 2018 to 'lift the ban' which refers to the above policy; the main campaign aims are for the government to reduce the waiting time to get permission to work to six months and to allow access to all vacancies, not those on the shortage occupation list. The campaign has many members from refugee and other sectors and has some parliamentary support, leading to debates, a short Bill and an amendment to the Immigration and Social Security Co-ordination (EU Withdrawal) Bill.

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 bail and subject to conditions which may include residing at an address that they give. There is no special access to re-training to enable access to the labour market. Any vocational training is subject to the conditions for education set out in the section on [Access to Education](#).

### 2. Access to education

#### Indicators: Access to Education

1. Does the law provide for access to education for asylum-seeking children? ☒ Yes ☐ No
2. Are children able to access education in practice? ☒ Yes ☐ No

Education is compulsory for children from 5 to 16. This includes children seeking asylum, 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 Section 4 support are not entitled to free school meals or other benefits and yet have no cash to pay for school

<sup>315</sup> Para 360 Immigration Rules Part 11 B.

<sup>316</sup> Court of Appeal, *ZO (Somalia) v Secretary of State for the Home Department* [2009] EWCA Civ 442.

<sup>317</sup> Para 360D Immigration Rules Part 11 B.

meals. There are not generally preparatory classes to facilitate access. If children seeking asylum have special educational needs these may be assessed and met as for other children.

There is no general legal bar to adult asylum seekers entering into education, although specific prohibitions on people claiming asylum can be placed through a bail condition,<sup>318</sup> and many people have been affected by it, particularly as the first iteration of the guidance was unclear in the government's position that there should not generally be bar on asylum seekers accessing education until a refusal of asylum.<sup>319</sup>

Whilst children are entitled to access free school education, the barriers for adults in further and higher education are financial since (other than in Scotland) 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.<sup>320</sup> The regulations do not compel universities to charge these higher fees, but a 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 **Scotland**, the child of an asylum seeker or a young asylum seeker (under 25) is treated as a home student if they meet a set of residence conditions including 3 years residence in Scotland.<sup>321</sup>

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.<sup>322</sup>

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 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.<sup>323</sup> 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 United Kingdom Council for International Student Affairs (UKCISA) gives advice and information on student finance and fee status.<sup>324</sup>

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<sup>318</sup> Home Office, *Immigration Bail*, August 2018, available at: <https://bit.ly/2xxta19>.

<sup>319</sup> Refugee Council, *Immigration bail and right to study*, July 2018, available at: <https://bit.ly/2C8yFWd>.

<sup>320</sup> Reg. 4 Education (Fees and Awards) (England) Regulations 2007 SI 779; Reg. 4 Education (Fees and Awards) (Wales) Regulations 2007 SI 2310. 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.

<sup>321</sup> Reg. 4 Schedule 1 Higher Education (Fees) (Scotland) Regulations 2011 SI 389.

<sup>322</sup> Court of Appeal, *R (Kebede) v Newcastle City Council* [2013] EWCA Civ 960.

<sup>323</sup> 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* [2015] UKSC 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.

<sup>324</sup> UKCISA, *Home or overseas fees: the basics*, available at: <http://bit.ly/1xWsqix>.

As explained in [Unaccompanied Children](#), young people whose asylum claim is refused are commonly given 'UASC leave'. They may apply to extend this before their 18<sup>th</sup> birthday, and so may be applying to higher education while still on UASC leave. Young people in this position are also treated as overseas students. This can impose obstacles on young people who have sought asylum and are leaving local authority care.<sup>325</sup>

Under certain conditions asylum seekers are treated as home students for the purposes of further education. In **England**, this is the case 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 Section 4 support or other statutory assistance. In Wales those on asylum support are treated as home students. In Northern Ireland asylum seekers and their families are treated as home students.<sup>326</sup> In **Scotland**, the conditions are as for higher education, and in addition full-time English courses for speakers of other languages and other part-time courses may be 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.

## D. Health care

### Indicators: Health Care

1. Is access to emergency healthcare for asylum seekers guaranteed in national legislation?  
☒ Yes      ☐ No
2. Do asylum seekers have adequate access to health care in practice?  
☐ Yes      ☒ Limited      ☐ No
3. Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?  
☐ Yes      ☒ Limited      ☐ No
4. If material conditions are reduced or withdrawn, are asylum seekers still given access to health care?  
☐ Yes      ☒ Limited      ☐ No

In **England**, there is free hospital treatment to asylum seekers with a current claim, those refused asylum seekers who are receiving Section 95 or Section 4 support and unaccompanied children in the care of the local authority.<sup>327</sup> Current asylum seekers are entitled to register with a general doctor although in practice many face barriers in registering. In 2016, for example, Doctors of the World assisted 1,906 people, including asylum seekers, to access the National Health Service (NHS).<sup>328</sup> More recent figures are not available.

Free hospital treatment is not generally available to asylum seekers who are not on Section 95 or Section 4 support. Hospital doctors should not refuse treatment that is urgently needed for refused asylum seekers who are not receiving Section 95 or Section 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 Section 95 support stops for single people.<sup>329</sup>

<sup>325</sup> STAR, *How to Campaign for Equal Access: a Guide*, available at: <http://bit.ly/1Lv3DUQ>.

<sup>326</sup> Circular FE 15/12 of the Department of Employment and Learning.

<sup>327</sup> Part 4 HM Government National Health Service (Charges to Overseas Visitors) Regulations 2015 No. 238.

<sup>328</sup> Doctors of the World, *Our UK clinics*, available at: <http://bit.ly/2IL5nWf>.

<sup>329</sup> Department for Health, *Guidance on implementing the Hospital Charging Regulations 2015*, para 7.51.

Accident and emergency services (but not follow-up in-patient care) and treatment for listed diseases are free to all including refused asylum seekers who are not on asylum support. General doctors have the same discretion to register refused and unsupported asylum seekers that they have for any person living in their area.<sup>330</sup>

In **Scotland** all asylum seekers are entitled to full free health care, including those refused asylum seekers not on Section 4 support and including the spouse/civil partner and any dependent children of any of these people.<sup>331</sup>

In **Wales**, regulations which entailed charging refused asylum seekers were introduced, but after lobbying these charges were revoked.<sup>332</sup>

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.<sup>333</sup>

Access to mental health services is not guaranteed, and is often lacking.<sup>334</sup>

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.<sup>335</sup> Moves sometimes entail a break of several weeks in antenatal care including monitoring and treatment of conditions such as diabetes or hepatitis, which need to be sustained during pregnancy.<sup>336</sup> Moves are not frequent once accommodation is allocated, but can happen for instance when an asylum seeker is allocated Section 95 or Section 4 housing away from the area where she has been previously living.

Charges for those with no leave to remain in the UK were introduced in April 2015.<sup>337</sup> 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.<sup>338</sup> Guidance was issued by the Government (Department of Health)

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<sup>330</sup> British Medical Association, *Access to health care for asylum seekers and refused asylum seekers – guidance for doctors*, April 2012, available at: <http://bit.ly/1CqjDIN>.

<sup>331</sup> Scottish Government Healthcare Policy & Strategy Directorate, April 2010, CEL 9 (2010) Overseas Visitors' Liability to Pay Charges for NHS Care and Other Services.

<sup>332</sup> NHS (Charges to Overseas Visitors) (Amendment) (Wales) (Regulations 2009).

<sup>333</sup> Provision of Health Services to Persons Not Ordinarily Resident Regulations (Northern Ireland) 2015 SI No. 27 reg. 9, available at: <http://bit.ly/1PcmHMJ>.

<sup>334</sup> Yohannes Fassil and Angela Burnett, *Commissioning mental health services for vulnerable adult migrants* August, 2014, available at: <http://bit.ly/2jHiNle>.

<sup>335</sup> Refugee Council and Maternity Action, *When Maternity Doesn't Matter*, 2013.

<sup>336</sup> *Ibid.*

<sup>337</sup> Section 38 Immigration Act 2014 and National Health Service (Charges to Overseas Visitors) Regulations 2015 No. 238.

<sup>338</sup> Department of Health: *Migrant Access to the NHS: Consultation*, July 2013, available at: <http://bit.ly/1Jdl3Xw>.



in April 2016.<sup>339</sup> A report from the National Audit office in 2016 reported that the policy has unintended consequences and that some people are wrongly charged.<sup>340</sup> Similar findings were revealed in a report and review of evidence published by the Equality and Human Rights Commission in 2018.<sup>341</sup>

In 2017 the government announced its intention to extend charging for many more frontline services (except GPs) and to introduce a duty for health services in England to check a person's immigration status before treating. To enable this to happen regulations were introduced to Parliament; some changes were made in August 2017 and others in October 2017.<sup>342</sup> During a parliamentary debate the government agreed to review the impact of the regulations. There has been a lot of lobbying on the issue.<sup>343</sup> A report by Doctors of the World in 2017 concluded that people were being deterred from seeking medical care as a result of the charges.<sup>344</sup>

## E. Special reception needs of vulnerable groups

### Indicators: Special Reception Needs

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

☒ Yes

☒ No

There is no mechanism laid down by law to identify vulnerable groups or persons with special reception needs, although there is policy that instructs caseworkers to assess whether the asylum seekers have any special medical needs that will affect dispersal.<sup>345</sup> This policy was revised in 2016.

If the asylum seeker has e.g. a medical report which already shows that they are vulnerable, or has some other individual assessment showing this, the accommodation provider is required to take their vulnerability into account in providing accommodation.<sup>346</sup> The arrangements for accommodation of children have been described above (see section on [Types of Accommodation](#)). Aside from this the law provides no specific measures to address the reception needs of vulnerable groups.

If an asylum seeker discloses a health need during screening (i.e. before dispersal) the Home Office must provide sufficient information to the accommodation provider to ensure that necessary arrangements for dispersal are put in place i.e. appropriate travel, accommodation and location. The accommodation provider is contractually obliged to take an asylum seeker to a General Practitioner within 5 days of dispersal if he or she has a pre-existing condition or is in need of an urgent General Practitioner review.<sup>347</sup>

Whether needs are addressed in fact is variable according to local practice. Initial accommodation centres are run by private companies under contract to the Home Office. The Initial Accommodation includes a healthcare team who offer a basic screening of the health needs of all residents. In practice, unless vulnerability is identified at one of the initial accommodation centres by a healthcare provider, it is unlikely

<sup>339</sup> Department of Health, *Guidance on overseas visitors hospital charging regulations*, 6 April 2016, available at: <http://bit.ly/1mU47FG>.

<sup>340</sup> National Audit Office, *Recovering the cost of NHS treatment for overseas visitors*, October 2016, available at: <http://bit.ly/2e4ri6z>.

<sup>341</sup> Equality and Human Rights Commission, 'Asylum seekers in Britain unable to access healthcare', 29 November 2018, available at: <https://bit.ly/2QW9WJe>.

<sup>342</sup> The National Health Service (Charges to Overseas Visitors) (Amendment) Regulations 2017, available at: <http://bit.ly/2tFXxz>.

<sup>343</sup> See e.g. Health Stream of Sanctuary, 'Changes to Accessing Healthcare – Impact on Refugees & Asylum-Seekers – Take Action Now!', 31 August 2017, available at: <http://bit.ly/2wrObsh>.

<sup>344</sup> Doctors of the World, *Deterrence, delay and distress*, 2017, available at: <http://bit.ly/2n5nANs>.

<sup>345</sup> Home Office, *Healthcare needs and pregnancy dispersal policy*, available at: <http://bit.ly/1Vgcw9H>.

<sup>346</sup> Asylum Seeker (Reception Conditions) Regulations SI 2005/7.

<sup>347</sup> *Ibid*, Home Office Asylum Process Guidance.



to be identified until the asylum seeker discloses a problem to a voluntary, community or community advice organisation.

The Home Office has a 'protected period' of eight weeks for women not to be moved for four weeks before and after giving birth.<sup>348</sup> However, the accommodation allocated during this time is in initial accommodation centres, in which conditions are often not conducive to the care of a new baby.<sup>349</sup> The particular difficulties for pregnant women and new mothers were highlighted in both the 2018 Home Affairs Committee report<sup>350</sup> and the Independent Chief Inspector's report on the same subject. The government issued an assurance action plan with its response to the latter report.<sup>351</sup> Research from the Asylum Support Appeals Project, Scottish Refugee Council and Refugee Council revealed the lack of attention to women's safety in asylum support accommodation.<sup>352</sup>

If it comes to light that an asylum seeker has been trafficked, they may be referred to special accommodation run by the Salvation Army where specific support is given and the trafficking case considered. In 2018 the amount of subsistence paid to these individuals was cut to bring it in line with others in the asylum support system. This change was challenged in court and was successful.<sup>353</sup> In January 2019 guidance was issued by the government advising affected victims how to claim backdated payments arising from the unlawful cut.<sup>354</sup>

## 1. Reception and care of unaccompanied children

Those who are given the benefit of the doubt and those who are accepted as being under the age of 18 are referred to a local authority social services department which becomes responsible for their care.<sup>355</sup> They should be looked after according to the same standards as other young people in the care of local authorities. There is little practical guidance for social workers on the specific needs of these children, although statutory guidance for England and Wales was reissued in 2017 and contains more practical guidance.<sup>356</sup> Some helpful information for local authorities has been provided as a result of the transfer scheme, this guidance was revised in 2018.<sup>357</sup> The joint safeguarding strategy published in November 2017 identified future work such as resources for professionals, guidance and training.<sup>358</sup> Some of this work is already in progress: the funding for training of foster carers has been awarded to the Refugee Council and ECPAT UK and has begun.<sup>359</sup>

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

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<sup>348</sup> Home Office, *Healthcare needs and pregnancy dispersal policy*, available at: <http://bit.ly/1Vgcw9H>.

<sup>349</sup> Home Affairs Select Committee, *Asylum accommodation*, January 2017.

<sup>350</sup> Home Affairs Select Committee, *Asylum accommodation*, December 2018, available at: <https://bit.ly/2XBNvOh>.

<sup>351</sup> Home Office, *Asylum support – Assurance Action Plan*, available at: <https://bit.ly/2NMOTJt>.

<sup>352</sup> Helen Baillot and Elaine Connelly, *Women seeking asylum: safe from violence in the UK?*, 2018, available at: <https://bit.ly/2lWFbFi>.

<sup>353</sup> High Court, *R (K and AM) v Secretary of State for the Home Department* [2018] EWHC 2951 (Admin), 8 November 2018, available at: <https://bit.ly/2Fy4WJE>.

<sup>354</sup> Home Office, *Claim a subsistence rates back payment: victims of modern slavery*, 17 January 2019, available at: <https://bit.ly/2TnE867>.

<sup>355</sup> Home Office, *Asylum Policy Instruction: Processing an Asylum Application from a Child*.

<sup>356</sup> Department of Education, *Statutory guidance for unaccompanied migrant children and victims of modern slavery*, November 2017, available at: <http://bit.ly/1tZSXZv>.

<sup>357</sup> National Transfer Scheme Interim Protocol, available at: <http://bit.ly/2l53tMt>.

<sup>358</sup> Government, *Joint Safeguarding Strategy*, November 2017, available at: <http://bit.ly/2mXriMd>.

<sup>359</sup> Details are available on the Refugee Council website at: <https://bit.ly/2MgjOgp>.

Council's Children's Advice Service (formerly named the 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.<sup>360</sup>

Some local authorities, such as those with a port of entry and immigration control within their boundary, have become responsible for a disproportionate number of unaccompanied children, as the responsibility lies with the local authority where the child is first identified. When numbers started to rise in 2015-2016, particularly around the port of **Dover**, some local authorities, particularly **Kent**, reported that they were finding it difficult to look after them appropriately and asked other local authorities to offer placements for them. The Immigration Act 2016 included provision for the legal transfer of responsibility from the initial local authority to a second local authority which has volunteered to take over the care. Initially possible only in England; in 2018 the government extended it to **Scotland, Wales and Northern Ireland**.<sup>361</sup> A protocol, along with information and advice for social workers is available on the ADCS website.<sup>362</sup> Funding is provided to local authorities for the care of unaccompanied children and those who have left care but are still the responsibility of the local authority.<sup>363</sup>

The Refugee Children's Consortium produced a briefing note outlining some of its members' concerns about the operation of the transfer scheme, particularly focusing on the difficulties children face when their transfer is uncertain or delayed.<sup>364</sup> There has been a drop in the overall numbers transferred (from 2017 to 2018).

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 their human rights. This tends to be a more minimal provision than that provided to other young people. Provisions of the Immigration Act 2016 will restrict further the support that local authorities can provide to those over 18 who are appeal rights exhausted but this has not yet been enacted.

## F. Information for asylum seekers and access to reception centres

### 1. Provision of information on reception

Paragraph 358 of the Immigration Rules is the only provision in law on information concerning reception conditions (see section on [Accelerated Procedure](#)). Paragraph 344C requires a person who is granted asylum to be provided with access to information, as soon as possible, in a language that they may reasonably be supposed to understand which sets out the rights and obligations relating to refugee status.<sup>365</sup>

The charity Migrant Help has been providing the Asylum Support Applications UK and Asylum Advice and Guidance services, called [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.

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<sup>360</sup> Refugee Council Children's Section Advice service, available at: <http://bit.ly/2F9wTmS>.

<sup>361</sup> The Transfer of Responsibility for Relevant Children (Extension to Wales, Scotland and Northern Ireland) Regulations 2018, available at: <https://bit.ly/2Ry84vl>.

<sup>362</sup> National Transfer Scheme Interim Protocol, available at: <http://bit.ly/2l53tMt>.

<sup>363</sup> Home Office, *Unaccompanied asylum seeking children and leaving care: funding instructions*, October 2018, available at: <https://bit.ly/2DfgsHn>.

<sup>364</sup> Refugee Children's Consortium 2017, available at: <http://bit.ly/2DBT2Nv>.

<sup>365</sup> Para 344C Immigration Rules Part 11.

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 Section 4 support, and there is no specific contact point with the Home Office at which this information is provided, although a telephone-only application and advice system is in place for Section 4.

## 2. 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 and 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 health service or 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 or legal representatives 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.

## G. Differential treatment of specific nationalities in reception

There is no differential treatment relating to nationality.

## Detention of Asylum Seekers

### A. General

#### Indicators: General Information on Detention

1. Total number of asylum seekers detained in 2018: <sup>366</sup>	12,637
2. Number of asylum seekers in detention at the end of 2018:	1,085
3. Number of detention centres: <sup>367</sup>	10
4. Total capacity of detention centres: <sup>368</sup>	3,385

When asylum seekers are detained, they are detained in immigration removal centres (IRC), usually under the same legal regime and in the same premises as other people subject to immigration detention. 51% of immigration detainees in 2018 were asylum seekers. The centres consist of 7 IRC and 3 short-term holding facilities (STHF). In November 2018 the government announced it would close **Campsfield** IRC in May 2019 but it actually closed in December 2018.<sup>369</sup> The published statistics now include immigration detainees held in prisons; in 2018 there were 3,058 immigration detainees held in prison at some point during the year.

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 immigration bail. 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 also 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.

The number of people who had sought asylum at some time and have been detained (“asylum detainees”) in recent years is as follows:

<sup>366</sup> Includes applicants detained in the course of the asylum procedure, persons lodging an application from detention and rejected applicants. 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. Government statistics, available at: <https://bit.ly/2VJp6UX> (detention tables).

<sup>367</sup> Including short-term holding facilities.

<sup>368</sup> Source; AVID detention. There is an agreement for an additional 600 immigration detention places in prisons.

<sup>369</sup> Migration Observatory, *Immigration detention in the UK*, July 2018, available at: <https://bit.ly/2Hkuxpq>.

“Asylum detainees” in the United Kingdom: 2014-2018		
	Detentions throughout the year	Detained at the end of the year
2014	14,056	1,698
2015	14,751	1,250
2016	13,230	1,626
2017	12,916	1,508
2018	12,637	1,085

Home Office, *Immigration statistics, Detention Tables dt1 and dt13*. Note that this does not necessarily mean detention of asylum seekers during the course of the procedure.

Guidance was published in 2017 relating to asylum claims made from detention.<sup>370</sup> It is aimed at those considering asylum claims from people detained at the point of making their claim, as well as considering the detention of people during their claim. It does not replace or replicate other guidance on consideration of asylum claims; it is complementary to other guidance.

## B. Legal framework of detention

### 1. Grounds of detention

#### Indicators: Grounds for Detention

- In practice, are most asylum seekers detained
  - ❖ on the territory: ☐ Yes ☒ No
  - ❖ at the border: ☐ Yes ☒ No
- Are asylum seekers detained in practice during the Dublin procedure?
  - ☒ Frequently ☐ Rarely ☐ Never
- Are asylum seekers detained during a regular procedure in practice?
  - ☐ Frequently ☒ Rarely ☐ 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:

- ❖ The person is likely to abscond if released;
- ❖ There is currently insufficient reliable information to decide whether to release them (for instance their identity cannot be verified);
- ❖ Removal from the United Kingdom is imminent;
- ❖ The person needs to be detained whilst alternative arrangements are made for their care;
- ❖ Release is not considered conducive to the public good;
- ❖ The application may be decided quickly using the fast track procedures.<sup>371</sup>

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

<sup>370</sup> Home Office, *Asylum claims in detention*, September 2017, available at: <http://bit.ly/2rwD2HN>.

<sup>371</sup> Home Office, *Chapter 55 – Enforcement Instructions and Guidance*, available at: <http://bit.ly/2t3RRCs>.

Following the Court of Justice of the European Union (CJEU)'s ruling in *Al Chodor*, which required Member States to lay down objective criteria for the interpretation of the 'significant risk of absconding' needed in order to impose detention pending a Dublin transfer, the Transfer for Determination of an Application for International Protection (Detention) (Significant Risk of Absconding Criteria) Regulations 2017 were introduced. There is a list of eleven criteria to be considered; some are based on an applicant's immigration history but the criteria include whether there are reasonable grounds to believe that the applicant is likely to fail to comply with any conditions attached to a grant of temporary admission or release or immigration bail; which is subject to interpretation. The regulations were unsuccessfully challenged in a judicial review.<sup>372</sup> A challenge to the pre-*Al Chodor* policy ruled that the claimants had been unlawfully detained, as the Enforcement guidance had not been compatible with the Dublin Regulation, specifically Articles 28(2) and 2(n).<sup>373</sup>

Most asylum seekers are not detained before their claim is decided. However, detention in Dublin cases is more frequent. When a take charge or take back request has been accepted or deemed accepted by the prospective receiving country, the asylum seeker will usually be detained prior to removal.

## 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:

- (a) Electronic tagging;<sup>374</sup>
- (b) Regular reporting;<sup>375</sup>
- (c) Bail with sureties;<sup>376</sup>
- (d) Residence restrictions.<sup>377</sup>

Guidelines say that detention should only be used as a last resort. However, no proof is required that alternatives are not effective. Residence restrictions and regular reporting are routinely applied to all asylum seekers, and bail will always include residence restrictions and reporting. Breach of these conditions may result in detention. Electronic tagging is in frequent use mainly for ex-offenders and may be a bail condition. Numbers of asylum seekers tagged are not available. New guidance relating to Immigration Bail was issued in August 2018.<sup>378</sup> This guidance includes the process for referring detainees for automatic bail consideration, in most cases, four months after the person was first detained and every four months thereafter.

<sup>372</sup> Court of Appeal, *Omar v Secretary of State for the Home Department* [2019] EWCA Civ 207, 21 February 2019, available at: <https://bit.ly/2F7kanl>.

<sup>373</sup> Court of Appeal, *Hammati v Secretary of State for the Home Department* [2018] EWCA Civ 2122, 4 October 2018, available at: <https://bit.ly/2S1EtLk>.

<sup>374</sup> Section 36 AITOCA.

<sup>375</sup> Para 21(2) Schedule 2 Immigration Act 1971.

<sup>376</sup> Section 61 Schedule 10 Immigration Act 2016.

<sup>377</sup> Para 21(2) Schedule 2 Immigration Act 1971.

<sup>378</sup> Home Office, *Immigration bail*, August 2018, available at: <https://bit.ly/2xxxta19>.



In September 2016, Detention Action published a report on community-based alternatives to detention, exploring their potential use in the immigration control context and calling for their further development.<sup>379</sup> The Detention Forum has produced a guide to alternatives to detention.<sup>380</sup>

In response to the second report by Stephen Shaw on the detention of vulnerable people,<sup>381</sup> the government announced that some specific projects (alternatives) would be developed in partnership with the voluntary sector.<sup>382</sup> Details of the first of these was announced in December 2018.<sup>383</sup>

An inquiry by the parliamentary Joint Committee on Human Rights published evidence as it was submitted (oral and written), including evidence from the government.<sup>384</sup> In evidence to the Committee the Immigration Minister stated that in the 10 months since the automatic bail policy was introduced 10% of automatic bail hearings have resulted in the detainee being granted bail.<sup>385</sup>

The Committee published its report on 7 February 2019 and made five main recommendations:<sup>386</sup>

1. The decision to detain should not be made by the Home Office but should be made independently.
2. Introduce a 28 day time limit to end the trauma of indefinite detention.
3. Detainees should have better and more consistent access to legal aid to challenge their detention.
4. More needs to be done identify vulnerable individuals and treat them appropriately.
5. The Home Office should improve the oversight and assurance mechanism in the immigration detention estate to ensure that any ill-treatment or abuse is found out immediately and action is taken. Concerns over the distressing effect of indeterminate detention.

### 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.<sup>387</sup> In practice vulnerable individuals are detained.

<sup>379</sup> Detention Action, *Without detention: Opportunities for alternatives*, September 2016, available at: <http://bit.ly/2kS7qoR>.

<sup>380</sup> Detention Forum, *Alternatives to detention: Frequently asked questions*, July 2018, available at <https://bit.ly/2pDYpmF>.

<sup>381</sup> Stephen Shaw, *Welfare in detention of vulnerable people review: progress report*, July 2018, available at: <https://bit.ly/2JQVvmb>.

<sup>382</sup> Home Office, 'Home Secretary statement on immigration detention and Shaw report', 24 July 2018, available at: <https://bit.ly/2uVZdGQ>.

<sup>383</sup> Home Office, 'New pilot schemes to support migrants at risk of detention', 3 December 2018, available at: <https://bit.ly/2QQEj3X>.

<sup>384</sup> Minister of State for Immigration, 'Use of immigration detention: The Government's strategic approach', 3 December 2018, available at: <https://bit.ly/2DdzNc0>.

<sup>385</sup> Joint Committee on Human Rights, Oral evidence session, HC 1484, 5 December 2018, available at: <https://bit.ly/2TjsfON>.

<sup>386</sup> Joint Committee on Human Rights, *Immigration Detention Inquiry*, 7 February 2019, available at: <https://bit.ly/2HVfZyF>.

<sup>387</sup> Home Office, *Enforcement Instructions and Guidance – Chapter 55 Detention*, para 55.10



Following a review of the treatment of vulnerable people in detention (“the Shaw Review”) in January 2016,<sup>388</sup> NGOs expected that guidance would follow the main message of the report – that fewer people should be detained and that better systems need to be designed to reduce the number of vulnerable people detained. However, the policy guidance issued in response to the report, which also fulfilled the requirements of section 59 of the Immigration Act 2016, makes it more difficult to secure release based for example on their experiences of torture or of their deteriorating mental health.<sup>389</sup> The definition in the Adults at Risk policy was more limited than that provided in the UN Convention against Torture (UNCAT). In a case brought by Medical Justice the definition in this new policy was challenged; the case was heard in March 2017 and judgment delivered in October 2017.<sup>390</sup> At an early stage of the case the Home Office was ordered to revert to the more generous UNCAT definition, which as the case was successful, remains the policy.

Stephen Shaw was asked to review the extent to which his recommendations have been met; this review began in autumn 2017 and was published in July 2018,<sup>391</sup> alongside a response from the Home Secretary.<sup>392</sup> The response elicited a mixed reaction from stakeholders although in its evidence to the Joint Committee on Human Rights the government laid out details of its strategy. Criticisms of the safeguards introduced as a result of the initial report remain.<sup>393</sup> Oversight of the Adults at Risk Policy will now form part of the work of the Independent Chief Inspector of Borders and Immigration.<sup>394</sup>

### 3.1. Detention of women

Pregnant women may only be detained where (a) they will shortly be removed from the UK; and (b) there are exceptional circumstances justifying detention.<sup>395</sup>

During the passage of the Immigration Act 2016, the government announced a time limit for the detention of pregnant women.<sup>396</sup> This was in response to amendments proposed to the Bill by various parliamentarians calling for a complete prohibition, a recommendation that had been made in the “Shaw review”, published in January 2016.

The Home Office published specific guidance concerning the detention of pregnant women in July 2016.<sup>397</sup>

The most recent inspection of **Yarl’s Wood IRC**, the detention centre for women, reported that some conditions had improved since the previous report although:

- 70% of detained women were released into the community, not removed from the UK.

<sup>388</sup> Stephen Shaw, *Review into the Welfare in Detention of Vulnerable Persons*, Cm 9186, January 2016, available at: <http://bit.ly/2kqYkln>.

<sup>389</sup> Home Office, ‘*Adults at Risk*’ in immigration detention, 6 December 2016, available at: <http://bit.ly/2l4ZXkS>.

<sup>390</sup> Medical Justice, available at: <http://bit.ly/2gyl1zM>.

<sup>391</sup> Stephen Shaw, *Welfare in detention of vulnerable people review: progress report*, July 2018, available at: <https://bit.ly/2JQVvmb>.

<sup>392</sup> Home Office, ‘Home Secretary statement on immigration detention and Shaw report’, 24 July 2018, available at: <https://bit.ly/2uVZdGQ>.

<sup>393</sup> See e.g. BID, *Adults at Risk: the ongoing struggle for vulnerable adults in detention*, July 2018, available at: <https://bit.ly/2AsQbUK>.

<sup>394</sup> Independent Chief Inspector of Borders and Immigration, *Call for evidence: ‘Adults at Risk’ in immigration detention*, 25 January 2019, available at: <https://bit.ly/2ETM5XY>.

<sup>395</sup> Section 60 Immigration Act 2016.

<sup>396</sup> Government, ‘New time limit planned for pregnant women in detention’, 18 April 2016, available at: <http://bit.ly/2lcjhBE>.

<sup>397</sup> Home Office, *Enforcement instructions and guidance – Chapter 55a Detention of pregnant women*, 12 July 2016, available at: <http://bit.ly/2jDmhBK>.

- few women were released on the basis of torture evidence; it was noted that the Home Office were reluctant to see rape as torture;
- Whilst the number of pregnant women detained had reduced, 28 were detained in the six months leading up to the inspection.<sup>398</sup>

### 3.2. Detention of children

Where a person is treated after screening as under 18 they are not detained. Home Office published policy is that children may be detained for short periods pending removal if other steps in the family removal procedure do not result in their leaving the UK,<sup>399</sup> and this is the purpose of the family 'Pre Departure Accommodation' this has been located at Tinsley House Removal Centre since May 2017.

63 children entered detention in 2018, including 42 'child asylum detainees'. Out of 63 children recorded as leaving detention in 2018, 41 were bailed by the state (into the community) and 22 removed from the UK. Of the remainder one was released on bail and two recorded as 'other'.<sup>400</sup>

The instances of applicants detained as adults and found to be children has reduced since the case of AA in June 2016,<sup>401</sup> although they do still occur.

### 3.3. Detention of seriously ill persons

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.<sup>402</sup> Torture survivors continue to be detained even after Rule 35<sup>403</sup> reports (see section on [Special Procedural Guarantees](#)).<sup>404</sup> 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.<sup>405</sup> 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 IRC. 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

<sup>398</sup> HM Inspector of Prisons, *Report on the unannounced inspection of Yarl's Wood*, June 2017, available at: <http://bit.ly/2iidM16>.

<sup>399</sup> Home Office, *Enforcement Instructions and Guidance*, Chapter 45 *Families and Children, Family Returns Process operational Guidance*.

<sup>400</sup> Home Office, *Immigration statistics: Q4 2018, Detention*.

<sup>401</sup> High Court, *AA v Secretary of State for the Home Department* [2016] EWHC 1543 (Admin), 20 June 2016.

<sup>402</sup> For example, *R (S) v Secretary of State for the Home Department* [2011] EWHC 2120 (Admin); *R (BA) v Secretary of State for the Home Department* [2011] EWHC 2748 (Admin); *R (HA) v Secretary of State for the Home Department* [2012] EWHC 979 (Admin); *R (D) v Secretary of State for the Home Department* [2012] EWHC 2501 (Admin); *R (on the application of Lamari) v Secretary of State for the Home Department* [2013] EWHC 3130 and *R (on the application of Das) v Secretary of State for the Home Department* [2014] EWCA Civ 45, *R (on the application of MD) v Secretary of State for the Home Department* [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' (2013) 27:1 *Journal of Immigration Asylum and Nationality Law* 41-46.

<sup>403</sup> Rule 35 Detention Centre Rules.

<sup>404</sup> Independent Chief Inspector of Borders and Immigration and Chief Inspector of Prisons, *The effectiveness and impact of immigration detention casework*, 2012, available at: <http://bit.ly/1BGKAH8> and Natasha Tsangarides, *The Second Torture: immigration detention of torture survivors*, Medical Justice, 2012, available at: <http://bit.ly/1GC9Yg2>.

<sup>405</sup> Home Office, *Review of Mental Health Issues in Immigration Removal Centres Immigration & Border Policy Directorate*, 2015.

with a mental health condition should only be detained under exceptional circumstances.<sup>406</sup> A report by Amnesty International UK looked into the use of detention and its consequences; in their interviews with detainees and their families the most common consequences reported were damage to mental and physical health and harm for family members, particularly women and children.<sup>407</sup>

Following the Shaw Review in January 2016,<sup>408</sup> NGOs expected that guidance would follow the main message of the report – that fewer people should be detained and that better systems need to be designed to reduce the number of vulnerable people detained. However, the policy guidance issued in response to the report, which also fulfilled the requirements of Section 59 of the Immigration Act 2016, makes it more difficult to secure release based for example on their experiences of torture or of their deteriorating mental health.<sup>409</sup> The definition in the Adults at Risk policy was more limited than that provided in the UN Convention against Torture (UNCAT). In a case brought by Medical Justice the definition in this new policy was challenged; the case was heard in March 2017 and judgment delivered in October 2017.<sup>410</sup> The Immigration Rules were amended to reflect the new definition of torture.<sup>411</sup> The Adults at Risk policy has also been revised.<sup>412</sup>

#### 4. Duration of detention

##### Indicators: Duration of Detention

- |  |                     |
|--|---------------------|
| 1. What is the maximum detention period set in the law (incl. extensions): |                     |
| ❖ Pregnant women and children  | 72 hours, or 7 days |
| ❖ Other groups   | None                |
| 2. In practice, how long in average are asylum seekers detained?           | Not available       |

The Home Office is responsible for ordering detention of asylum seekers. It is difficult to give meaningful data on the average length of detention of asylum seekers (outside the Detained Fast Track, for which see the section on [Accelerated Procedure](#)). There is no maximum period set in law, with the exception of detention of pregnant women and children which cannot exceed 72 hours, or 7 days with Ministerial approval. 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.

<sup>406</sup> All Party Parliamentary Group on Refugees & the All Party Parliamentary Group on Migration, *The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom*, 2015, available at: <http://bit.ly/1GLjtbG>.

<sup>407</sup> Amnesty International, *A matter of routine; the use of immigration detention in the UK*, December 2017, available at: <http://bit.ly/2BoDAPC>.

<sup>408</sup> Stephen Shaw, *Review into the Welfare in Detention of Vulnerable Persons*, Cm 9186, January 2016, available at: <http://bit.ly/2kqYkln>.

<sup>409</sup> Home Office, *'Adults at Risk' in immigration detention*, 6 December 2016, available at: <http://bit.ly/2l4ZXkS>.

<sup>410</sup> High Court, *Medical Justice v Secretary of State for the Home Department* [2017] EWHC 2461 (Admin), 10 October 2017, available at: <http://bit.ly/2gy1zM>.

<sup>411</sup> The Detention Centre (Amendment) Rules 2018, Rule 2, available at: <https://bit.ly/2T5EHh3>.

<sup>412</sup> Home Office, *Adults at Risk in Immigration Detention*, July 2018, available at: <https://bit.ly/2TTPfj9>.

During 2018, 25,487 people left immigration detention. Of these:

Persons released from detention by duration of stay: 2016-2018			
Duration of stay in detention	2016	2017	2018
Less than 29 days	18,281	18,368	17,655
From 29 days to 2 months	5,271	4,675	3,480
From 2 to 4 months	3,261	3,304	2,400
From 1 to 2 years	179	194	186
At least 2 years	29	31	14

Source: Home Office, *Immigration Statistics, Detention*.

However, there is no cross referencing of the number of asylum detainees in 2018 (13,442) and length of detention of those who 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?<sup>413</sup> ☒ Yes ☐ No

#### 1.1. Immigration Removal Centres (IRC)

There are currently 7 Immigration Removal Centres (IRC) where immigration detention is implemented:

Immigration Removal Centres: 2018			
IRC	Population detained	Capacity	Occupancy end 2018
Harmondsworth	Men	615	447
Yarl's Wood	Women	406	159
Dungavel House	Men; women	217	61
Tinsley House	Men; families	154	57
Campfield House	Men	276	Closed December 2018
Brook House	Men	448	240
Morton Hall	Men	392	216
Colnbrook	Men; women	420	199
<b>Total</b>		<b>2,928</b>	<b>1379</b>

Source: Home Office, *Immigration statistics: Q4 2018, Detention* (capacity courtesy of AVID detention).

<sup>413</sup> If a person claims asylum from prison, they will be kept there.

## 1.2. Short-Term Holding Facilities (STHF)

There are currently 3 residential Short-Term Holding Facilities (STHF), which can hold detainees for up to seven days, in addition to a small facility in Yarl's Wood, where some people are detained for screening. Many airports or reporting centres have short term holding facilities where people are held under detention powers for up to 24 hours.

Short-Term Holding Facilities: 2018		
STHF	Capacity	Occupancy end 2018
Colnbrook	8	2
Larne House	19	3
Manchester	32	4
<b>Total</b>	59	9

Source: Home Office, *Immigration statistics: Q4 2018, Detention* (capacity courtesy of AVID detention).

## 1.3. Prisons

At the end of December 2018, 366 individuals were detained under Immigration Act powers in prisons in **England and Wales**.<sup>414</sup> 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 (IRC) 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 IRC, 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. 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.<sup>415</sup>

<sup>414</sup> Association of Visitors to Immigration Detainees (AVID), *Prison statistics*, available at: <http://bit.ly/1N0tKpz>.

<sup>415</sup> Home Office, *Enforcement Instructions and Guidance*, Chapter 55.10.1.

## 2. Conditions in detention facilities

### Indicators: Conditions in Detention Facilities

- |   |   |  |
|---|---|--|
| 1. Do detainees have access to health care in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ If yes, is it limited to emergency health care?       | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |

### 2.1. Overall conditions

The purpose built IRC (**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.<sup>416</sup> **Morton Hall** is a converted prison, albeit with lower security and in its most recent inspection was criticised for its prison-like physical environment.<sup>417</sup>

Women and children are detained separately from men except where there are family units. The **Cedars**, the family facility opened in 2010, was closed in 2016 and a new facility at **Tinsley House** has replaced it.<sup>418</sup>

Other than the family units, there are not special facilities for vulnerable people. In theory health care provided to detainees is not limited to emergency health care; however, in practice detainees have difficulty obtaining access to care. A report by the British Medical Association expressed concern at how health needs were met in detention, as well as commenting that some disabilities are not identified.<sup>419</sup>

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.<sup>420</sup>

Detainees normally wear their own clothes. IRC have made attempts through the provision of 'cultural kitchens' where detainees can occasionally cook food of their choice, but the general provision is still considered to be poor.<sup>421</sup>

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.<sup>422</sup> After a legal battle the High Court compelled disclosure of a report showing that the allegations were not properly investigated.<sup>423</sup> Women for Refugee Women's report on detention in Yarl's Wood revealed that there was

<sup>416</sup> See e.g. Gatwick Detainees Welfare Group (GDWG): *A Prison in the Mind: Mental health implications of detention in Brook House Immigration Removal Centre*, 2012, available at: <http://bit.ly/1THGggs>.

<sup>417</sup> HM Inspector of Prisons, *Report of an unannounced inspection of Morton Hall*, November 2016, available at: <http://bit.ly/2F3EGCL>.

<sup>418</sup> Robert Goodwill MP, 'Cedars pre-departure accommodation: Written statement', 21 July 2016, available at: <http://bit.ly/2jHytVM>.

<sup>419</sup> British Medical Association, *Locked up, locked out*, 2017, available at: <http://bit.ly/2n4dmh3>.

<sup>420</sup> HM Inspector of Prisons, *Report on unannounced inspection of Colnbrook Immigration Removal Centre*, March 2016, available at: <http://bit.ly/2ajmrNx>.

<sup>421</sup> HM Inspector of Prisons, *Report on the unannounced inspection of Yarl's Wood*, June 2017, available at: <http://bit.ly/2iidM16>.

<sup>422</sup> HM Inspector of Prisons, *Report on unannounced inspection of Yarl's Wood Immigration Removal Centre, 17-28 June and 30 Sept – 1 Oct 2013*, available at: <http://bit.ly/1Lfx1R8>.

<sup>423</sup> The Guardian, 'MPs to investigate Serco over sex assault claim at Yarl's Wood centre', 17 May 2014, available at: <http://bit.ly/1jGXUeB>.



a culture of inappropriate sexual conduct in the centre, which included unwanted contact and exploitation by centre staff.<sup>424</sup> An undercover documentary filmed for Channel 4 also revealed abuse in Yarl's Wood.<sup>425</sup>

In 2017 an employee of **Brook House** IRC worked with the BBC to report undercover, resulting in a documentary broadcast in September 2017.<sup>426</sup> The company that runs the IRC suspended staff and began an internal investigation.<sup>427</sup> The Home Affairs Select Committee opened an Inquiry and took evidence from key individuals.<sup>428</sup>

In 2018 three inspection reports relating to Immigration Removal Centres were published,<sup>429</sup> along with several inspections of short term holding facilities. The main concern about **Dungavel House** related to the physical environment. Whilst detainees reported worrying about their safety, this related to their impending or potential removal from the UK rather than their treatment. In **Harmondsworth** nearly a third of detainees were regarded as vulnerable under the Home Office's own definition and the report says that these detainees were not sufficiently safeguarded. Inspectors raised concerns about how people were managed, with a below average (for IRC) proportion of detainees stating that staff treated them with respect. Overall there had been little progress since the previous report in 2015. The smaller **Tinsley House** is described as 'one of the better establishments we have inspected' by the Chief Inspector, in some part due to the in-house welfare provision and support from the visitors' group.

## 2.2. Activities

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 and outdoor exercise space. Access is variable, ranging from being generally accessible during daylight hours to restricted access. The HM Inspector of Prisons reported improvements in the access for detainees to the gym in **Yarl's Wood**<sup>430</sup> and generally performance related to activities appears to have improved in recent inspections.<sup>431</sup>

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.<sup>432</sup> Access to social media and skype are prevented.<sup>433</sup> 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.'<sup>434</sup> New guidance was issued by the Home Office in 2016, aiming to make the access in detention centres more

<sup>424</sup> Women for Refugee Women, *I am Human: Refugee Women's Experiences of Detention in the UK*, 2015, available at: <http://bit.ly/1WChYDI>, 14.

<sup>425</sup> Channel 4, 'Yarl's Wood: undercover in the secretive immigration centre', 2 March 2015, available at: <http://bit.ly/1E6X4pz>.

<sup>426</sup> BBC, 'What I saw when I went undercover', available at: <http://bbc.in/2wyzHsj>.

<sup>427</sup> The Guardian, 'G4S staff suspended from Brook House immigration centre over abuse claims', 1 September 2017, available at: <http://bit.ly/2n4x4sV>.

<sup>428</sup> House of Commons, *Brook House Immigration Removal Centre inquiry*, available at: <http://bit.ly/2n4ifGO>.

<sup>429</sup> HM Inspector of Prisons, *Reports*, available at: <https://bit.ly/2apUEsN>.

<sup>430</sup> HM Inspector of Prisons, *Report on the unannounced inspection of Yarl's Wood*, June 2017.

<sup>431</sup> HM Inspector of Prisons, *Report of an unannounced inspection of Morton Hall*, November 2016.

<sup>432</sup> Habeas Corpus Project, 'Yarl's Wood Detention Centre Blocks Detainees from Accessing Our Website', 27 March 2015, available at: <http://bit.ly/1Gw1KEj>.

<sup>433</sup> HM Inspector of Prisons, *Report on unannounced inspection of Yarl's Wood Immigration Removal Centre*, May 2015, available at: <http://bit.ly/1IQVwQe>; *Report on an unannounced inspection of The Verne Immigration Removal Centre*, March 2015.

<sup>434</sup> The APPG Inquiry into the Use of Immigration Detention in the United Kingdom, 43.



consistent and ensure that sites were not inappropriately blocked, although it does not apply to those held in prisons.<sup>435</sup>

### 2.3. Health care and special needs in detention

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.<sup>436</sup> 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.<sup>437</sup> The All Party Parliamentary Group and the Tavistock Institute are among those who have reported on failings in medical care in detention. In 2017 the British Medical Association published a report raising several concerns, including how doctors deal with the conflict of interest inherent in providing healthcare to people who are detained and made a number of recommendations.<sup>438</sup>

Whilst guidance has been produced for those needing to be taken to hospital from detention,<sup>439</sup> anecdotal reports of last minute cancellations are common. The follow up Shaw review, published in July 2018,<sup>440</sup> includes a detailed analysis of healthcare provision and contains concerns as well as remarking on improvements. The report includes a description of healthcare in each centre and comments on the physical environment as well as discussing issues with staff, detainees and NGOs. Some improvement from the previous report was identified but concerns remain that healthcare in detention does not match the standards expected in the community.

Health care in **England** has been transferred to the National Health Service (NHS) 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 IRC 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 IRC.<sup>441</sup> The Home Office does not collect data on the numbers of people with mental illness in immigration detention. NGOs regularly request the numbers of incidents of self-harm in immigration detention which required medical treatment. These were 428 in 2018, with 1,819 individuals at risk.<sup>442</sup>

Detention centres have a local group of approved visitors, who provide an external point of reference for detainees and the centre. Visitors increasingly report that detainees are experiencing high levels of anxiety and distress, are self-harming, have symptoms of depression or post-traumatic stress disorder (PTSD), or are suffering from severe and enduring mental illness.<sup>443</sup> The courts have held that even someone who is so severely ill as to be hospitalised may remain in immigration detention in hospital.

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<sup>435</sup> Home Office, Detention Services Order 04/2016, available at: <http://bit.ly/1qqEDZu>.

<sup>436</sup> The Detention Centre Rules 2001 SI No. 238, available at: <http://bit.ly/1iFchXN>.

<sup>437</sup> Medical Justice, *Detained and Denied: the clinical care of detainees living with HIV/AIDS*, 2011, available at: <http://bit.ly/1QLSKoq>.

<sup>438</sup> British Medical Association, *Locked up, locked out*, 2017, available at: <http://bit.ly/2n4dmh3>.

<sup>439</sup> Detention Services Order – Medical Appointments outside of the detention estate, available at: <http://bit.ly/2DFbTYa>.

<sup>440</sup> Stephen Shaw, *Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons*, July 2018, available at: <https://bit.ly/2LIDGI8>.

<sup>441</sup> Ali McGinley and Adeline Trude, *Positive duty of care? The mental health crisis in immigration detention*, AVID and BID, 2012, available at: <http://bit.ly/1BGukWG>.

<sup>442</sup> No Deportations (NGO), *Self-Harm in Immigration Detention January through December 2087*, available at: <https://bit.ly/2UoFp9x>.

<sup>443</sup> Ali McGinley and Adeline Trude, *Positive duty of care? The mental health crisis in immigration detention*, AVID and BID, 2012.

### 3. Access to detention facilities

#### Indicators: Access to Detention Facilities

1. Is access to detention centres allowed to

- |                   |                              |   |                             |
|-------------------|------------------------------|---|-----------------------------|
| ❖ Lawyers:        | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ NGOs:           | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ UNHCR:          | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ Family members: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |

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.<sup>444</sup> 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 IRC, 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 (AVID) who provide support, practical help and friendship to detainees. Some visitors groups such as Detention Action engage in policy and advocacy work and research. Bail for Immigration Detainees (BID) provides advice and information for detainees generally including self-help packs to make bail applications. 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. UNHCR does not have the capacity to represent people in detention and in practice detainees rarely seek help from the UNHCR.

BID has carried out surveys twice a year since 2010 and found that, in relation to immigration detainees held in IRC, usually between 43% and 69% of detainees had legal representatives. The latest figure, published following its survey in April 2018,<sup>445</sup> was 51%. Almost half (46%) are paying a solicitor privately. One in five at the time of the last survey had never had a legal representative while they were in detention. There are concerns among NGOs about the movement of detainees between different centres, and the resulting disruption in their access to legal advice.

## 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? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. If yes, at what interval is the detention order reviewed?    | 4 months                                |                             |

Detainees have a right to be informed of the reason for their detention. This is generally done by ticking a box on a standard list of reasons, and sometimes is inaccurate or omitted. The reasons for detention should be subject to regular monthly reviews by detention officers, and a breach of this requirement can make the detention unlawful if the effect is that the continued legality of the detention has not been effectively considered.<sup>446</sup>

<sup>444</sup> Government information on IRCs and information for visitors, available at: <http://bit.ly/2DA3s0W>.

<sup>445</sup> BID, *Legal Advice Survey*, November 2018, available at: <https://bit.ly/2RAsYKC>.

<sup>446</sup> Supreme Court, *Kambadzi v Secretary of State for the Home Department* [2011] UKSC 23.

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. Applications can be made to the Chief Immigration Officer (CIO),<sup>447</sup> 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.

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.<sup>448</sup>

A bail application to the Tribunal involves a hearing before an immigration judge. The Home Office is required to provide a summary before the hearing of the reasons for opposing bail. Studies of bail hearings show that in practice the summary may occasionally be late, or non-existent, but the most persistent problem is reliance on standard reasons without evidence that they apply to the particular applicant. The hearing may then focus on unsubstantiated risks of absconding or offending but fail to focus on how long the person has been detained and what prospect there is of the Home Office being able to arrange their removal from the UK, matters which are critical to the lawfulness of detention.<sup>449</sup> First-Tier Tribunal judges hearing bail applications do not have the jurisdiction to consider the lawfulness of detention, and there is no full reasoned decision given by the judge.

Bail hearing centres may be far removed from the detention centre, and the use of video conference systems has become routine. While this avoids long journeys for the detainee, the lack of personal contact with the judge, and problems in quality of sound and visual transmission are also experienced as obstacles to an effective hearing. Detainees in prisons may have video links cut off before the end of the bail hearing if it continues over 60 minutes. Technical problems may compound the difficulty of speaking through an interpreter. In video conferencing cases the lawyer is only allowed 10 minutes to speak with their client before the hearing. This is insufficient.<sup>450</sup>

Bail hearings are timetabled so that several can be heard in one day, and this creates pressure on the proceedings, sometimes with the result that an interpreter is not given time to interpret everything that is said.<sup>451</sup> BID has reported delays in providing a bail address.<sup>452</sup>

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

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<sup>447</sup> Application form available on the government's website at: <http://bit.ly/2n6OmpA>.

<sup>448</sup> Schedule 10 Immigration Act 2016.

<sup>449</sup> Adeline Trude, *The Liberty Deficit*, Bail for Immigration Detainees, 2012, available at: <http://bit.ly/1L2oUai>; Bail Observation Project, Second report, 2013.

<sup>450</sup> *Ibid.*

<sup>451</sup> Adeline Trude, *The Liberty Deficit*, Bail for Immigration Detainees, 2012, available at: <http://bit.ly/1L2oUai>.

<sup>452</sup> BID, *No Place to Go: delays in Home Office provision of s.4 (1)(c) bail accommodation*, September 2014, available at: <http://bit.ly/2wlwR5E>.

Automatic bail referrals were introduced in 2018. Officials make referrals four months after initial detention started and every four months thereafter. This does not appear to have resulted in many more individuals being released from immigration detention. In February 2018 a pilot began to refer people for automatic bail hearings after two months which aims to run for a limited period (one calendar month)

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.<sup>453</sup> The usual legal issue which affects the length of detention for refused asylum seekers is whether the Home Office can arrange the detainee's removal within a reasonable period. No clear and coherent case law on reasonable periods has emerged. However, the Home Office's own guidance on whether removal is 'imminent' is that 'removal could be said to be imminent where a travel document exists, removal directions are set, there are no outstanding legal barriers and removal is likely to take place in the next four weeks.'<sup>454</sup> Revised guidance was issued to Immigration Judges in January 2018 advises that it is generally accepted that detention for three months would be considered a substantial period and six months a long period.<sup>455</sup>

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

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

## 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 IRC. 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. BID's survey showed that 42% had to wait more than a week.<sup>456</sup> Notice of removal may be as short as 72 hours, and five days is common.

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.<sup>457</sup>

<sup>453</sup> High Court, *R (Hardial Singh) v Governor of Durham Prison* [1983] EWHC 1 (QB).

<sup>454</sup> Home Office, *Enforcement Instructions and Guidance – Chapter 55*, para 55.3.2.4.

<sup>455</sup> Tribunals Judiciary, *Guidance on Immigration Bail for Judges of the First-Tier Tribunal*, January 2018, available at: <https://bit.ly/2suYjzj>.

<sup>456</sup> BID, *Legal Advice survey*, November 2018, available at: <https://bit.ly/2RAsYKC>.

<sup>457</sup> The APPG Inquiry into the Use of Immigration Detention in the United Kingdom, 46.

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.

#### **E. Differential treatment of specific nationalities in detention**

No differential treatment is reported.

## Content of International Protection

### A. Status and residence

#### 1. Residence permit

##### Indicators: Residence Permit

- |  |         |
|--|---------|
| 1. What is the duration of residence permits granted to beneficiaries of protection? |         |
| ❖ Refugee status   | 5 years |
| ❖ Subsidiary protection  | 5 years |

Beneficiaries of refugee status and subsidiary protection (“humanitarian protection”) receive 5 years’ leave to remain. For most people, applying for settlement, also known as Indefinite Leave to Remain (ILR), after the end of the 5 year period of leave is a straightforward process.<sup>458</sup> Difficulties encountered relate to the length of time it takes for the application to be processed, as all documents must be submitted to the authorities. Therefore, although legally the period of leave is extended by virtue of the new application, this is difficult to prove to employers and or providers of services that may require evidence of leave to access. This is becoming an increasing problem, as the government seeks to deny more services to those who cannot provide evidence of leave.<sup>459</sup>

This same Home Office policy explains the circumstances in which a person’s application for unlimited leave (“settlement”) is denied.

Applicants must have held a UK Resident Permit (UKRP) for a continuous period of 5 years which must not have been revoked or not renewed. The Rules also enable the Home Office to delay granting settlement to those with a criminal history or where there is any evidence of extremist behaviours that run contrary to British values, either permanently or for set periods of time depending on the severity of the crime or behaviour.

In these cases, the application for settlement may be refused but if the applicant is still in need of international protection, additional periods of time limited leave may be granted.<sup>460</sup>

#### 2. Civil registration

A child born to any person in the UK is expected to be registered in the same way as any other child and must be done within 42 days of the child’s birth in England, Wales and Northern Ireland and within 21 days in Scotland.<sup>461</sup> A child born to a refugee who is settled can be registered as a British citizen. If the child is born during the five years limited leave as a refugee, they will be granted ‘leave in line’ to expire on the same date as the parent, and can be included in a subsequent application for settlement.

Beneficiaries are subject to the same rules as UK or EEA nationals if they wish to marry in a register office; notice of the intention to marry must be given at a designated register office.<sup>462</sup> This also applies to non EEA nationals who wish to marry in a religious ceremony.

<sup>458</sup> See Home Office, *Asylum Policy Instruction: Settlement protection*, 2 February 2016, available at: <http://bit.ly/2kSFC3n>.

<sup>459</sup> See e.g. Joint Council for the Welfare of Immigrants (JCWI), *Passport please*, February 2017, available at: <http://bit.ly/2kBLCNw>; Independent Chief Inspector of Borders and Immigration, *Report on the ‘hostile environment’*, October 2016, available at: <http://bit.ly/2eeZ7Qw>.

<sup>460</sup> Home Office, *Asylum Policy Instruction: Settlement protection*, 2 February 2016, Section 7.

<sup>461</sup> Government website – applies to England, Wales and Northern Ireland, available at: <http://bit.ly/2Gcm12d>. For Scotland, available at: <http://bit.ly/2n8u3au>.

<sup>462</sup> A list of designated register offices in England and Wales is available at: <http://bit.ly/2BQUev7> and for Scotland at: <http://bit.ly/2ClgX9D>.

The only difficulties, if both parties are in the UK, would arise if one of the parties did not have a Biometric Residence Permit or who didn't have documentary evidence of a previous divorce, for example.

### 3. Long-term residence

The UK has not opted into the Long-Term Residence Directive.

### 4. Naturalisation

#### Indicators: Naturalisation

- |   |               |
|---|---------------|
| 1. What is the waiting period for obtaining citizenship?  | 6 years       |
| 2. Number of citizenship grants to beneficiaries in 2018: | Not available |

Those with refugee status and subsidiary protection may not apply for naturalisation as a British citizen until they have been in receipt of Indefinite Leave to Remain (settlement leave) for 12 months. They are subject to the same test of 'good character' as other applicants and must pass a 'Life in the UK' test and meet the requirements for English language proficiency. There is also a fee, which can be up to £1,236 (€1,416).<sup>463</sup>

The requirements that a person be of good character specifically refer to applicants who previously entered the UK unlawfully i.e. through evading immigration control.<sup>464</sup> This is despite policy that follows Article 31 of the Refugee Convention, acknowledging that sometimes it is necessary to enter a country unlawfully and be recognised as a refugee, and that the Refugee Convention requires signatory states to allow refugees to integrate.

158,795 applications for UK citizenship were made in 2018, of which 111,198 were from non-EU nationals. 85,754 grants of citizenship were made based on residence in the UK in 2018. This figure will include beneficiaries of international protection but also other categories.<sup>465</sup>

### 5. Cessation and review of protection status

#### Indicators: Cessation

- |   |  |
|---|--|
| 1. Is a personal interview of the asylum seeker in most cases conducted in practice in the cessation procedure? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  |
| 2. Does the law provide for an appeal against the first instance decision in the cessation procedure?           | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No  |
| 3. Do beneficiaries have access to free legal assistance at first instance in practice?                         | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> With difficulty <input type="checkbox"/> No |

The grounds of cessation are laid out in the Immigration Rules and follow the cessation provisions of the Refugee Convention.<sup>466</sup>

<sup>463</sup> Home Office, *Fees with effect from 18 March 2016 for citizenship applications and the right of abode*, available at: <http://bit.ly/2jVQvRd>.

<sup>464</sup> Annex D: Good character requirement, Section 9, Naturalisation at discretion (nationality instructions), Home Office, 13 July 2015, available at: <http://bit.ly/2jDXJbv>.

<sup>465</sup> Home Office, *Immigration statistics Q4 2018*.

<sup>466</sup> Rules 339A to 339AB Immigration Rules.



The procedure is set out in Home Office guidance.<sup>467</sup>

The beginning of the procedure is not the same in all instances. There may be a different trigger, such as the individual travelling back to the country of origin or being convicted of a serious offence which has led to an investigation of the original grounds for asylum. In all cases the applicant is informed of the intention and invited to submit their view to the caseworker. UNHCR will also be consulted, usually after any submissions from the refugee have been received, given 10 days to submit its view, which must be taken into consideration.<sup>468</sup>

The applicant would not usually be interviewed, unless there are specific reasons for doing so. Appeal rights are suspensive i.e. the refugee remains in the country whilst the appeal is heard, unless s/he is outside of the UK.

Review of status and consideration of cessation is not a routine consideration, save in criminal cases and those where the refugee has spent more than 2 years out of the UK or where there is evidence he or she has availed themselves of the protection of the country of asylum e.g. by obtaining a national passport.

It is not applied to specific groups as a matter of policy. In policy terms each case is dealt with on its own merit and there are no reported concerns about how it is applied, other than occasionally in individual cases.

## 6. Withdrawal of protection status

### Indicators: Withdrawal

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the withdrawal procedure? ☐ Yes ☒ No
2. Does the law provide for an appeal against the withdrawal decision? ☒ Yes ☐ No
3. Do beneficiaries have access to free legal assistance at first instance in practice? ☒ Yes ☐ With difficulty ☐ No

The grounds for withdrawal / revocation of international protection are set out in the Immigration Rules and include: (a) the grounds for exclusion in the Refugee Convention; (b) misrepresentation of facts to obtain refugee status; and (c) being a danger to the UK.<sup>469</sup> The procedure is outlined in the section on [Cessation](#).

The legal framework for withdrawal of leave is Section 76 of the NIAA 2002. Indefinite leave (ILR) will be taken from a person or considered to have lapsed when that person:

- ❖ Is liable to deportation or administrative removal but cannot be deported or removed because of the UK's obligations under the Refugee Convention or the ECHR (ILR is revoked);
- ❖ Has obtained leave by deception (ILR is revoked);
- ❖ Is deported from the UK (ILR is invalidated);
- ❖ Ceases to be a refugee because of their own actions (ILR is revoked);
- ❖ Remains outside of the UK for more than two years (ILR lapses).

The only appeal against a decision to take away leave is if that is accompanied by a decision to remove protection status i.e. the appeal is against the refusal of protection status.

<sup>467</sup> Home Office, *Asylum policy instruction: Revocation of refugee status*, 19 January 2016, available at: <http://bit.ly/2kkxPvi>.

<sup>468</sup> *Ibid*, para 3.6.

<sup>469</sup> Rules 339A to 339AB Immigration Rules.

## B. Family reunification

### 1. Criteria and conditions

#### Indicators: Family Reunification

1. Is there a waiting period before a beneficiary can apply for family reunification?  
☐ Yes ☒ No  
❖ If yes, what is the waiting period?
2. Does the law set a maximum time limit for submitting a family reunification application?  
☐ Yes ☒ No  
❖ If yes, what is the time limit?
3. Does the law set a minimum income requirement? ☐ Yes ☒ No

The UK has not opted into the Family Reunification Directive.

There is no waiting period for a beneficiary of refugee status or humanitarian protection. Nor is there a maximum time limit after which the beneficiaries are no longer entitled, as long as they do not become UK citizens. There is no charge for the application nor requirement for the sponsor to have an income to support their family members. There is no distinction between refugees and those with humanitarian protection.

Eligibility is restricted to the immediate family as it existed prior to the sponsor's flight and the only people automatically eligible to join the refugee in the UK are:

- Spouse / same sex partner; and
- Dependent children under the age of 18.

Refugee children are not eligible to sponsor their parents and or siblings. In 2016, a child successfully challenged the policy under Article 8 ECHR and his parent and sibling were brought to the UK to join him.<sup>470</sup> Whilst the judge was critical of the policy, it has not led to a change. A number of NGOs are collaborating in campaigning for changes to the Immigration Rules on Refugee Family Reunion, including this issue. Two Private Members' Bills have been introduced into Parliament; the first was debated in December 2017.<sup>471</sup> The second was debated in the House of Commons on 16 March 2018 and passed that stage.<sup>472</sup> It is due to enter the next stage in 2019 where it will be examined by a Committee of MPs.

Applications and decisions on family visa are published by the government. The category under which refugee family reunion cases fall may include other types, but is generally relied on by the government to describe a figure for refugee family reunion visa. In 2018, 5,900 family reunion visas were issued; 2,781 of them to children.<sup>473</sup>

The refugee family reunion process was inspected by the Independent Chief Inspector of Borders and Immigration in 2016.<sup>474</sup> The inspection was overall critical of the restrictiveness of the family reunification procedure, and noted that the possibility to examine applications outside the Immigration Rules in

<sup>470</sup> Upper Tribunal, *AT (Family Reunification: Eritrea)* [2016] UKUT 227 (IAC), 24 March 2016, available at: <http://bit.ly/2kvjm1S>.

<sup>471</sup> Hansard, Refugees (Family Reunion) Bill [HL], 15 December 2017, available at: <http://bit.ly/2DBWylq>.

<sup>472</sup> Refugee Council, 'MPs vote to reunite refugee families torn apart by conflict', 16 March 2018, available at <https://bit.ly/2RSdVuR>.

<sup>473</sup> Home Office, *Immigration statistics Q4 2018*.

<sup>474</sup> Independent Chief Inspector on Borders and Immigration, *An inspection of family reunion applications*, January – May 2016, available at: <http://bit.ly/2khoPav>.

‘exceptional circumstances’ or where ‘compassionate factors’ arise is very rarely applied. This was witnessed in none of the 181 applications inspected at the visa sections of the Home Office in Jordan, Turkey and South Africa.<sup>475</sup> A re-inspection of the handling of Refugee Family Reunion applications in Amman in 2018 concluded that not all of the previous recommendations had been resolved.<sup>476</sup>

The Home Office also revised its policy and guidance; it was reissued in 2016 although the policy remained the same.<sup>477</sup> Better explanation was given about the circumstances in which extended family members could be admitted but no changes to the criteria were made.

The Home Office ceased funding for free DNA testing to prove family links in 2014. This has had a substantial impact on the success rate of family reunification applications, insofar as applicants were not advised of the possibility to cover DNA tests through own means. This has led to an exponential rise in rejection rates between 2013 and 2015: from 9% to 35% for Syrians, from 15% to 46% for Eritreans and from 17% to 80% for Somalis.<sup>478</sup> The 2016 Home Office policy clarifies that DNA testing to prove family links must be carried out at the expense of the applicant, from an organisation accredited by HM Courts and Tribunals Service.<sup>479</sup>

## 2. Status and rights of family members

Family members do not receive the same status as their sponsor. They receive ‘leave in line’ i.e. leave to remain to expire at the same time as their sponsor. If the sponsor has limited leave, the family members all apply for settlement at the same time. There are difficulties for estranged partners in these circumstances.

## C. Movement and mobility

### 1. Freedom of movement

There are no restrictions on freedom of movement for refugees, those with humanitarian protection or their family members. Some difficulties arise when people want to move away from where they have been dispersed and relocate to a place where they have no previous connection. New duties in the Homelessness Reduction Act which came into force in April 2018 should alleviate this problem although there is still a high incidence of homelessness amongst newly recognised refugees. New research reports relating to this issue from NGOs in 2018 include *Mind the Gap* from the No Accommodation Network (NACCOM),<sup>480</sup> and *Still an Ordeal* from the British Red Cross.<sup>481</sup> The government’s Integration Action Plan, published in February 2019,<sup>482</sup> includes commitments to improve the information provided to new refugees and to better coordinate government departments to improve new refugees’ access to existing services.

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<sup>475</sup> *Ibid.* See also Refugee Council, ‘Watchdog: Government should show more compassion in reuniting refugees’, 15 September 2016, available at: <http://bit.ly/2kWBXFX>.

<sup>476</sup> Independent Chief Inspector of Borders and Immigration, *A re-inspection of the family reunion process, focusing on applications received at the Amman Entry Clearance Decision Making Centre*, September 2018, available at: <https://bit.ly/2oK8QVY>.

<sup>477</sup> Home Office, *Family reunion: for refugees and those with humanitarian protection*, 29 July 2016, available at: <http://bit.ly/2kWnTaM>.

<sup>478</sup> Independent Chief Inspector on Borders and Immigration, *An inspection of family reunion applications*, January – May 2016, para 5.37.

<sup>479</sup> Home Office, *Family reunion: for refugees and those with humanitarian protection*, 29 July 2016, 24.

<sup>480</sup> NACCOM, *Mind the Gap*, May 2018, available at: <https://bit.ly/2H7voKQ>.

<sup>481</sup> British Red Cross, *Still an Ordeal*, December 2018, available at: <https://bit.ly/2APRYCW>.

<sup>482</sup> Government, *Integrated communities Action Plan*, February 2019, available at: <https://bit.ly/2XC9EMe>.

## 2. Travel documents

Refugees and their dependants, including those who are united through the refugee family reunion process, can apply for a 'Convention Travel Document'. The cost is the same as a UK national passport. An adult's travel document will expire after 10 years or at the same time as the refugee's limited leave (if during the first 5 years of leave) if that is earlier. A child's travel document will expire after 5 years or at the expiry of their leave.

Beneficiaries of subsidiary protection and other forms of leave, including their dependants, are expected to apply to their national authorities for a passport, unless the humanitarian protection is granted following a refusal of asylum and it is accepted that the beneficiary has a fear of their national authorities.<sup>483</sup> This includes those resettled under the Syrian Resettlement Scheme who are granted humanitarian protection. Other than these individuals, including dependants, those with leave following a refusal of asylum, including beneficiaries of subsidiary protection where it is not accepted that the person is in fear of the national authority, are expected to show evidence of refusal to issue a document following contact with their national embassy.

All those who are not entitled to a Convention Travel Document, including all beneficiaries of subsidiary protection, can apply for a certificate of travel, which costs more than three times that of a Convention Travel Document and a maximum validity of 5 years. It will only be issued when the individual has more than 6 months leave remaining.

The procedure for all travel documents is via an online or paper form.<sup>484</sup> Travel documents that are not CTD, issued by other countries, would often need to be accompanied by a visa.

The numbers of travel documents issued are to third party nationals who do not have a passport, so are not exclusively travel documents for beneficiaries of international protection. In 2018, 11,177 of these were issued.

## D. Housing

### Indicators: Housing

- |  |               |
|--|---------------|
| 1. For how long are beneficiaries entitled to stay in reception centres?       | 28 days       |
| 2. Number of beneficiaries staying in reception centres as of 31 December 2018 | Not available |

The reception centres are designed for short term support, almost all residents will move to 'dispersal accommodation' in self contained houses or apartments. This is known as 'Section 95' support (see [Reception Conditions: Criteria and Restrictions](#)). At the end of 2018, 2,129 asylum seekers were staying in short-term reception.

On receipt of a decision to grant asylum or leave that would entitle the individual to work, apply for state welfare benefits and rent, buy or take on a public housing tenancy, that individual and their dependants will only receive Home Office accommodation and funding for a maximum of 28 days. This is often termed the 'move on period'. This is regardless of whether or not any alternative source of income and accommodation has been secured. In practice few refugees find alternative accommodation within this time. The main obstacles they face are the processing times for welfare benefits, the lack of a bank account or online credit history. Public housing is restricted to those with children or who are considered a priority because of ill health or disability and those whose illness is mental rather than physical face

<sup>483</sup> Home Office, *Travel Documents Guidance Notes*, March 2016, available at: <http://bit.ly/2jGkr2M>.

<sup>484</sup> Home Office, *Application Form TD11 BRP*, March 2016, available at: <http://bit.ly/2kWsDh4>.

particular difficulties. The latter category often find difficulty persuading the authorities to provide them with public housing. The Refugee Council has written a guide to making and pursuing these applications.

This is in stark contrast to those resettled through programmes such as the Gateway Protection Programme and the Syrian Vulnerable Persons Programme. Although individuals will have to open a bank account, sign a tenancy for housing and make a claim for welfare benefits on arrival, support is usually available to assist with this and a small monetary amount is given by the Home Office to ensure that people have some funds on which to live when they first arrive.

Despite a wealth of evidence, and efforts through parliamentary means to extend the period,<sup>485</sup> the issue continues to affect many new refugees and other beneficiaries of leave, resulting in homelessness and destitution.<sup>486</sup> The reasons for this are outlined in the research; it is acknowledged that many refugees may not be aware that claims for welfare benefits usually take weeks to process and may not apply as soon as they are eligible, but recent reports show that in many cases the people advising them, employed by the department that processes claims, to advise that refugees are not able to make welfare benefits applications whilst still receiving asylum support. Similar incorrect advice was found to be given regarding eligibility for an advance payment to cover any gap in support. Additional barriers exist for refugees who have not opened a bank account; unable to do this without a regular income, they then face additional delays in welfare benefits payments which are usually made directly into a claimant's bank account.

Unless eligible for public housing, refugees' access to the private rental sector is impeded in practice because of the lack of funds; a refugee will not have been eligible for asylum support payments if s/he has savings but will need a lump sum in order to pay a deposit. Without specific schemes such as one operated by the Refugee Council in **London**, refugees are reliant on family, friends, refugee hosting schemes or members of their community to avoid street homelessness.

## E. Employment and education

### 1. Access to the labour market

The law provides for refugees and beneficiaries of humanitarian protection the same access to the labour market as UK citizens.<sup>487</sup> In practice, very few individuals will enter the labour market immediately; some will need to ensure their qualifications allow them to practice their profession and may need to retrain or pass exams to allow them to practice e.g. doctors. Many refugees may have had limited language provision when they were seeking asylum so may need to learn English sufficient to access the labour market.

There is little practical support provided by the state although when applying for the main welfare benefit for those fit to work (Job Seekers Allowance) individuals are required to show evidence of applications for jobs they have made and are questioned about this by an adviser.

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<sup>485</sup> Refugee Council, *Briefing on Asylum Support amendments to the Immigration Bill*, February 2015, available at: <http://bit.ly/2k2u1QU>.

<sup>486</sup> British Red Cross, *Still an ordeal*, December 2018, available at: <https://bit.ly/2APRYCW>; Refugee Council, *Refugees without refuge: Findings from a survey of newly recognised refugees*, September 2017, available at: <http://bit.ly/2wNldEz>; *England's Forgotten Refugees*, May 2016, available at: <http://bit.ly/1U4c3VH>; *28 Days Later; the experience of new refugees in the UK*, 2014, available at: <http://bit.ly/1CgV1gE>; British Red Cross, *The move on period: an ordeal for new refugees*, 2014, available at: <http://bit.ly/1sHreYP>.

<sup>487</sup> Paragraph 334B Immigration Rules.

## 2. Access to education

Access to compulsory education (up to age 16) is the same for asylum seekers, refugees and UK citizens (see section on [Reception Conditions: Education](#)). Although mid-term admissions may cause additional difficulties, the ease access to school places is related more to the geographical area in which an individual lives than their immigration status.

In **England, Wales** and **Northern Ireland** access to post-18 education is different and one of the distinctions between beneficiaries of refugee status and subsidiary (“humanitarian”) protection is that for the purposes of fees and student support, refugees are considered home students once they receive status, whereas recipients of humanitarian protection are considered as overseas students until they have lived in the UK for 3 years. In **Scotland** the only requirement is 3 years residence, rather than status.

## F. Social welfare

The law provides access to social welfare for beneficiaries of international protection, although practical difficulties are encountered.

Social welfare is provided to beneficiaries under the same conditions and on the same level as for nationals, although public housing may be restricted to those with a history of living in a particular area, so beneficiaries who move away from dispersal areas may encounter problems. The laws do apply to all. The main authorities responsible for granting social assistance are the Department for Work and Pensions, (national government department) administered by local Job Centres. The provision of social welfare is not tied to a requirement to reside in a specific place or region.

Beneficiaries face various difficulties in accessing social assistance, outlined in research conducted by the Refugee Council and British Red Cross.<sup>488</sup> These include difficulties in obtaining the necessary documentation, although a change in policy announced in 2017 should alleviate this. From 8 January 2018 the Residence Permit has the National Insurance Number printed on it,<sup>489</sup> which should reduce delays in making welfare benefit claims. Anecdotal evidence suggests that this has reduced the waiting time but it remains an issue. The issues relating to opening bank accounts and finding enough money to secure private rented housing (which require an upfront fee) remain unresolved. A new way of administering welfare benefits is being phased in to all Job Centres across the country. This has inbuilt waiting times and applications can only be made on time, which has resulted in further hardship. These concerns were expressed to a Parliamentary Inquiry in 2017.<sup>490</sup> The Inquiry was cut short by the announcement of the 2017 General Election.

## G. Health care

The entitlement to health care is not affected in law for refugees and beneficiaries of humanitarian protection but in practice there can be difficulties. Although not required in law, registering with a GP

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<sup>488</sup> Refugee Council, *Refugees without refuge: Findings from a survey of newly recognised refugees*, September 2017, available at: <http://bit.ly/2wNIdEz>; *England's Forgotten Refugees*, May 2016, available at: <http://bit.ly/1U4c3VH>; *28 Days Later; the experience of new refugees in the UK*, 2014, available at: <http://bit.ly/1CgV1gE>; British Red Cross, *The move on period: an ordeal for new refugees*, 2014, available at: <http://bit.ly/1sHreYP>.

<sup>489</sup> Minister for Immigration, Answer to parliamentary question, 5 December 2017, available at: <http://bit.ly/2DDIEXL>.

<sup>490</sup> Refugee Council, *Submission to the Work and Pensions Committee Inquiry into Universal Credit*, March 2017, available at: <http://bit.ly/2ozrqSD>.

practice for primary care often asks for proof of address; if a refugee has moved from asylum support accommodation it may be difficult to obtain this.

Specialist medical support for refugees is patchy; waiting list for mental health services in particular can be long. The issues in practice are very similar for refugees to those faced by asylum seekers, despite the difference in status.