

## UNITED KINGDOM

### 1 Arrivals

#### 1 Total number of applications for asylum lodged, with monthly breakdown and percentage variation between years

Table 1:

Month	2003	2004	Variation +/- (%)
January	7,175	3,030	-57
February	4,255	2,900	-31
March	4,565	3,015	-33
April	3,695	2,640	-28
May	3,280	2,550	-22
June	3,610	2,730	-24
July	3,945	2,860	-27
August	3,785	2,680	-29
Sept.	4,225	3,060	-27
October	4,030	2,805	-30
November	3,265	2,875	-11
December	3,535	2,780	-21
<b>Total</b>	<b>49,405</b>	<b>33,930</b>	<b>-31</b>

Source: Home Office, Research Development and Statistics  
 Figures do not include dependants.

#### 2 Breakdown according to the country of origin/nationality of applicant, with percentage variation

Table 2:

Country	2003	2004	Variation +/- (%)
Iran	2,875	3,450	+20
Somalia	5,100	2,590	-49
China	3,445	2,370	-31
Zimbabwe	3,280	2,050	-38
Iraq	4,045	1,715	-57
Pakistan	1,905	1,710	-11
Democratic Republic of Congo (DRC)	1,525	1,460	-5
India	2,275	1,405	-39
Afghanistan	2,290	1,390	-39
<i>Others</i>	<i>22,665</i>	<i>15,790</i>	<i>-30</i>

Source: Home Office, Research Development and Statistics

Figures do not include dependants.

#### 3 Persons arriving under family reunification procedure

No figures available.

#### 4 Refugees arriving as part of a resettlement programme

Between March and December 2004, 150 refugees arrived under the UK resettlement programme. (See Question 26 for further details).

Source: Home Office, Immigration and Nationality Directorate website.

## 5 Unaccompanied minors

In 2004, UK received 2,755 applications for asylum from unaccompanied children (subject to change, as there is often late recording of applications from unaccompanied children). The main countries of origin were\*:

Table 3:

Country Name	Number
Afghanistan	280
Iran	275
Somalia	250
Vietnam	180
Eritrea	155
Iraq	140
DRC	140
China	105
Ethiopia	95
Romania	75

These countries accounted for 1690 of applications from unaccompanied children.

Source: Home Office

\*Figures have been rounded to the nearest five.

## 2 Recognition Rates

### 6 The statuses accorded at first instance and appeal stages as an absolute number and percentage of overall decisions

Table 4:

Statuses	2003		Appeal		2004		Appeal	
	Number	%	Number	%	Number	%	Number	%
No status awarded	53,865	83	63,810	78	40,525	88	43,760	78
Convention status	3,865	6	16,070	20	1,515	3	10,845**	19
Subsidiary status	3,975	6	-	-	N/A	-	-	-
Humanitarian residence permits	140	0	-	-	155	0	-	-
Discretionary leave	3,095	5	-	-	3,840	8	-	-
<b>Total</b>	<b>64,940</b>		<b>81,725</b>		<b>46,035</b>		<b>55,975</b>	

Source: Home Office, Research Development and Statistics

### Comments

Figures do not include dependants.

**European Council on Refugees and Exiles - Country Report 2004 – United Kingdom**

The statuses accorded at first instance and appeal stage do not necessarily relate to applications made in the same period.

Figures include asylum refusals after non-substantive consideration, for example refusals on non-compliance grounds and on safe third country grounds.

\* Appeal figures relate to appeals determined by the Immigration Appellate Authority and do not include successful appeals at the second appeal stage to the Immigration Appeal Tribunal.

\*\* This figure includes successful appeals, which resulted in awards of Convention status, Humanitarian Protection and Discretionary Leave.

\*\*\* Humanitarian protection and Discretionary Leave replaced exceptional Leave to Remain from 1 April 2003.

Figures may not add up due to rounding.

**7 Refugee recognition rates (1951 Convention: as an absolute number and as a percentage of total decisions) according to country of origin, at first instance and appeal stages**

Table 5:

Country of origin	2003				2004			
	First instance and appeal		Appeal		First instance and Appeal			
	Number	%	Number	%	Number	%	Number	%
Somalia	1,660	27	2,055	38	460	14	1,835	43
Zimbabwe	870	21	1,165	29	220	8	595	18
Sudan	130	18	310	38	120	8	445	39
Iran	115	4	1,460	30	80	3	985	22
Turkey	95	3	1,685	29	70	2	840	23
Pakistan	75	3	505	19	75	7	410	16
Eritrea	65	9	550	33	60	3	405	39
<b>Total countries</b>	<b>3,865</b>	<b>6</b>	<b>15,815</b>	<b>20</b>	<b>1,515</b>	<b>3</b>	<b>9,545</b>	<b>19</b>

Source: Home Office, Research Development and Statistics.

**Comments**

Figures do not include dependants.

2004 appeal figures include Convention status grants, Humanitarian Protection and Discretionary Leave. 2003 appeal figures also include grants of Exceptional Leave to Remain.

\*Appeal figures relate to appeals determined by the Immigration Appellate Authority and do not include successful appeals at the second appeal stage to the Immigration Appeal Tribunal.

Figures may not add up due to rounding.

**8 Subsidiary and other status granted (as an absolute number and as a percentage of total decisions) according to country of origin, at first instance and appeal stages**

Exceptional leave to remain (granted between January and March 2003 only)

Table 6:

Country of origin	2003				2004			
	First instance and Appeal		First instance and Appeal		First instance and Appeal		First instance and Appeal	
	Number	%	Number	%	Number	%	Number	%
Iraq	2,105	31	495	9	N/A			
Angola	225	20	165	18				
Afghanistan	205	5	710	13				
SAM	195	9	915	16				
Somalia	160	2	2,055	38				
Albania	100	11	130	12				
Bangladesh	95	11	50	8				
<b>Total</b>	<b>3,975</b>	<b>6</b>	<b>15,815</b>	<b>20</b>				

Source: Home Office, Research Development and Statistics.

**Comments**

Figures do not include dependants.

\* Appeal figures relate to appeals determined by the Immigration Appellate Authority and do not include successful appeals at the second appeal stage to the Immigration Appeal Tribunal.

Appeal figures include Convention status grants, Humanitarian Protection, Exceptional Leave to Remain and Discretionary Leave.

Figures may not add up due to rounding.

Humanitarian Protection (granted from April 2003)

Table 7:

Country of origin	2003				2004			
	First instance		Appeal*		First instance		Appeal*	
	Number	%	Number	%	Number	%	Number	%
Burundi	85	11	160	23	55	14	85	17
SAM	5	0	915	16	*	0	330	16
Iran	5	0	1,460	30	15	0	985	22
DRC	5	0	710	26	-	0	400	20
Somalia	5	0	2,055	38	10	0	1,835	43
Sierra Leone	5	0	160	14	5	0	65	11
Zimbabwe	5	0	1,165	29	**	0	595	18
<b>Total</b>	<b>135</b>	<b>0</b>	<b>15,815</b>	<b>20</b>	<b>155</b>	<b>0</b>	<b>9,545</b>	<b>19</b>

Source: Home Office, Research Development and Statistics.

**Comments**

Figures do not include dependants.

Appeal figures relate to appeals determined by the Immigration Appellate Authority and do not include successful appeals at the second appeal stage to the Immigration Appeal Tribunal.

\* 2004 appeal figures include Convention status grants, Humanitarian Protection and Discretionary Leave. 2003 appeal figures also include grants of Exceptional Leave to Remain.

\*\* = 1 or 2.

Figures may not add up due to rounding.

Discretionary Leave (granted from April 2003)

Table 8:

Country of origin	2003		Appeal*		2004		Appeal*	
	Number	%	Number	%	Number	%	Number	%
Somalia	385	6	2,055	38	455	13	1,835	43
Afghanistan	350	38	710	13	405	15	325	11
Bangladesh	240	28	50	8	275	47	10	5
Vietnam	195	16	**		220	24	45	7
Angola	155	14	165	18	105	18	125	16
SAM	140	7	915	16	165	14	330	16
DRC	120	6	710	26	175	9	400	20
<b>Total</b>	<b>3,105</b>	<b>11</b>	<b>15,815</b>	<b>20</b>	<b>3,840</b>	<b>9</b>	<b>9,545</b>	<b>19</b>

Source: Home Office, Research Development and Statistics.

### Comments

Figures do not include dependants.

\* 2004 appeal figures include Convention status grants, Humanitarian Protection and Discretionary Leave. 2003 appeal figures also include grants of Exceptional Leave to Remain.

\*\* data not available.

Humanitarian Protection and Discretionary Leave replace Exceptional Leave to Remain from 1 April 2003.

SAM comprises the Republic of Serbia, the Republic of Montenegro, and the province of Kosovo.

Figures may not add up due to rounding.

## 3 Returns, Removals, Detention and Dismissed Claims

### 9 Persons returned on safe third country grounds

No figures available.

### 10 Persons returned on safe country of origin grounds

No figures available.

### 11 Number of applications determined inadmissible

No figures available.

### 12 Number of asylum seekers denied entry to the territory

No figures available.

### 13 Number of asylum seekers detained, the maximum length of and grounds for detention

Figures for the total number of asylum seekers detained throughout the year are not available. As of 25 December 2004, there were 1,515 asylum seekers detained under Immigration Act powers; 865 asylum seekers were detained for less than one month and 55 asylum seekers were detained for more than one year.

#### **14 Deportations of rejected asylum seekers**

See Question 15 below.

#### **15 Details of assisted return programmes, and numbers of those returned**

12,430 principal asylum applicants were removed from the UK in 2004 including enforced removals, persons departing 'voluntarily' following the enforcement action initiated and persons leaving under the Assisted Voluntary Return Programme run by the International Organization for Migration. Including dependants, 14,715 asylum seekers were removed. The nationalities with largest numbers of principal applicants removed or departing voluntarily in 2004 were asylum seekers from SAM (1,980), Afghanistan (795), Iraq (760), Albania (675), Romania (500), Pakistan (475), Iran (460) and Sri Lanka (450).

The Voluntary Assisted Return and Reintegration Programme (VARRP) is an assistance package co-ordinated by IOM, in collaboration with its programme partners, for asylum seekers, failed asylum seekers and people with limited leave to remain who want to return permanently to their country of origin. The Programme is financed by the Home Office and co-funded by the European Refugee Fund (ERF). It generally covers the following:

- Advice, counselling and information to help applicants decide on whether to participate in the scheme;
- Mines-awareness training if appropriate;
- A flight to the country of origin and onward transportation to the final destination; and
- The opportunity to take advantage of a reintegration fund in the country of origin.

The aim of the Reintegration Fund is to provide financial support for activities that benefit returnees, providing tools for self-sufficiency in their country of origin. Reintegration assistance provided will vary according to the needs of returnees, availability of resources and local circumstances in the country of origin. Where possible, the reintegration activity will be implemented so as to contribute to the development of the local community as well as the returnees, for example, through supporting local development projects.

Of the 3,590 asylum seekers removed in Q2 2005, 660 were principal applicants removed under Assisted Voluntary Return schemes and 55 were dependants.

#### **16 Number of asylum seekers sent back to the Member State responsible for examining the asylum application under the Dublin II Regulation**

No figures available.

### **4 Specific Refugee Groups**

#### **17 Developments regarding refugee groups of particular concern**

##### *Zimbabwe*

In November 2004, the Government resumed forcible removals to Zimbabwe, despite continuing evidence of human rights abuses in that country. In December 2004, UNHCR urged governments not to return asylum seekers to Zimbabwe in view of the situation there. The UK government has continued to return unsuccessful asylum seekers to Zimbabwe despite UNHCR opposition and widespread concern amongst NGOs.

*Afghanistan*

The Government continued with forcible removals to Afghanistan throughout 2004 in spite of persistent reports about instability, the ability of power holders to operate with impunity and the absence of an effective rule of law. The monthly maximum of 50, agreed informally with the Afghan government, remained in force. The profile of those removed was still young, single males, with some heads of household, although it remained the intention to remove families with children, including girls, 12 years old or over. So far, no families have been removed.

*Iraq*

A Home Office press release issued on 24 February, set out plans for a pilot programme for both removal of unsuccessful asylum seekers and voluntary return to Iraq to commence in April. Agreement was reached with the Coalition Provisional Authority (CPA) for 30 Iraqis to be removed each month, for an initial period of three months. The upsurge in violence that occurred in Iraq from April meant these plans were not acted upon. The agreement with the CPA was superseded by the handover to the Iraqi Interim Government (IIG) on 28<sup>th</sup> June. The newly appointed Minister for Displacement and Migration made a series of statements, which made clear the IIG's unwillingness to accept forcible returns, or large scale voluntary returns, until Iraq's security environment had improved, and the country had the capacity to absorb them. Despite this, the UK government maintained its policy of removing unsuccessful Iraqi asylum seekers 'as soon as the practical arrangements were in place'. No Iraqis were forcibly removed from the UK to Iraq in 2004, but there was a growing pool of unsuccessful claimants with no means of support. 'Voluntary' returns were taking place, with the International Organization for Migration flying returnees to Jordan and escorting them to the Iraqi border, where they travelled onwards to Baghdad. The safety of this route formed one element of a legal challenge brought against the Home Office towards the end of the year, where it was argued that unsuccessful Iraqi asylum seekers who applied for Section 4 support (see Question 24) should not be required to apply for voluntary return as the route currently used was demonstrably unsafe. The Home Office conceded this case in January 2005 and Iraqis were free to apply for Section 4 support without opting for voluntary return. People who do return voluntarily are required to sign a waiver saying that they are travelling at their own risk. Returns will resume when the route is acknowledged to be safe and a new readmission agreement has been signed with the new government.

*Somalia*

Reports started filtering through in May 2004 about removal directions being set for Somalis in the UK, and of Somalis being detained with a view to removal. The first indication of forced removals came out in a Home Office IND operational guidance note on Somalia dated May 2004, which stated 'there is no longer any policy that precludes the return to any region of Somalia of those not granted asylum, Humanitarian Protection or Discretionary Leave'. Amnesty International advised that the UK started enforced returns on 31 March 2004 for failed Somali asylum applicants and so far 6 men had been returned on commercial flights via Dubai. Amplifying its advice given in January 2004, UNHCR issued a statement on 16 June in which it reiterated its position that involuntary return of rejected asylum seekers should not take place to southern Somalia, including Mogadishu. It added that no Somali should be involuntarily returned to an area of the country from which he or she does not originate. It was pointed out to the Home Office that the Transitional National Government of Somalia, a body with little authority outside Mogadishu, had said that they were opposed to returns.

*Democratic Republic of Congo*

In a Written Answer to the House of Lords on 30 June 2004, Baroness Scotland stated that 'each asylum (and human rights) claim made by someone from the Democratic Republic of Congo (DRC) is considered by the Home Office on its individual merits, in accordance with our obligations under the 1951 UN Refugee Convention and the European Convention on Human Rights (ECHR). Individual asylum seekers from DRC found by both, the Home Office and the Independent Appellate Authority not to be at risk of persecution, and not in need of humanitarian protection, are considered for removal on a case-by-case basis. All returns of failed asylum seekers from DRC are to Kinshasa only.' In its report for 2004, Human Rights Watch characterised the DRC as a country still threatened by civil war, rebellion, and interference from its neighbours. Frequent and widespread abuses were still being carried out against civilians and the country was ill prepared for elections scheduled in mid-2005.

Concerns were also raised about the fate of asylum seekers forcibly returned to the DRC and there were several reports of returned asylum seekers being automatically imprisoned by the authorities in Kinshasa. In addition, the DRC will no longer accept the European travel documents used in order to remove people to DRC and it is therefore doubtful if they can in practice be removed. Their intention to do so is consequently unlawful.

*Asylum seekers from areas affected by the Asian Tsunami*

On 31 December 2004, the Government temporarily suspended enforced returns to the area in South East Asia directly affected by the tsunami, including parts of Sri Lanka, Indonesia, the Maldives, India and Somalia. Suspension of removals was temporary and not accompanied by any grants of status to rejected asylum seekers from the directly affected areas. 'Hard case' support was granted to these rejected asylum seekers, without the usual requirement that they sign up for voluntary return in order to access support. It is not clear when returns will resume to these areas.

## **5 Legal and Procedural Developments**

### **18 New legislation passed**

The main piece of legislation in 2004 was the Asylum and Immigration Act, which received the Royal Assent in September 2004. <http://www.opsi.gov.uk/acts/acts2004/20040019.htm>

This Act has sections on appeals and removals. It also creates a number of additional offences relating to the destruction of immigration documents and failure to co-operate with removals.

The most profound change relates to the appeals process – the legislation removed a whole tier of appeals – previously there was an appeal before a single adjudicator and the possibility of a further appeal to the Immigration Appeal Tribunal (IAT). The IAT has been abolished leaving the UK with a single tier appeal now known as the Asylum and Immigration Tribunal (AIT). This can be single member but can be a panel of three for more complex cases. The Government attempted to remove the appellate authority entirely from the overall scrutiny of the judiciary (by proposing the so called ouster clause) but this met with strong opposition from the judiciary itself. A compromise was adopted whereby there are limited rights of review of Tribunal decisions to the higher courts but only on the papers and only on a point of law. Crucially, entitlement to legal aid for these reviews is retrospective and subject to a high merits test. Legal advisers have argued that representatives are unlikely to risk marginal challenges to Tribunal decisions and this effectively imposes an 'ouster' from the Court of Appeal by other means.

There has been considerable concern also about the creeping criminalization of asylum seekers. For example, between September 2004 to January 2005, 172 asylum seekers were prosecuted under Section 2 of the 2004 Act for failing to produce immigration documents without a good excuse. These people routinely plead guilty and receive prison sentences of several months. The concern is that they plead guilty because they have been advised by a duty criminal lawyer not experienced in immigration advice and who may not be aware of possible mitigating circumstances under Article 31 of Refugee Convention. Section 8 of the 2004 Act also allows such a conviction to render an individual's asylum claim invalid because it lacks credibility. It is feared that victims of trafficking in particular, especially women, may be caught by these measures as they commonly have little control over their immigration papers.



## 19 Changes in refugee determination procedure, appeal or deportation procedures

For changes to the appeals system see above. Beyond this, there have been significant developments in the basic procedures in particular with the growing use of fast track procedures. In addition to those at Oakington Reception Centre and Harmondsworth Removal Centre there have now been added:

- a fast track procedure for women at Yarl's Wood Removal Centre (capacity 60, commenced May 2005); and
- a pilot scheme, not involving detention, but with accelerated procedures, known as the North West pilot, based in Liverpool. This commenced in December 2004. This pilot scheme introduced the idea of a single caseworker being responsible for an asylum case throughout the whole process from decision, through appeal to removal, or integration. The pilot also requires people to live in specific highly supervised accommodation, with close reporting requirements.

In February 2005, the Government announced a new five-year strategy on immigration with far reaching implications.

[http://www.ind.homeoffice.gov.uk/ind/en/home/news/press\\_releases/controlling\\_our\\_borders/five\\_year\\_strategy.Maincontent.0004.file.tmp/Immigration%20-%20final%20version.pdf](http://www.ind.homeoffice.gov.uk/ind/en/home/news/press_releases/controlling_our_borders/five_year_strategy.Maincontent.0004.file.tmp/Immigration%20-%20final%20version.pdf)

In relation to asylum, it announced firstly that people granted refugee status would no longer be granted Indefinite Leave to Remain but instead would have their status reviewed after five years with the possibility of status being revoked. NGO's have pointed out that granting limited leave to refugees flies flatly in the face of the Government's own integration strategy. In addition, they are concerned that it is impractical to completely review every refugee's status after five years. The Home Office is currently considering how to proceed with this policy.

Secondly, the Government has announced a new asylum model (NAM). This builds on the experiment of the North West pilot, using the same approach (high levels of supervision, and a single caseworker for each asylum case), but applies it to a far wider range of cases. The Home Office hopes to apply the NAM to all asylum cases by September 2006. The NAM involves a process of 'segmentation', whereby cases are identified at screening according to the strength of their claim, the speed with which it might be resolved and the ease with which the individual might be removed thereafter. Some segments are straightforward, for example third country removals. Others are more problematic, for example, the first to be implemented, on 20<sup>th</sup> June 2004, is called 'late and opportunistic claims', defined as 'people applying only once they had had other extensions of leave refused'. These 'late and opportunistic' asylum seekers will be interviewed and put through an extremely accelerated procedure. Whereas the target for applications generally is to make decisions within 2 months in these accelerated procedures decisions are made on day 11. Information is only slowly emerging about the other proposed segments but there is clearly much to cause concern.

The whole approach is designed to deliver a seamless casework service from start to finish to facilitate speed of processing and (largely) removal. NGOs are concerned that the accelerated procedures of the NAM will add to existing concerns about the quality of initial decisions on asylum claims.

## 20 Important case-law relating to the qualification for refugee status and other forms of protection

### *Interpretation of the Refugee Convention*

The most significant case on the interpretation of the Refugee Convention was the case of Re B, Regina v. Special Adjudicator (Respondent) ex parte Hoxha. The two claimants were ethnic Albanians from Kosovo who had suffered gross mistreatment by the Serbian authorities in the period prior to 1999. Their claims for asylum in the UK were not assessed until some time later by which time the circumstances in Kosovo had changed to the extent that there was no current risk to either claimant.

Article 1C5 of the Convention states that the Convention shall cease to apply to any person recognized as a refugee where the circumstances, which gave, rise to that status no longer exist. However, there is

## European Council on Refugees and Exiles - Country Report 2004 – United Kingdom

an exception to this, which states that those recognized as refugees prior to 1951 will continue to be recognized as such regardless of any change in circumstances. The claimants asserted that there was a general international consensus that Article 1C5 was being interpreted so as to allow refugees recognized after 1951 to keep their status despite a change of circumstances in their home countries.

Their Lordships did not accept that there was a clear and widespread state practice sufficient to override the express words of limitation in the proviso and stressed the importance of those claiming refugee status, regardless of their past experiences, establishing a current well-founded fear.

Baroness Hale stated that the assessment of whether future mistreatment would cross the threshold into persecution should also take account of past persecution.

The issue was not determined as there was an absence of evidence on whether the Kosovan authorities would be able to provide sufficient protection. However, Baroness Hale's analysis stressed that rape was not necessarily merely an expression of individual aggression or desire, but may be used as a systematic weapon of persecution or war.

### *Interpretation of the European Convention on Human Rights*

The House of Lords have provided a number of judgements on the interpretation of the European Convention on Human Rights (ECHR). In the case of Regina v. Special Adjudicator (Respondent) ex parte Ullah (FC) (Appellant) Do (FC) (Appellant) v. Secretary of State for the Home Department (Respondent) their Lordships considered whether any article other than Article 3 could be engaged where the removal of a foreign national from the UK would subject them to a breach of their human rights. Ms Ullah and Ms Do were to be returned to Pakistan and Vietnam respectively where they both claimed they would face mistreatment for their religious beliefs. They both claimed that such mistreatment would be a breach of their right to freedom of religion (Article 9).

Their Lordships reviewed an extensive number of decisions by the European Court of Human Rights and held that foreign nationals facing expulsion from the UK could rely on all articles within the ECHR. However, their Lordships also stated that in cases involving mistreatment resulting in a breach of an article other than Article 3, the claimant would need to show a flagrant denial or gross violation of those rights such that the right was completely denied or nullified in the destination country.

The effect of this decision is that in cases involving mistreatment that amounts to a breach of Article 3 the claimant merely needs to show that there is a real risk of that right being breached. However, in relation to all other articles, the claimant will need to show a flagrant denial or gross violation of those rights.

In N v Secretary of State for the Home Department their Lordships considered the case of a Ugandan woman with AIDS who was receiving treatment in the UK. It was accepted that to return her to Uganda might well shorten her life expectancy and that her removal could be likened to switching off her life-support machine.

In reviewing the ECHR jurisprudence, their Lordships stated that aliens who are subject to expulsion couldn't claim any entitlement to remain in the territory of a contracting state in order to continue to benefit from medical, social or other forms of assistance. Secondly, their Lordships stated that exceptions might be made where there are very exceptional circumstances. The test to be applied is one of whether the claimant's current state of health is such that he should not be removed unless it can be shown that such treatment will be available to him. Their Lordships found that there was no place for consideration of the degree of deterioration the appellant might suffer if returned.

This was broadly in line with their Lordships earlier decision in R v SSHD ex parte Razgar, albeit their Lordships stated in Razgar that the assessment of a breach of Article 8 where medical grounds are invoked could be applied to foreseeable future risks.

In R v Secretary of State for the Home Department, ex parte Bagdanavicius and another their Lordships considered whether the return of a Lithuanian man who feared mistreatment from Lithuanian mafia members would breach Article 3. The claimant argued that the test to be applied was simply one of whether there was a real risk that he would suffer treatment contrary to Article 3. The Secretary of State argued that the claimant must also establish whether the Lithuanian state would fail to provide a reasonable level of protection.

Their Lordships drew a distinction between a risk of serious harm and a risk of treatment contrary to article 3. In cases where the risk emanates from state agents the terms could be used interchangeably. However, where the risk emanated from non-state agents, their Lordships stated that such mistreatment could not constitute article 3 mistreatment unless in addition the state has failed to provide reasonable protection.

The effect of this is that terms used in Article 3 such as ‘torture’ or ‘degrading treatment’ do not have their everyday meaning. For Article 3 purposes, a person has not been tortured if they have been kidnapped by a gang and subject to serious abuse. Such mistreatment could only satisfy the ‘torture’ element of Article 3 if it was accompanied by a failure by the state to provide reasonable protection.

The decision brings the UK jurisprudence on the interpretation of the ECHR in line with the Refugee Convention where there is already a requirement on claimants to show a lack of sufficient protection (see House of Lords decision in Horvath).

## **21 Development s in the use of the exclusion clauses of the Refugee Convention in the context of the national security debate**

In August 2004, the Government passed the Nationality, Immigration and Asylum Act 2002 (Specification of Particularly Serious Crimes) Order 2004 (‘the Serious Crimes Order’). This contains a list of offences defined as serious within the context of Article 33(2) of the Refugee Convention that is sufficient to remove the person from the protection of that Convention. The concern is that, as well as being applicable to any sentence of two years and above, the Order now also applies to offences listed by type, irrespective of the sentence. There is concern that the range of offences listed is so extensive the effect could be wholly disproportionate and inappropriate. The list includes, for example, criminal damage such as graffiti or shoplifting. The Convention uses the term ‘particularly serious’ and this is a concept well understood in international law to encompass crimes such as murder, torture, rape, armed robbery and arson. The UK’s Serious Crimes Order trivialises this concept and NGOs and UNHCR have agreed that the Order is wholly disproportionate and unnecessary.

## **22 Developments regarding readmission and cooperation agreements**

In January 2004, the Home Office announced that it had signed an arrangement with the Sri Lankan government, under which there will be a faster and more efficient system for issuing travel documents to Sri Lankan citizens who do not have the right to enter or remain in the UK.

[http://www.homeoffice.gov.uk/n\\_story.asp?item\\_id=776](http://www.homeoffice.gov.uk/n_story.asp?item_id=776) The arrangement will help return up to 100 people a month, and is the result of the co-operation with the Sri Lankan government on illegal immigration, which has contributed to a significant reduction in unfounded asylum claims from that country.

## 6 The Social Dimension

### 23 Changes in the reception system

The reception directive became part of UK law in February 2005. There have been no obvious effects of this on the UK reception system so far as the UK government claims to be compliant and did much lobbying to ensure the Directive would reflect current UK practices. Lawyers in the UK are looking more closely at the issue of compliance but nothing has been made official as yet.

Throughout 2004, the Government had been developing an induction process for newly arrived asylum seekers; a process that includes detailed briefings on the rights, responsibilities and entitlements of asylum seekers. If asylum seekers need accommodation, the briefing process is given through an induction centre. Where asylum seekers only need financial support and can get housing from friends or relatives they go through the One Day Induction Process (ODIP), a series of briefings given over one day.

2004 also saw a significant reduction of numbers of asylum seekers being housed in Emergency Accommodation (EA); nationally there are now fewer than 3,000 people housed in emergency accommodation down from 15,000. The length of stay in EA has also been reduced to below three months, and services in the remaining EA are being enhanced so that it more closely resembles induction centres.

Previous government policy was to develop accommodation centres, centres to house large numbers of asylum seekers where all services were to be supplied on site. The Government procured a large centre at Bicester for this purpose. They have since announced that the site at Bicester is to be used as a removal (detention) centre, which will further expand the detention estate. There are no plans to develop accommodation centres any further.

### 24 Changes in the social welfare policy relevant to refugees

There has been a significant increase in the numbers of people being supported under Section 4 of the [1999 Asylum and Immigration Act](#) (also known as ‘hard case’ support). Once people have failed their appeal they are no longer able to receive full NASS support. There is provision at this stage for ‘hard case’ support in the form of reduced provision of accommodation and food only. The criteria of eligibility are very strict – mainly health grounds – and people have to sign a declaration confirming they will sign up for voluntary removal. The numbers accommodated under this provision have increased from 1,000 to 6,000 people. This is partly due to a recent court case ruling that Iraqis had no safe route of return and should be entitled to Section 4 support, but is also a result of Section 4 support being better publicised, larger numbers being refused, and another court ruling that held that Section 4 should be available to people waiting for a government decision on further representations. The Government’s legal advisers take the view that it is illegal to provide cash payments under Section 4, so people in receipt of Section 4 will either receive full board, or if they are in no-board or half board accommodation will be given vouchers. There is no provision for additional expenses related to travel, clothing or other essential items. This form of support has raised serious concerns amongst NGOs, particularly for people with small children or particular dietary requirements.

Section 10 of the [Asylum and Immigration Act 2004](#) is a provision that allows the Government to require recipients of Section 4 support (see above) to perform ‘community activities’ in return for their support. This section of the new act was severely criticised by the [Joint Committee on Human Rights](#) who concluded in their fourteenth report that:

“there is a significant risk that making the provision of accommodation to failed asylum seekers conditional on their performance of community work would be in breach of the prohibition of forced or compulsory labour in Article 4(2) ECHR, Section 10“.

The Government had planned to pilot this scheme with the YMCA which provides some accommodation under the Section 4 team. However, the YMCA in Liverpool have recently said that they will not participate in the scheme, and many voluntary sector organisations have chosen not to participate due to reservations about forced labour.

Section 9 of the Asylum and Immigration Act 2004 withholds any support from families that do not satisfy the Government that they are complying with attempts to remove them from the UK. The Government has said that if a family becomes destitute as a result of this provision the only support available will be for the children under section 20 of the Children's Act (the provision for taking children into care). The Government are currently introducing this legislation in a pilot project for 150 families. Key concerns for NGOs and local government centre on the rights of the child, both under UK law, and under Article 8 of the ECHR (right to family).

Sections 12 and 13 of the Asylum and Immigration Act 2004 remove the rights of people given refugee status to get backdated benefit payments, and introduce a refugee integration loan. This amounts to replacing a grant (backdated benefits) with a loan (the integration loan) and is a significant reduction in support available to refugees given status. The Government is also proposing to administer the loan through the Department for Work and Pensions, which would mean that loan repayments have to be deducted from benefit payments, which are defined as the minimum amount, needed to live on.

Section 55 of the 2002 Nationality, Immigration and Asylum Act stopped the provision of support for childless adults who did not apply for asylum 'as soon as reasonably practicable' after arriving in the UK. This policy was effectively abandoned after a court ruling in May 2004, which found that its application was a breach of Article 3 of the ECHR if it forced someone into destitution. The Government may yet re-implement this policy depending on the decision of the House of Lords who will be hearing the Government's appeal in October 2005.

## **25 Changes in policy relating to refugee integration**

In March 2005, the Government published ["Integration Matters: A National Strategy for refugee Integration"](#) which is a welcome change of government emphasis from preventing asylum seekers arriving in the UK to developing services and integration for people granted refugee status. A key part of the strategy includes the Strategic Upgrade of National Refugee Integration Services (SUNRISE) project:

"under which each new refugee who chooses to participate will work with a caseworker to manage the transition from asylum seeker to refugee and produce a Personal Integration Plan covering longer-term integration objectives. During the 28-day period following receipt of a favourable decision, the caseworker will provide links into appropriate housing and employment advice; access to other services; English language tuition and other training; opportunities for volunteering and for being mentored; and contacts with cultural or faith communities if sought. The caseworker and refugee will also begin work on the Personal Integration Plan which can be further developed and reviewed in the months after the initial 28-day period."

Voluntary sector organisations have welcomed the SUNRISE initiative, though some have argued that integration starts from the time of claiming asylum and should not be seen as only beginning when refugee status is granted. There have also been concerns that SUNRISE projects will not be sufficiently funded to meet the needs of refugees at this crucial stage (of getting status).



## **26 Changes in family reunion policy**

There has been no change in policy for family reunion.

Persons recognised as refugees are still entitled to family reunion for spouses and dependent children under 18. Other family members may be considered in exceptional circumstances.

Persons granted subsidiary forms of protection are not entitled to family reunion until they are granted Indefinite Leave to Remain.

## **7 Other Policy Developments**

### **27 Developments in resettlement policy**

In 2003, the Home Office (HO) announced a new resettlement programme known as Gateway. The target is to bring in up to 500 refugees per year in the UK. In practice, the first group of 69 Liberians arrived in Sheffield between March and May 2004, the second group of 54 Liberians (and 27 Congolese) arrived in Bolton in October and December 2004. The third Gateway group of 51 Burmese arrived in Sheffield in May 2005. Evaluations so far (HO and voluntary sector) have confirmed that operationally the programme has been very successful. The HO has already selected a fourth group (70 Sudanese) for resettlement who are still in refugee camps in East Africa, but have not yet finally identified a local authority area who will agree to accept them. For all the three groups so far, the HO have contracted with NGOs (Refugee Action and Refugee Council) to provide the first 12 months of support, and have also provided additional finance for the first 12 months to health and education agencies to meet the additional costs of services. The HO has not so far carried out further selection missions and is still committed to individual selection via missions, rather than the dossier-based selection approach recommended by the UNHCR. There is still no specific HO policy on family reunion for Gateway refugees, which is the biggest issue for the Gateway refugees now here. In addition, there is no clarity on whether the HO's new policy of giving only temporary refugee status initially (for five years, then review) will apply to Gateway refugees too.

### **28 Developments in return policy**

See under Section 4, Specific Refugee Groups - each of these relate to an insistence on an active returns policy in the face of substantial evidence of instability and risk to returnees. Equally, the whole ethos of the new asylum model is to label cases at the outset according to their removability and to put them into a more or less accelerated procedure accordingly. There is hence concern about the objectivity of a system that appears to prejudge cases. For example, one category is 'late and opportunistic claims' where people apply for asylum only after having other extensions of leave refused. In a similar vein more European refugee funding in phase two (2005) will be dedicated to return programmes.

The Government is also now actively proceeding with a programme to return unaccompanied children. Whilst the position of government has not changed, i.e. unaccompanied children who are considered by HO not to be in need of international protection, will only be returned if safe reception arrangements can be made for them. A programme announced in February 2005 will result in children being returned in wider circumstances than previously. The Government is currently negotiating with the Albanian government and NGOs to put in place a package of accommodation and support for unsuccessful asylum seekers under the age of 18 who will be returned. Fears around the safety of these young people are based on the lack of statutory social work services in Albania, as well as the difficulty in ensuring that the international protection needs of all unaccompanied children-seeking asylum have been fully addressed by the Home Office.

### **29 Developments in border control measures**

During 2004, the UK government implemented a plethora of initiatives to further secure the UK's borders and reduce the number of irregular entrants and 'unfounded' asylum seekers. Some of these initiatives are linked to the UK's 'e-borders' programme to use advanced technology to modernise UK immigration controls. For example, the Home Office rolled out a voluntary iris recognition system in several airports. It also introduced a £15 million pilot scheme, Project Sephamore which will initially target six million passengers a year travelling on selected air routes to and from the UK. Project Sephamore will use on-line technology and advance passenger information provided by airlines before arrival to screen and record individuals as they enter and leave the UK.

The Home Office is seeking to fully implement the e-borders project by 2008, resulting in a system that can identify people who have boarded transport destined for the UK, check them automatically against databases of individuals who pose a 'security risk', and keep an electronic record of entry into the country. The system will also enable authorities to record people leaving the UK, and identify those who overstay. Undoubtedly, it will also make it increasingly difficult for refugees fleeing persecution to reach safety in the UK.

In January 2004, the Government introduced secondary legislation so that those applying for visas to come to the UK from Djibouti, Eritrea, Ethiopia, Tanzania and Uganda would be required to provide a record of their fingerprints when applying for a visa. Transit visas were introduced for Kenya and Tanzania and individuals seeking to enter the UK using 1951 Convention travel documents are now also required to have their fingerprints recorded and their documents photocopied. The Government's five-year plan for immigration and asylum, published in February 2005, sets out plans to fingerprint all visa applicants by 2008.

On 1 February 2004, the Le Touquet Treaty came into force, effectively moving the UK's border controls across into France. As a result of this Anglo-French agreement, all UK-bound passengers travelling from Calais and Dunkirk are now subject to checks by UK immigration officers before they travel. Similar arrangements were made with Belgium, for the Eurostar station of Brussels-Midi. The more formal arrangement replaced the former situation whereby UK Immigration Officials were acting in an advisory capacity. This has now changed so that UK immigration officers can exercise their full legal powers, checking and refusing boarding to passengers.

### **30 Other developments in refugee policy: Scotland**

Although asylum and immigration legislation is reserved to Westminster, nearly all the support services that impact on refugees are entirely the responsibility of the Scottish parliament. Health, education, housing, policing, legal aid, children and social work are all areas where legislation, policy and practice are entirely devolved.

During the last year, work was ongoing to deliver against the Scottish Refugee Integration Forum (SRIF) action plan which was published in February 2003. The progress report, outlining what has been achieved over the previous two years, was published at almost the same time as the National Refugee Integration Plan was published by the Home Office.

Scotland has the fastest falling population in Europe. The negative consequences for the Scottish economy of not dealing with this are recognised across the political spectrum and by business. The Scottish Executive has a major initiative, Fresh Talent designed to encourage more people to move to and settle in Scotland. There have been some minor concessions allowed by the Home Office such as allowing students to stay and work for two years after graduating, compared to one year in England and Wales. A strong case has also been made for the new points system for migrant workers to give extra points for people prepared to move to Scotland. There has been no concession on permission to work for asylum seekers although the contradictory policies North and South of the border are often highlighted in the media.

*Legal Aid*

The restrictions on the amount of legal aid available do not apply in Scotland, although there are still problems when people have engaged a lawyer in England and then find themselves dispersed to Glasgow. English lawyers are not allowed to practice in Scotland and vice versa. The Scottish Executive is consulting on the legal aid system in Scotland. Although there is no specific reference to immigration or asylum in the documentation, it will be important to ensure there is no attempt to introduce the English model by the back door.

*Local connection*

Section 11 of the 2004 Act establishes a local connection for housing purposes to the location people have been dispersed to. This legislation does not apply in Scotland which means a person granted refugee status anywhere in the UK could present as homeless anywhere in Scotland and be assessed under the current Scottish Homelessness Code of Guidance.

*Access to education*

The SRIF action plan recognised the importance of education being available to asylum seekers. The Executive committed additional money for English for Speakers of Other Languages provision and allows colleges to decide for themselves whether to accept asylum seekers into courses up to Higher National Diploma level. This would allow people receiving permission to stay to enter university courses in year two. Many colleges have followed this route.

*Female Genital Mutilation (FGM)*

Due to a timing quirk, the legislation necessary to bring Scotland into line with England and Wales on the penalties for arranging or committing female genital mutilation went through the full Scottish legislative process rather than the more usual Sewell motion route. During the consultation process Members of the Scottish Parliament accepted the need to protect non-UK citizens, including asylum seekers and overseas students, something Westminster argued was unnecessary. It is now an offence to make arrangements for a female asylum seeker living in Scotland to be subjected to FGM anywhere in the world, with a maximum sentence of 14 years in prison. This would not be a criminal offence in England and Wales.

## **8 Political Context**

### **31 Government in power during 2004**

The Labour Party was in power throughout 2004 and widely expected to be re-elected in the general election expected - rightly, as it turned out - in May 2005.

### **32 Governmental policy vis-à-vis EU developments**

The UK's policy in relation to EU developments is 'to participate to the fullest extent possible in EU measures to combat illegal immigration, where these are compatible with our ability to operate our own frontier controls'. Despite not being part of Schengen, the UK continues to seek to participate in many of the Schengen border control initiatives. The UK is bringing a challenge against its exclusion from the EU Border Management Agency. In relation to the Common European Asylum System, the UK has supported the first stage of harmonisation where proposals have not required substantial changes to UK asylum laws and policies. The UK's approach to the second stage of harmonisation is currently unclear.

### **33 Asylum in the national political agenda**

Immigration and asylum remained high on the political and media agenda. Opinion polls throughout the year showed that asylum and immigration was one of the top four policy concerns of the public.

The Asylum and Immigration (Treatment of Claimants) Act 2004 was passed in July 2004. This contained a number of controversial measures including plans to prevent asylum seekers seeking judicial review of asylum decisions. It was only after a media, political and judicial outcry that the



## European Council on Refugees and Exiles - Country Report 2004 – United Kingdom

Government withdrew its plans on this latter measure but not before abolishing one of the two tiers of appeal and putting in place a number of procedural barriers to applicants wishing to challenge refusals. Other measures included the power to withdraw support from families with children after final decision if the family fails to cooperate in leaving the country, a criminal offence of arriving in the UK undocumented without good reason and the power to make support for failed applicants conditional on the performance of voluntary service.

One area of progress was the Government's decision, following a succession of court defeats and media pressure, to dismantle the machinery for enforcing Section 55\* of the 2002 Act. As a result, from June onwards most in-country applicants arriving in the UK were able to get food and shelter.

The main opposition party, the Conservative Party, sought to highlight the Government's failings on immigration and asylum. This ensured that the issue maintained its high profile and contributed to the resignations of the Immigration Minister and the Home Secretary (the UK's Interior Minister post) in two separate controversies on non-asylum immigration.

The run-in to EU accession witnessed widespread and apocalyptic media reporting that the UK would be 'flooded' by arrivals. This was responsible for the Government announcing a toughening up of eligibility for social support for new applicants.

In a speech to businessmen the Prime Minister, who started convening regular stocktake meetings on the issue with his officials and ministers, set out his position on the issue. He argued that the UK had a lot to gain economically from immigration but accepted that people would only believe this message if they felt borders were robust and the asylum system wasn't being abused. In a speech later in the year, the Prime Minister also set out his target for removals of failed applicants.

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\* For further details, see question 24.

## **Biography**

### REFUGEE COUNCIL

Several Refugee Council staff in the Mainstreaming Policy team, Protection Unit, and Information and Marketing team contributed to this report. Scottish Refugee Council, Refugee Legal Centre and Immigration Advisory Service contributions were also incorporated in this report.

The Refugee Council is the largest organisation in the UK working with asylum seekers and refugees. It not only gives help and support, but also works with asylum seekers and refugees to ensure their needs and concerns are addressed.

[WWW.REFUGEECOUNCIL.ORG.UK](http://WWW.REFUGEECOUNCIL.ORG.UK)