

# Country Report: United Kingdom



2016  
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. This report was 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 researcher relied heavily on information and analysis provided by a variety of sources, in particular the Immigration Law Practitioners' Association (ILPA), Association of Visitors to Immigration Detainees, Detention Action, and Bail for Immigration Detainees (BID).

The information in this report is up-to-date as of 31 December 2016, 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 20 countries. This includes 17 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, SE, 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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## 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: provision to introduce 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>	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>	Support provided 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>	Section 95 of the Immigration, Asylum and Nationality Act 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.

## List of Abbreviations

<b>APPG</b>	All Party Parliamentary Group/s
<b>ARE</b>	Appeal Rights Exhausted
<b>AIU</b>	Asylum Intake Unit
<b>ASU</b>	Asylum Screening Unit
<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>IRC</b>	Immigration Removal Centres
<b>NAAU</b>	National Asylum Allocation Unit
<b>NAIU</b>	National Asylum Intake 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>SSHD</b>	Secretary of State for the Home Department
<b>UKBF</b>	United Kingdom Border Force (previously part of UKBA)
<b>UKHL</b>	United Kingdom House of Lords (highest appellate court, now UKSC)
<b>UKSC</b>	United Kingdom Supreme Court
<b>UKVI</b>	United Kingdom Visas and Immigration
<b>UT (IAC)</b>	Upper Tribunal Immigration and Asylum Chamber
<b>VPR/VPRS</b>	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> However, the Minister of State for Immigration did not provide information to recent Parliamentary Questions relating to Dublin statistics, stating: “At present, we do not publish data on cases covered by the Dublin Regulation. Eurostat, the EU’s statistics agency, regularly publishes Member State figures.”<sup>3</sup> Difficulties have also been encountered with regard to Home Office responses to freedom of information (FOI) requests.<sup>4</sup>

### Applications and granting of protection status at first instance in 2016

	Applicants in 2016	Pending applications in 2016	Asylum status	Humanitarian Protection	Discretionary leave	Rejection	Asylum rate	Hum. Prot. rate	Dis. Leave rate	Rejection rate
<b>Total</b>	30,603	24,903	7,136	189	1,141	16,518	28.6%	0.8%	4.6%	66.1%

Breakdown by countries of origin of the total numbers

Iran	4,192	2,478	1,333	3	119	2,460	34%	0.1%	3%	62.9%
Pakistan	2,857	2,065	279	0	13	1,740	13.7%	0%	0.6%	85.6%
Iraq	2,666	1,930	164	25	97	2,102	6.9%	1.0%	4.1%	88%
Afghanistan	2,341	2,242	293	3	307	1,112	17.1%	0.2%	17.9%	64.8%
Bangladesh	1,939	1,273	62	0	8	1,161	5%	0%	0.6%	94.3%
Albania	1,488	1,693	11	0	210	602	1.3%	0%	25.5%	73.1%
India	1,488	796	3	0	4	907	0.3%	0%	0.4%	99.2%
Syria	1,409	876	1,579	3	9	268	84.9%	0.2%	0.5%	14.4%
Sudan	1,314	968	1,168	1	4	211	84.4%	0.1%	0.3%	15.2%
Eritrea	1,238	1,447	986	122	127	598	53.8%	6.7%	6.9%	32.6%

Source: Home Office.

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

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

<sup>3</sup> See e.g. House of Commons, Asylum: Written questions 59796 to 59799, 12 January 2017, and Reply of 16 January 2017, available at: <http://bit.ly/2kmM6dc>.

<sup>4</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: 2016

	Number	Percentage
<b>Total number of applicants</b>	30,603	100%
Men	:	:
Women	:	:
Children	:	:
Unaccompanied children	3,175	10.4%

Source: Home Office.

### Comparison between first instance and appeal decision rates: 2016

	First instance		Appeal	
	Number	Percentage	Number	Percentage
<b>Total number of decisions</b>	24,984	100%	12,304	100%
Positive decisions	8,466	33.9%	5,002	40.1%
• <i>Refugee status</i>	7,136	28.6%	:	:
• <i>Humanitarian protection</i>	189	0.8%	:	:
• <i>Discretionary leave</i>	1,141	4.6%	:	:
Negative decisions	16,518	66.1%	6,698	54.4%

Source: Home Office.

## Overview of the legal framework

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

Title (EN)	Abbreviation	Web Link
Immigration Act 1971	IA 1971	<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 and detention

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>
The Asylum Seekers (Reception Conditions) Regulations 2005 SI 7	Reception Conditions Regs	<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>
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 HC 667	Immigration Rules	<a href="http://bit.ly/2i9nV1P">http://bit.ly/2i9nV1P</a>

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

The report was previously updated in **November 2015**.

### *Asylum procedure*

- ❖ A new process for children's claims was introduced in July 2016.<sup>5</sup> There are changes to the early parts of the process, as well as new guidance on family tracing.<sup>6</sup>

### *Reception conditions*

- ❖ A new transfer scheme was introduced to share responsibility for the care of unaccompanied children across a greater number of local authorities. Although the Immigration Act 2016 allows for the scheme to be mandatory, it remains a voluntary process at the time of writing.<sup>7</sup>
- ❖ The government announced in December 2016 that the contracts for the provision of accommodation have been extended and some changes made to the contracts, particularly to funding.<sup>8</sup>
- ❖ A little more detail was contained in a response to a Parliamentary Question (PQ) as it had been reported in the media that the age thresholds for children sharing with parents and/or opposite gender siblings, had been changed at the same time.<sup>9</sup>

### *Detention*

- ❖ Since the suspension of the Detained Fast Track Process in 2015, a new instruction has been issued to staff dealing with those applications.<sup>10</sup>
- ❖ Following a January 2016 report on the review of detention policy with regard to vulnerable groups ("Shaw review") and calls to end the detention of pregnant women, the Immigration Act 2016 introduced a time limit for the detention of pregnant women and children.

### *Content of protection*

- ❖ No change has been noted to integration policy, but an increased evidence base of problems encountered by refugees when they move from asylum support provided by the Home Office to becoming self-reliant, having to find their own source of income and accommodation. Evidence of extreme destitution and homelessness can be found most recently in a research report by the Refugee Council: *England's Forgotten Refugees*.<sup>11</sup>

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<sup>5</sup> Home Office, *Processing children's asylum claims*, 12 July 2016, available at: <http://bit.ly/2jtz4uD>.

<sup>6</sup> Home Office, *Family tracing*, 12 July 2016, available at: <http://bit.ly/2kmRWet>.

<sup>7</sup> Section 69, Immigration Act 2016, available at: <http://bit.ly/2jQM3Dh>.

<sup>8</sup> House of Commons, *Asylum Accommodation: Written statement by the Minister of State for Immigration, HCWS335*, 8 December 2016, available at: <http://bit.ly/2jypHWb>.

<sup>9</sup> House of Commons, *Asylum: Housing*, Written question 58481 of 20 December 2016, and reply by the Minister of State for Immigration of 9 January 2017, available at: <http://bit.ly/2jPHATC>.

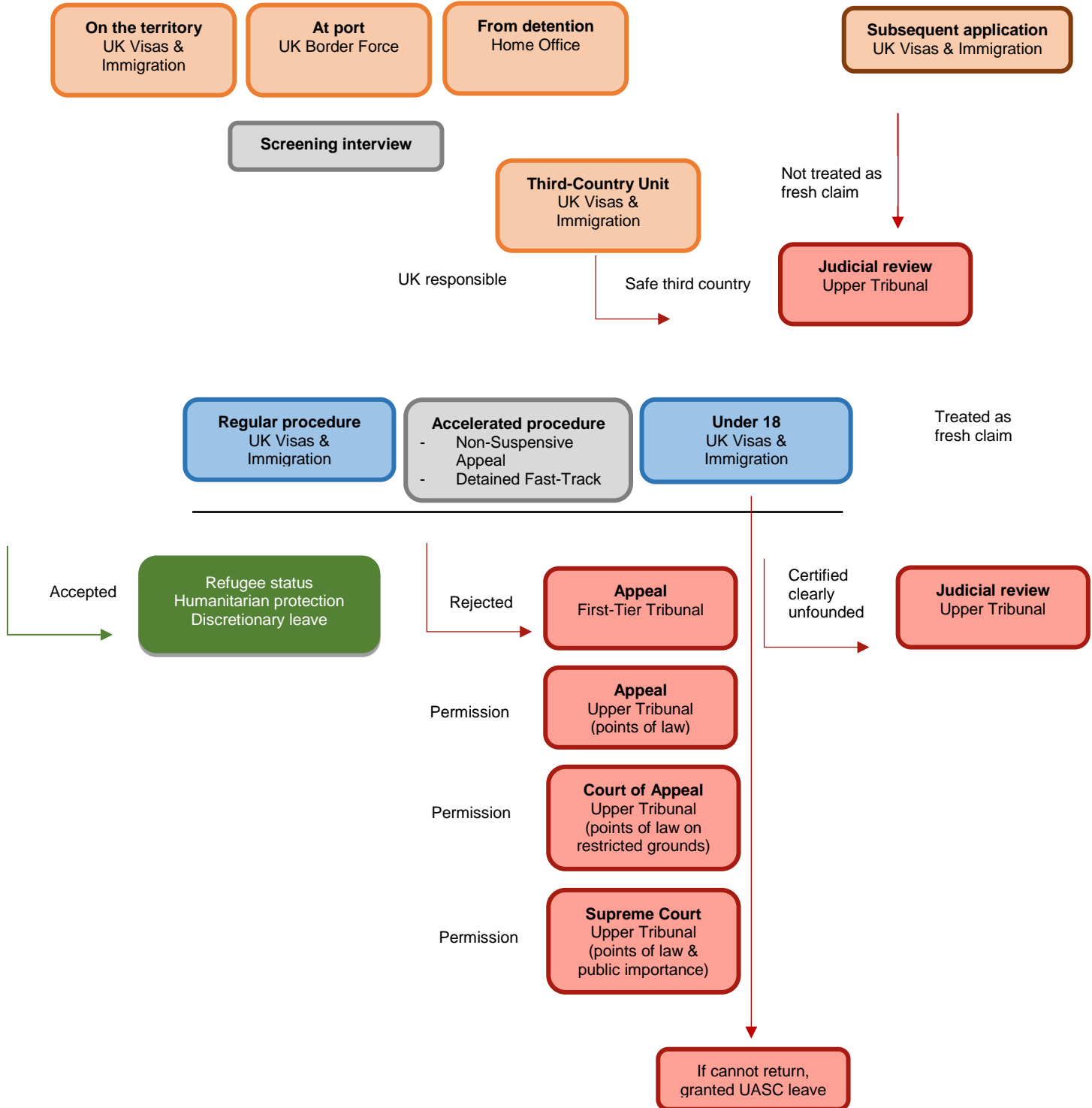
<sup>10</sup> Home Office, *Detention: Interim instruction for cases in detention who have claimed asylum, and for entering cases who have claimed asylum into detention*, 1 August 2016, available at: <http://bit.ly/2kPK16s>.

<sup>11</sup> Refugee Council, *England's Forgotten Refugees: Out of the fire and into the frying pan*, May 2016, available at: <http://bit.ly/1U4c3VH>.

# 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>12</sup> | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| ▪ Fast-track processing: <sup>13</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>14</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
Application at the border	
❖ At the border	Home Office: UK Border Force (UKBF)
❖ On the territory	Home Office: UK Visas and Immigration (UKVI)
Dublin (responsibility assessment)	Home Office: UK Visas and Immigration (UKVI), Third Country Unit
Refugee status determination	Home Office: UK Visas and Immigration (UKVI)
Appeal procedures	
❖ First appeal	First Tier Tribunal, Immigration and Asylum Chamber (FTT (IAC))
❖ Second (onward) appeal	Upper Tribunal, Immigration and Asylum Chamber (UKUT (IAC))
Subsequent application (admissibility)	Home Office: UK Visas and Immigration (UKVI)

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

Name	Number of staff <sup>15</sup>	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, Asylum Casework Directorate	395	Home Office	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

<sup>12</sup> For applications likely to be well-founded or made by vulnerable applicants.

<sup>13</sup> Accelerating the processing of specific caseloads as part of the regular procedure.

<sup>14</sup> Labelled as "accelerated procedure" in national law.

<sup>15</sup> Information provided by the Home Office, 2016.

## 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 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 National Asylum Intake Unit (NAIU), but this name is not yet used everywhere.

### 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. 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>16</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>17</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 has operated a Detained Fast Track (DFT) procedure where Home Office officials considered that the case could be decided quickly. Following a series of legal challenges the DFT policy is currently suspended.<sup>18</sup> The current guidance for applications considered whilst the applicant is detained was updated in August 2016.<sup>19</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 cases, and 12 months in other cases. Reasoned decisions are normally sent by post,

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<sup>16</sup> Currently suspended but remains in the description of the procedure.

<sup>17</sup> Section 16, Tribunals Courts and Enforcement Act 2007.

<sup>18</sup> House of Commons, Written Statement made by The Minister of State for Immigration (James Brokenshire), HCWS83, 2 July 2015.

<sup>19</sup> Home Office, *Detention: Interim instruction for cases in detention who have claimed asylum, and for entering cases who have claimed asylum into detention*, 1 August 2016, available at: <http://bit.ly/2kPK16s>.

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

#### Calais and push backs

The UK government has made several statements on the clearance outlining its position and actions, including a statement by the Home Secretary on 24 October 2016.<sup>20</sup> Previous statements, including a joint one with French Interior Minister Cazeneuve, focused on joint border control, but increasingly responded to calls for children to be protected in the plans to clear the unofficial camps in Calais. Juxtaposed border controls in France and Belgium allow the UK to limit access to the territory.

### 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>21</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>22</sup>

Where a couple or family claim asylum, the children normally apply as dependants on the claim of one of their parents. Also one partner may apply as the dependant of the other. This means that the outcome of their claim will depend upon that of the main applicant. It is policy to inform women separately that they may claim separately from their partner.<sup>23</sup> However, there are concerns that this question may not always be asked in a confidential setting, and that the woman may not be aware of all the implications.<sup>24</sup>

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>25</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>26</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>27</sup> but not if this would entail a breach of human rights (see section on [Reception Conditions](#)).<sup>28</sup>

<sup>20</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>21</sup> Section 113, NIAA 2002, available at: <http://bit.ly/1HOZagy>.

<sup>22</sup> Para 328, Immigration Rules Part 11, available at: <http://bit.ly/1JRSeKu>.

<sup>23</sup> Home Office, *Gender issues in the asylum claim*, September 2010, para 7.1, available at: <http://bit.ly/1CbiHBK>.

<sup>24</sup> See e.g. UNHCR, *Untold stories... Families in the asylum process*, June 2013, available at: <http://bit.ly/2jqIUPq>.

<sup>25</sup> Para 339M, Immigration Rules Part 11, available at: <http://bit.ly/1JRSeKu>.

<sup>26</sup> Para 339MA, Immigration Rules Part 11, available at: <http://bit.ly/1JRSeKu>.

<sup>27</sup> Section 55, NIAA 2002, available at: <http://bit.ly/1SatOPR>.

<sup>28</sup> House of Lords, *Limbuela v SSHD* [2005] UKHL 66.



First applications made from inside the UK must be registered by appointment at the Asylum Screening Unit, now Asylum Intake Unit (AIU) in **Croydon** in the South East of England unless the asylum seeker is in detention. This includes all applications not made at the port of entry, even if only hours after arrival and where the asylum seeker has left the port. Around 90% of asylum applications in the UK are not registered at the port of entry. These 'in country' applications are made at the AIU or from detention, or in exceptional cases an applicant who is destitute and whose condition is such that they cannot reasonably be expected 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>29</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>30</sup> In practice, this is only permitted exceptionally. There is no government funding for fares to the AIU. In the absence of this, over a four year period, a charity in **Scotland** provided 420 grants from its own funds to pay for travel to enable people to claim asylum.<sup>31</sup> Particularly where asylum seekers are newly arrived in the UK, and may be confused, disoriented and understanding little English, making this journey successfully is very problematic.

Applicants are required to telephone the 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.<sup>32</sup>

There is no rule laying down a maximum period within which an asylum claim must be registered, after the authority has first been notified of the claim. Appointments for the screening interview are usually fixed within one or two weeks after the telephone call, but there are also reports of very substantial delays.<sup>33</sup>

Indeed, instances still occur when appointment times are not kept by the Home Office, and asylum seekers, including those with small children may be kept waiting many hours or even sent away. A person who claims asylum on being arrested or detained or during detention is not taken to the AIU but may be screened in detention or at a regional office or even in a police station. The screening interview in such a case is carried out by an immigration official, not a police officer, but information disclosed during a police interview under caution may be disclosed to the asylum authorities.

At the screening interview, fingerprints are taken for comparison with databases including Eurodac and the route of travel is inquired into. The asylum seeker is asked basic details of their claim. During 2012 the Home Office changed the physical arrangements at the ASU, including making available private areas for the screening interview. The lack of private space was one of the factors for which screening interviews had been criticised as not suited to identifying sensitive issues such as the fact that the

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<sup>29</sup> Home Office, *Asylum Process Guidance: Registering an asylum application in the UK*, para 7.1 available at: <http://bit.ly/1BkfXXq>.

<sup>30</sup> The Home Office, *Asylum Process Guidance: Postal claims*, paras 3.4 and 4.1, available at: <http://bit.ly/1CbntPG>.

<sup>31</sup> Morag Gillespie, *Trapped: Destitution and Asylum in Scotland*, Scottish Poverty Information Unit, Institute for Society and Social Justice Research, Glasgow Caledonian University, 2012 and Refugee Survival Trust destitution grant data 2013-2014.

<sup>32</sup> Christel Querton, *I feel like as a woman I'm not welcome: a gender analysis of UK law, policy and practice*, Asylum Aid 2012.

<sup>33</sup> House of Commons Home Affairs Select Committee, *Asylum: Seventh Report of Session 2013-14 HC 71*, available at: <http://bit.ly/1dlhjAF>.

asylum seeker had been tortured or raped since they could be overheard by others waiting.<sup>34</sup> Although confidential space is now provided for interviewing at the **Croydon** screening unit, there is no supervised child care.<sup>35</sup>

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

Although details of the asylum claim should not be required at this stage, the decision as to which kind of procedure the application will be routed through, including whether the case will be decided in an accelerated procedure, is taken on the basis of the screening interview.

Improvements made in the screening process at the AIU have not yet been applied in the other locations where screening can take place (ports, police stations, local immigration offices, detention centres and prisons).<sup>36</sup>

There is no provision for legal assistance at the screening interview except for unaccompanied children and those with mental illness. Applicants who have applied from within the UK may have had legal advice prior to screening, but those applying at 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 area where the asylum seeker is going to be sent for initial accommodation (see section on [Reception Conditions](#)). There is no obligation on screening offices to help in finding legal representation.

### **Registration of unaccompanied children**

The policy is to treat unaccompanied children differently.<sup>37</sup> The new policy guidance issued in July 2016 reflects the practice that had emerged following a report by the Office of the Children's Commissioner for England,<sup>38</sup> and a judgment of the Court of Appeal.<sup>39</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>34</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>35</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>36</sup> Independent Chief Inspector of Borders and Immigration, *Asylum: A Thematic Inspection of the Detained Fast Track*, ICIBI, 2012.

<sup>37</sup> Home Office, *Processing children's asylum claims*, 12 July 2016, available at: <http://bit.ly/2jfz4uD>.

<sup>38</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/1MljwYn>.

<sup>39</sup> *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 as of 31 December 2016   | 24,903  |

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). The UKVI is currently subject to a restructuring; different senior officials will be responsible for areas of work, differentiating between protection based issues and more general immigration (including points based systems) applications. 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>40</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>41</sup> If a decision is not taken within six months, the caseworker should inform the applicant of the delay, or, if requested, make an estimate of the time that the decision will take.<sup>42</sup>

Since 2013 and to date, a new source of delay was developing as the time spent waiting after screening for a substantive interview increased for some applicants so that some asylum seekers have waited many months, some even a year, for their initial interview. Those subject to these extended waiting times are in a minority. These delays seemed to coincide with a practice introduced in 2013 of sending asylum seekers to dispersed accommodation, i.e. away from initial accommodation centres (see section on [Reception Conditions](#)) before their initial substantive interview.<sup>43</sup>

It is not possible to say how many applicants have been waiting for an initial decision for over a year, because the published figures are of decisions outstanding at six months. The figures for decisions made within a given year relate to the year's cohort, not the cumulative total, of decisions outstanding. The figure for those who have applied since April 2006 and not received a first decision includes those who have been waiting over six months but less than a year.

In 2006, the then Home Secretary made a commitment that the Home Office would deal with a backlog of 450,000 unresolved asylum cases by July 2011. 19,025 of the asylum cases remained outstanding at the end of December 2016.<sup>44</sup> This does not mean that they have not had an initial decision, but that the case has not been concluded by one of the following:

- a. Grant of permanent or temporary residency;
- b. Voluntary or enforced removal;

<sup>40</sup> See guidance at: <http://bit.ly/1Q7pK5Z>.

<sup>41</sup> Para 333A, Immigration Rules Part 11, available at: <http://bit.ly/1JRSeKu>.

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

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

<sup>44</sup> Government, *Asylum transparency data 4<sup>th</sup> quarter 2016*, available at: <http://bit.ly/2lzzxd0>.

- c. Found to have been given status before July 2006;
- d. Found to be a duplicate record;
- e. Deceased.<sup>45</sup>

These more precise outcomes for old cases were developed in response to recommendations from the Independent Chief Inspector of Borders and Immigration.<sup>46</sup> This inspection found that decisions on live cases were being made on the correct basis but that one in five asylum cases closed by the Older Live Cases Unit (OLCU) had been closed incorrectly or for the wrong reason. The Home Affairs Select Committee continues to find that delay in decision-making is on the increase, with the risk of a further backlog being generated. Their most recent report, published in July 2016, examines the work of the Directorates over the period January to March 2016. It includes a section dealing with asylum applications, including backlogs. On the timescales for determining asylum applications the Committee commented on the impact of the increased number of applications. They said:

“Progress in concluding cases in the Older Live Cases Unit (OLCU) has slowed over the last 18 months. The caseload of the OLCU is currently shrinking by an average of 250 cases per quarter. At this rate, it will take a further 24 years to clear the backlog of 23,962 outstanding cases, the majority of which date back to before 2007. It is unacceptable that people have had to wait over nine years for a conclusion to their case. The Home Office must explain why, nine years after its creation, the Older Live Cases Unit is still in existence, and when it expects the unit to have concluded its work. Sarah Rapson, the Director General of UK Visas and Immigration promised this Committee that this work would be a priority. Unfortunately she has been unable to live up to her promise. In our next report we expect to see better progress.”<sup>47</sup>

The human cost is intensified by the fact that many people in the ‘legacy’ system are destitute (see section on [Reception Conditions](#)).

## 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?  Yes  No
  - ❖ If so, are interpreters available in practice, for interviews?  Yes  No
2. In the regular procedure, is the interview conducted by the authority responsible for taking the decision?  Yes  No
3. Are interviews conducted through video conferencing?  Frequently  Rarely  Never

Applicants are entitled to a personal interview,<sup>48</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;

<sup>45</sup> UK Visas and Immigration Asylum Transparency Data Q2 2015 table OLCU 1.

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

<sup>47</sup> Parliament, Home Affairs Select Committee, *The work of the Immigration Directorates (Q1 2016)*, 25 July 2016, available at: <http://bit.ly/2kmCQ9o>, para 56.

<sup>48</sup> Para 339NA, Immigration Rules Part 11, available at : <http://bit.ly/1JRSeKu>.

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>49</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>50</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 adults, save in the case of lack of mental capacity, and so few are able to do so in practice. Where there is a legal representative present, their role is not to put the asylum seeker's case, but to ensure that their client is able to participate fully and properly in the interview.

Interpreters are required by the immigration rules and are provided by the Home Office. There is a code of conduct for these interpreters,<sup>51</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>52</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>53</sup>

Audio-recording of interviews is permitted and should be allowed where a request has been made in advance by the asylum seeker, except in the unusual cases where an asylum seeker is entitled to a legal representative at their interview. The Home Office advice to interviewers is that they need not arrange tape recording if the asylum seeker has not requested it in advance, and need not ask again when the asylum seeker arrives for interview.<sup>54</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 conducting a trial of digital recording of interviews and video link interviews, where the interviewing officer and the interpreter may be in a different location to the applicant. No public information is available on this.

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<sup>49</sup> The Home Office, *Asylum Process Guidance: Routing Asylum Applications*, para.3.9.

<sup>50</sup> Kamena Dorling and Anita Hurrell, *Navigating the System: Advice Provision for Young Refugees and Migrants*, 2012, Coram Children's Legal Centre.

<sup>51</sup> Home Office *Asylum Policy Instruction: Asylum Interviews Section 8: Interpreters*.

<sup>52</sup> Home Office *Asylum Policy Instruction: Asylum Interviews Section 7.3 Professional conduct*.

<sup>53</sup> Home Office *Asylum Policy Instruction, Gender issues in the asylum claim*, para 7.1, available at: <http://bit.ly/1CbiHBK>.

<sup>54</sup> Home Office *Asylum Policy Instruction, Asylum Interviews Version 6.0*, 4 March 2015, Section 6.1 Recording policy.

The guidelines on gender issues require provision of child care so that parents do not have to have their children present while being interviewed about possibly traumatic experiences.<sup>55</sup> This is in place in regional offices except **London**.<sup>56</sup>

## 1.4. Appeal

### Indicators: Regular Procedure: Appeal

- |   |  |   |
|---|--|---|
| 1. Does the law provide for an appeal against the first instance decision in the regular procedure? | <input checked="" type="checkbox"/> Yes      | <input type="checkbox"/> No             |
| ❖ If yes, is it   | <input checked="" type="checkbox"/> Judicial | <input type="checkbox"/> Administrative |
| ❖ If yes, is it suspensive  | <input checked="" type="checkbox"/> Yes      | <input type="checkbox"/> No             |
| 2. Average processing time for the appeal body to make a decision:                                  | 40 weeks                                     |   |

There is a right to appeal against an initial asylum decision under the regular procedure. Appeals are made to the Immigration and Asylum Chamber of the First Tier Tribunal (FTT (IAC)) on both facts and law. This is a judicial body, composed of immigration judges and sometimes non-legal members. The Tribunal can assess and make findings of fact on the basis of the evidence presented including evidence which was not before the Home Office decision-maker. The time limit for appealing is 14 days from the date that the Home Office 'sent' the decision.<sup>57</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 (€166) is required for an oral hearing of an asylum appeal in the regular procedure. For the period of a few weeks during October and November 2016 these fees rose – a decision that was later overturned by the government.<sup>58</sup> Applicants need not pay if they are receiving asylum support (see Chapter on [Reception Conditions](#)) or if they have public funding to be represented.<sup>59</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. Tribunal rules requires all evidence to be translated where relevant and sent to all parties in advance of the hearing.<sup>60</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 information available from government sources (including courts and tribunals service) on processing times although anecdotal evidence suggests it is commonly more than 12 months in

<sup>55</sup> Home Office *Asylum Policy Instruction, Gender issues in the asylum claim*, para 7.1.

<sup>56</sup> Christel Querton, *I feel like as a woman I'm not welcome: a gender analysis of UK law, policy and practice*, Asylum Aid 2012, and House of Commons Home Affairs Committee, *Asylum, Seventh Report of Session 2013-14*, HC 71.

<sup>57</sup> The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 rule 19.

<sup>58</sup> Government, 'The government has today announced the decision to review the fees charged for Immigration and Asylum appeals', 25 November 2016, available at: <http://bit.ly/2kmN0Xo>.

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

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

**Glasgow**, for instance.<sup>61</sup> The general average waiting time for immigration appeals was reported at 34 weeks (7.9 months) for 2015 and 2016,<sup>62</sup> but this figure represents both protection and non-protection appeals. Statistics published by the Ministry of Justice indicate that the average time of disposal of an asylum or protection appeal was 40 weeks during the period July to September 2016,<sup>63</sup> but this number does not tell the whole story as it includes cases that are withdrawn at an early stage.

Asylum seekers give evidence in person at the appeal hearing, and the Tribunal provides interpreters on request. This service was contracted out in February 2012. Following that, there was a steep rise in formal complaints about the interpreter service. Since then performance has improved, although the National Audit Office found continuing failings in a report published in January 2014.<sup>64</sup> Hearings are public. Decisions are in theory public documents, but decisions of the FTT (IAC) are not published.

### **Onward appeal**

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>65</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>66</sup>

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

If permission is granted to appeal to the 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.

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<sup>61</sup> See e.g. McGill & Co, '13 month waiting time for appeal hearing date at the First-tier Tribunal (Immigration and Asylum Chamber) in Glasgow', 28 April 2016, available at: <http://bit.ly/2kLqa9w>.

<sup>62</sup> House of Lords, Immigration: Appeals, Written question HL4315 of 20 December 2016, and Reply of 19 January 2017, available at: <http://bit.ly/2kn0guT>.

<sup>63</sup> Ministry of Justice, *Tribunals and Gender Recognition Certificate Statistics Quarterly: July to September 2016*, available at: <http://bit.ly/2gllAuc>.

<sup>64</sup> National Audit office, *The Ministry of Justice's language services contract: Progress update*, HC 995, 22 January 2014, available at: <http://bit.ly/1bcySkN>.

<sup>65</sup> Rule 33, Procedure Rules, available at: <http://bit.ly/1eawcw7>.

<sup>66</sup> Rule 54.7A, Civil Procedure Rules, available at: <http://bit.ly/1Gt3VdE>.

Where the only remedy is judicial review, this is only available with the permission of the reviewing court. Judicial review was the preserve of the High Court until October 2011, since when categories of immigration and asylum judicial reviews have been gradually transferred to the Upper Tribunal, and most are now in the Tribunal's jurisdiction.<sup>67</sup> Opponents of these transfers argue that the High Court is more independent and experienced in the public law principles which underpin judicial review. Those in favour of the transfer argue that immigration and asylum cases are best decided by those with specialist expertise.

## 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>68</sup> access to this is not guaranteed.

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

Few asylum seekers obtain advice before their screening interview. In the cases where they do, giving full instructions with an interpreter is not publicly funded, since the maximum that the solicitor can claim for work done before screening is £100 (€139) including disbursements.

In England and Wales, legal aid for legal advice and representation for the initial stage of an asylum case, from claim, through interview up to decision, is paid as a fixed fee of £413 (€577).<sup>69</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>70</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

<sup>67</sup> Regulations are made implementing the power in Borders, Citizenship and Immigration Act 2009 s.53.

<sup>68</sup> Para 333B, Immigration Rules Part 11, available at : <http://bit.ly/1eawcw7>.

<sup>69</sup> The Civil Legal Aid (Remuneration) Regulations 2013, Schedule 1, Table 4(a), available at: <http://bit.ly/1fiODPA>.

<sup>70</sup> Immigration Specification to the 2013 Standard Civil Contract, available at: <http://bit.ly/1QFm9jO>.



granting legal aid at appeal and makes it difficult for quality representatives to stay in business with high standards.<sup>71</sup>

Legal assistance is not provided at the ASU or at the port of entry. Free legal assistance (funded as described above) is limited to advising the asylum seeker before and immediately after their asylum interview. This may include making additional written representations to the Home Office, which as a matter of usual policy are only allowed within five days after the interview. With some exceptions (including unaccompanied children and people who lack capacity), there is no public funding for a legal representative to attend the asylum interview.<sup>72</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>73</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>74</sup>

The amount that is payable per case in England and Wales has been reduced steadily over a period of years. Prior to 2011, large non-governmental organisations offered free legal advice, but both had closed by 2011. Additionally, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 took immigration advice out of scope for all except asylum and trafficking. 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>75</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>76</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.

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<sup>71</sup> Julie Gibbs and Deri Hughes-Roberts, *Justice at Risk: Quality and Value for Money in Asylum Legal Aid*, Runnymede Trust, 2012, and see Christel Querton, *I feel like as a woman I'm not welcome: a gender analysis of UK law, policy and practice*, Asylum Aid 2012.

<sup>72</sup> Legal Aid, Sentencing and Punishment of Offenders Act 2012, Schedule 1 Part 1 (30), available at: <http://bit.ly/1J5vmy0>.

<sup>73</sup> Scottish Legal Aid Board, *Best Value Review: Immigration And Asylum 2011*, available at: <http://bit.ly/1LgW2fE>.

<sup>74</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>75</sup> Quality of legal services for asylum seekers, commissioned by the Solicitors Regulation Authority and Legal Ombudsman and conducted by Migration Works, April 2016 <http://bit.ly/2jzdw7V>.

<sup>76</sup> The Civil Legal Aid (Merits Criteria), (Amendment) Regulations 2014 No. 131, available at: <http://bit.ly/1epJg0S>.

## 2. Dublin

### 2.1. General

#### Dublin statistics: 2016

The government has refused to provide information to a recent round of Parliamentary Questions relating to 2016 Dublin statistics, stating: “At present, we do not publish data on cases covered by the Dublin Regulation. Eurostat, the EU’s statistics agency, regularly publishes Member State figures.”<sup>77</sup>

#### Application of the Dublin criteria

The Home Office has yet to issue guidance on the operation of the Dublin III Regulation, despite a draft being consulted on with key stakeholders in September 2016. Particular concern had been raised because of the lack of information about the ‘family unity’ clauses.<sup>78</sup> However, in a reply to a Parliamentary Question on 27 January 2017, the government noted that it is not required to publish eligibility criteria for transfers under the Regulation.<sup>79</sup>

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 TCU and the HO 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.

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

The majority of requests to third countries are based on Eurodac hits, as these are objective and easy to identify for the authorities. The perception of lawyers is that the Home Office is reluctant to apply other criteria (such as family reunion) however this observation should be balanced with the fact that legal representatives generally see cases where there is a problem. Positive Home Office decisions to take charge of a case are made internally and also occur, including where the applicant has passed through a safe country, and where they have family in the UK. Through freedom of information requests, media outlets have obtained limited information suggesting that over 700 outgoing transfers have been carried out by the UK from 2015 to the first half of 2016, more than 250 of which concerned Italy.<sup>80</sup>

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<sup>77</sup> See e.g. House of Commons, Asylum: Written questions 59796 to 59799, 12 January 2017, and Reply of 16 January 2017, available at: <http://bit.ly/2kmM6dc>.

<sup>78</sup> See Refugee Council, *The ‘Dublin’ Regulation and family unity*, November 2015, available at: <http://bit.ly/2kmUqdi>.

<sup>79</sup> House of Commons, Refugees: Children, Written question 61210 of 23 January 2017, and Reply of 27 January 2017, available at: <http://bit.ly/2kNNN4p>.

<sup>80</sup> Maeve McClenaghan, ‘Syrian Asylum-Seekers Are Being Forcibly Removed from the UK to Other EU Countries’, *BuzzFeed* 16 December 2016, available at: <http://bzfd.it/2kfuhdZ>.

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>81</sup> Whilst this case was later overturned by the Court of Appeal,<sup>82</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>83</sup> Immediately prior to the clearance of the Calais camp in October 2016, the process was expedited on a temporary basis.<sup>84</sup>

The only information made available by the government relating to numbers of persons transferred to the UK in 2016 was a reference to 900 transfers of unaccompanied children to the UK, about 200 of whom however fall under s.67 of the Immigration Act 2016 ("Dubs Amendment"). Over 750 of those were reported to have been transferred from France.<sup>85</sup>

Most of the media focus on Dublin has related solely to the issue of unaccompanied children.

### The discretionary clauses

In a written question to the Secretary of State for the Home Department asking how many times the UK had been asked to use the discretionary powers in Article 17 of the Dublin Regulation and how many of those requests resulted in the UK taking charge of an applicant, the Home Office confirmed that between January 2014 to November 2015, 29 requests under Article 17(1) and 17(2) of the Dublin III Regulation had been made and of those requests 14 were accepted.<sup>86</sup> Statistics on the use of the clauses in 2016 in response to a recent Parliamentary Question have been refused.

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 issuing a certificate in Dublin cases is where the applicant has a spouse, parents or children who are refugees in the UK.<sup>87</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.

## 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.

<sup>81</sup> *R (ZAT) v Secretary of State for the Home Department* [2016] UKUT 61 (IAC), Upper Tribunal, 22 January 2016, available at: <http://bit.ly/2jq9zLr>.

<sup>82</sup> *Secretary of State for the Home Department v ZAT* [2016] EWCA Civ 810, Court of Appeal, 2 August 2016, available at: <http://bit.ly/2kmEwiw>.

<sup>83</sup> Government, *Joint press release by the governments of France and the United Kingdom*, 30 August 2016, available at: <http://bit.ly/2bxKcEp>.

<sup>84</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>85</sup> House of Commons, *Refugees: Children*, Written question 61210 of 23 January 2017, and Reply of 27 January 2017, available at: <http://bit.ly/2kNNN4p>.

<sup>86</sup> House of Commons, *Asylum: EU law*, Written question 15249 of 6 November 2015, and Reply of 19 November 2015, available at: <http://bit.ly/1LqRM7S>.

<sup>87</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 will not be able to apply the Dublin Regulation to unaccompanied minors.

The First List is set out in the statute and consists of EU member states (except Croatia), Iceland, Norway and Switzerland. There is no reference to the Dublin Regulation, but the legislation states that the listed countries are to be treated as places in which a person will not be at risk of persecution contrary to the Refugee Convention, and from which they will not be sent in breach of the Refugee Convention or ECHR.<sup>88</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>89</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>90</sup> It can also contribute to a decision to detain.<sup>91</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>92</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>93</sup>

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

Home Office guidance lays down that a response from the Third Country Unit to the Screening Unit should be received in Dublin cases within two days,<sup>94</sup> with a decision as to whether the applicant should be detained and whether the Dublin regulation will be applied. In practice Dublin decisions are usually taken quickly, although it may take more than two days. If there is a Eurodac match there will usually be a reference to the Third Country Unit and a Dublin decision.

In practice a Dublin decision (i.e. a decision that the Dublin Regulation applies) normally entails a decision that the asylum claim will not be considered in the UK.

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

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<sup>88</sup> Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (AITOCA) Schedule 3 Part 2, First List. <http://bit.ly/2jTFL6g>.

<sup>89</sup> Home Office, *Asylum Process Guidance, Third Country Cases: Referring and Handling*, para 2.2.

<sup>90</sup> Para 339M, Immigration Rules: HC 395, available at : <http://bit.ly/1MOpgjX>.

<sup>91</sup> Enforcement Instructions and Guidance chapter 55 para 55.6.3.

<sup>92</sup> Home Office, *Asylum Instruction: Applicants with Poor Quality Fingerprints* para 1.3.

<sup>93</sup> *Ibid*, para 8.1.

<sup>94</sup> Home Office, *Asylum Process Guidance, Third Country Cases: Referring and Handling*, para 4.2.

## 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>95</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>96</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>97</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>98</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>99</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. The only challenge is by judicial review. This is on very limited grounds, generally that the Dublin Regulation has not been properly applied because for instance the person has family in the UK, or that human rights will be breached and the humanitarian clause should be applied (see section on [Dublin: Appeal](#)).

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 usually happens under escort.

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<sup>95</sup> *R (NA) v Secretary of State for the Home Department* [2015] EWHC 1095 (Admin), High Court, 22 April 2015, available at: <http://bit.ly/2jqTmFD>.

<sup>96</sup> *NA (Sudan) v Secretary of State for the Home Department* [2016] EWCA Civ 1060, Court of Appeal, 1 November 2016, available at: <http://bit.ly/2kLNdAY>.

<sup>97</sup> *EM (Eritrea) v Secretary of State for the Home Department* [2014] UKSC 12, Supreme Court, 19 February 2014, available at: <http://bit.ly/1dM83eJ>.

<sup>98</sup> Paras 107 and 156, *NA (Sudan) v Secretary of State for the Home Department* [2016] EWCA Civ 1060, Court of Appeal, 1 November 2016, available at: <http://bit.ly/2kLNdAY>.

<sup>99</sup> Para 110, *NA (Sudan) v Secretary of State for the Home Department* [2016] EWCA Civ 1060, Court of Appeal, 1 November 2016, available at: <http://bit.ly/2kLNdAY>.

## 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 in the Dublin procedure.

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

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

## 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>100</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>101</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>102</sup>

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>103</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.

<sup>100</sup> Asylum and Immigration (Treatment of Claimants, etc.) Act (AITOCA) 2004 Schedule 3, Part 2, available at: <http://bit.ly/1Sat3Lt>.

<sup>101</sup> Para 5, AITOCA 2004 Schedule 3 Part 2, available at: <http://bit.ly/1Sat3Lt>.

<sup>102</sup> Para 5, AITOCA 2004 Schedule 3 Part 2, available at: <http://bit.ly/1Sat3Lt>.

<sup>103</sup> See e.g. on **Austria**, *Abdulkadir and Mohammed v Secretary of State for the Home Department* [2016] EWHC 1504 (Admin), High Court, 28 June 2016, available at: <http://bit.ly/2jz6p32>; on **Malta**, *R (Hassan) v Secretary of State for the Home Department* [2016] UKUT 452 (IAC), Upper Tribunal, 28 September 2016, available at: <http://bit.ly/2jqXDsl>.

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.

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

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

## 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?  
 Yes       With difficulty       No  
❖ Does free legal assistance cover:  
 Representation in interview  
 Legal advice
2. Do asylum seekers have access to free legal assistance in judicial review against a Dublin decision in practice? <sup>104</sup>  
 Yes       With difficulty       No  
❖ Does free legal assistance cover  
 Representation in courts  
 Legal advice

Before a Dublin certificate is issued, an asylum seeker has the same opportunity as any other asylum seeker to obtain access to free legal representation. They are affected by the limited resources and the lack of incentive for legal representatives to advise before the screening interview (see [Regular Procedure: Legal Assistance](#)). Once the Dublin decision is issued they are likely to be detained. If they already have a legal representative that person may continue to represent them. If not, they may, again subject to resources, obtain access to representation in detention (see section on [Legal Assistance for Review of Detention](#)). There are no special restrictions on legal aid in Dublin cases (see section on [Regular Procedure: Legal Assistance](#)) and judicial review is funded by legal aid, although only if the merits are considered strong, and if the Court grants permission for the case to go ahead.

## 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

**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>105</sup> and in anticipation of

<sup>104</sup> The ticked box concerning appeals refers to judicial review since there is no appeal.

<sup>105</sup> ECtHR, *M.S.S. v Belgium and Greece*, Application No. 30696/09, Judgment of 21 January 2011.

the Court of Justice of the European Union (CJEU) decision in *NS*.<sup>106</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>107</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>108</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>109</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>110</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>111</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>112</sup>

**Cyprus:** The recent 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. The appeal to the Court of Appeal is due to be heard in February 2017, challenging removal to Austria.<sup>114</sup> Several cases are stayed behind it.

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>115</sup>

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<sup>106</sup> The Parliamentary Under-Secretary of State, Home Office House of Lords, 25 Oct 2011: Column WA121, available at: <http://bit.ly/1LkBDg0>.

<sup>107</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>108</sup> *Ibrahimi and Abasi v Secretary of State for the Home Department* [2016] EWHC 2049 (Admin), High Court, 5 August 2016, available at: <http://bit.ly/2bbliWq>.

<sup>109</sup> *Ibrahimi and Abasi*, para 16.

<sup>110</sup> *R (BG) v Secretary of State for the Home Department* [2016] EWHC 786 (Admin), High Court, 12 April 2016, available at: <http://bit.ly/1NooJV8>; *R (Adam) v Secretary of State for the Home Department* [2016] EWHC 1352 (Admin), High Court, 9 June 2016, available at: <http://bit.ly/2jQTq07>.

<sup>111</sup> *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>112</sup> *Khaled (No 1)*, para 94.

<sup>113</sup> *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> See Duncan Lewis Solicitors: <http://bit.ly/2jr2Lgx>.

<sup>115</sup> Information from the Asylum Support Appeals Project. See also CJEU, Case 179/11 *Cimade & GISTI v Ministre de l'interieur*, 27 September 2012.



## 2.7. The situation of Dublin returnees

The main issue for those faced with return under Dublin remains the fact that they are highly likely to be detained and lack effective access to advice.

## 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.

Since November 2015, UK law has also reflected 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 (see section on [Dublin](#)), or another safe third country (see [Safe Third Country](#)). There is no screening for admissibility on the basis of the merits of the case (see section on [Dublin: Procedure](#)). This section deals with decisions to remove the asylum seeker to a safe third country other than an EU Member State or other country using the Dublin Regulation.

As described in the context of the Dublin procedure, in effect the Dublin Regulation countries constitute the First List. Legislation gives a power to create a Second List. A country on the Second List is treated as a place to which non-nationals can be returned without a breach of the Refugee Convention, either in that country or through risk of being sent elsewhere (see [Safe Third Country](#)).<sup>118</sup> Additionally, there is a presumption that human rights claims against removal to it of non-nationals are unfounded.<sup>119</sup>

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

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<sup>116</sup> Para 345A, Immigration Rules, available at: <http://bit.ly/2krAPs1>.

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

<sup>118</sup> Para 3 & 4, AITOCA 2004 Schedule 3, available at: <http://bit.ly/1Sat3Lt>.

<sup>119</sup> Para 3, AITOCA 2004 Schedule 3, available at: <http://bit.ly/1Sat3Lt>.

### 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>120</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 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>121</sup>

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

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

<sup>120</sup> AITOCA 2004 Schedule 3, Parts 3 and 4, available at: <http://bit.ly/1Sat3Lt>.

<sup>121</sup> *R v Secretary of State for the Home Department ex p Daly* [2001] UKHL 26, available at: <http://bit.ly/1lbyKpJ>.

### 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 review, since changes in 2014, this is broadly speaking only if the court grants permission for the judicial review or the Home Office retracts the decision.

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

### 4.1. General (scope, time limits)

#### Indicators: Border Procedure: General

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

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

If a person claims asylum immigration officers grant temporary admission to enable the claim to be made. Temporary admission is not an immigration status and therefore there are no rights attached to the admission. It is analogous to release from detention on licence. Detention in an airport is limited to relatively short periods (less than 24 hours). Short-term holding facilities (STHF) in airports are not subject to the usual rules which govern immigration detention, but are inspected by the government's Prison Inspectorate.<sup>122</sup>

<sup>122</sup> See reports from the HM Inspectorate of Prisons on the Ministry of Justice, available at: <http://bit.ly/1Blx77p>.

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>123</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 2016, 17,395 people were refused entry at the UK port and subsequently left the country.<sup>124</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>125</sup> and the acknowledged purpose of these agreements with France and Belgium was to stop people travelling to the UK to claim asylum.<sup>126</sup> Of the 7,059 people turned back in control zones in 2016<sup>127</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, the Home Office officials disclosed the 'Gentleman's Agreement'.<sup>128</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 effectuated within 24 hours. Returns under the Gentleman's Agreement are carried out without a formal refusal of leave to enter. Following the Commissioner's discovery that this was being applied to young people, the practice was stopped in relation to acknowledged children. In 2012/13 the Independent Chief Inspector of Borders and Immigration carried out an inspection of juxtaposed controls which disclosed that, in 2010 UK officials at Calais ceased processing people attempting to travel clandestinely, but simply handed them straight to the French police.<sup>129</sup> This continues up to the present and is due to lack of detention facilities and was unlike the practice in other ports, where people travelling clandestinely were processed, fingerprinted and formally refused entry.<sup>130</sup> No comment was made by the inspector or Home Affairs Committee as to whether this could have had an impact on potential asylum seekers.

The ministerial authorisation to discriminate in refusing leave to enter takes effect also in control zones.<sup>131</sup> Field research by the Refugee Council, though not about juxtaposed controls, found that 'outposted immigration officials fail to differentiate between different types of unauthorised travellers attempting to enter the UK'.<sup>132</sup>

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<sup>123</sup> Section 29, Equality Act 2010 and Schedule 3, Part 4, available at: <http://bit.ly/1MOliaq>.

<sup>124</sup> Home Office Research and Statistics Directorate, *Immigration Statistics: Removals*, Q3 2015 Table 1, available at: <http://bit.ly/1XibVJM>.

<sup>125</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>126</sup> Independent Chief Inspector of Borders and Immigration, *An Inspection of Juxtaposed Controls*, 2013, available at: <http://bit.ly/1ImrYsF>.

<sup>127</sup> Home Office Research and Statistics Directorate, *Immigration Statistics: Removals*, Q4 2016.

<sup>128</sup> Adrian Matthews, *Landing in Dover: The Immigration process undergone by unaccompanied children arriving in Kent*, 2012, Children's Commissioner.

<sup>129</sup> Independent Chief Inspector of Borders and Immigration, *An Inspection of Juxtaposed Controls*, 2013, available at: <http://bit.ly/1ImrYsF>.

<sup>130</sup> House of Commons Home Affairs Committee, *The work of the Immigration Directorates: Calais, Eighteenth Report of Session 2014–15 HC 902*.

<sup>131</sup> Paragraph 17(4)(A) Ministerial Authorisation, para 4, Equality Act 2010 Schedule 3, Part 4.

<sup>132</sup> Sile Reynolds, Helen Muggeridge, *Remote Controls: how UK border controls are endangering the lives of refugees*, Refugee Council, 2008, available at: <http://bit.ly/1K0mHLN>.

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

#### 4.2. Personal interview

**Indicators: Border Procedure: Personal Interview**

Same as regular procedure

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

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

#### 4.3. Appeal

**Indicators: Border Procedure: Appeal**

Same as regular procedure

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

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

#### 4.4. Legal assistance

**Indicators: Border Procedure: Legal Assistance**

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?  Yes  With difficulty  No

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

## 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). About 7% of claims were certified clearly unfounded in 2016.<sup>133</sup> Albania, India, Nigeria, Pakistan and Ukraine were the most common nationalities, between them accounting for 67% of those people whose claims were certified unfounded during 2016.<sup>134</sup>

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

The most common reason 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 s.94 Nationality Immigration and Asylum Act 2002 or in the Act itself.<sup>135</sup> (See section on the [Safe Country Concepts](#)).

There is no time limit for a decision to be made in such a case, although the Home Office guidance states that the aim is to decide within 14 calendar days. The Home Office is responsible for making the decision. The policy is that all decisions on a potential NSA case must be made by a caseworker who is trained to make NSA decisions, and must be looked at by a second 'accredited determining officer' who decides whether to accept the first officer's recommendation.<sup>136</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>137</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>138</sup> This is general practice and is unlike the regular procedure where no such guidance is given and refusal is commonly based on credibility.

A claim may also be certified clearly unfounded and routed through the NSA on an assessment of the individual merits of the case, not only on the basis of a deemed safe country of origin (2,805 cases were

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<sup>133</sup> *Immigration Statistics: October to December 2016 Asylum Table AS01, February 2017.*

<sup>134</sup> *Immigration Statistics: October to December 2016 Asylum Table AS01, February 2017.*

<sup>135</sup> Section 94, NIAA 2002, available at: <http://bit.ly/1eqvY4g>.

<sup>136</sup> UK Visas and Immigration, Asylum decision-making guidance: *Non-Suspensive Appeals (NSA): Certification under s.94*, para. 2.3, available at: <http://bit.ly/1CfhMAf>.

<sup>137</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>138</sup> UK Visas and Immigration, Asylum decision-making guidance: *Non-Suspensive Appeals (NSA): Certification under s.94*, para. 2.2, available at: <http://bit.ly/1CfhMAf>.

individually certified in 2016.<sup>139</sup> This should only be done where the caseworker considers that the claim is incapable of succeeding before an independent tribunal.<sup>140</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>141</sup>

### Detained-Fast Track (DFT)

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

After a series of legal challenges to the safety and fairness of the DFT process, its operation was suspended on 2 July 2015.<sup>142</sup> It has not been reinstated nor abandoned. The final 'nail in the coffin' leading to the suspension was the appeals part of the process.<sup>143</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>144</sup> The outcome of the consultation is not yet published.

## 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 Procedure

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

<sup>139</sup> Home Office Research and Statistics Directorate, *Immigration Statistics: Asylum Table AS01*.

<sup>140</sup> *NA (Iran) v SSHD* [2011] EWCA Civ 1172.

<sup>141</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>142</sup> House of Commons: Written Statement (HCWS83) Home Office Written Statement made by: The Minister of State for Immigration (James Brokenshire).

<sup>143</sup> See 'round three of the Detention Action blog summarising the legal challenges <http://bit.ly/2jITAYA>.

<sup>144</sup> More information available at: <http://bit.ly/2l7kEBS>.

## 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>145</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?

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

In the NSA the appeal is non-suspensive, i.e. they may not be made from within the UK. They must be made within 28 calendar days of leaving the UK.<sup>146</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. The Chief Inspector was told that of 114 NSA appeals lodged since 2007, only one appeal had succeeded. The report noted that non-suspensive appeals cases accounted for an increasing percentage of refused asylum seekers removed from the UK, rising to more than a quarter in 2012/13.<sup>147</sup>

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

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

Firstly, detention pending appeal in the DFT was held by the Court of Appeal to be unlawful unless it is justified on normal detention grounds, i.e. with regard particularly to risk of absconding and imminence of removal. The Court found that the practice which had developed in the DFT was to detain people pending appeal in the DFT purely based on the criteria of speed and convenience without considering whether they were at risk of absconding. This was unlawful.<sup>148</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>149</sup> The Home Office must respond within two days, the hearing is required to take place

<sup>145</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>146</sup> The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 SI 2604 rule 19.

<sup>147</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>148</sup> *R (on the application of Detention Action) v SSHD* [2014] EWCA Civ 1634.

<sup>149</sup> The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 SI 2406 Schedule rule 5.



three days later,<sup>150</sup> and the decision should be given two days after the hearing.<sup>151</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 as between centres from 33 days to 16.<sup>152</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>153</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>154</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 on 4 August 2015.<sup>155</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>156</sup> the High Court found that the unlawful policy had been in operation from 2005 to 2014, affecting many more asylum seekers.

#### 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?
 

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> With difficulty	<input type="checkbox"/> No
❖ Does free legal assistance cover:		
<input checked="" type="checkbox"/> Representation in interview (in the DFT only)		
<input checked="" type="checkbox"/> Legal advice		
  
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?
 

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> With difficulty	<input type="checkbox"/> No
❖ Does free legal assistance cover		
<input checked="" type="checkbox"/> Representation in courts		
<input checked="" type="checkbox"/> Legal advice		

Unlike in the regular procedure, fast track detainees are entitled to have a publicly funded legal adviser present at their initial interview. However, the judge commented in the 2014 *Detention Action* case that:

<sup>150</sup> The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 SI 2406 Schedule rules 7 and 8.

<sup>151</sup> The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 SI 2406 rule 10.

<sup>152</sup> *Detention Action v SSHD Equality and Human Rights Commission intervening* [2014] EWHC 2245 (Admin) para 83.

<sup>153</sup> *The Lord Chancellor v Detention Action* [2015] EWCA Civ 840, para 45.

<sup>154</sup> *Detention Action, The Detained Fast Track: the end of the road*, 12 November 2015, available at: <http://bit.ly/1MCHLKh>.

<sup>155</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>156</sup> *R (TN) v Secretary of State for the Home Department* [2017] EWHC 59 (Admin), High Court, 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>.

“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>157</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>158</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>159</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 the DFT. Lawyers who work in the DFT say that it is very difficult to do the work effectively. They may have no opportunity to take instructions or meet the client before the asylum interview. This was endorsed by the High Court in the 2014 *Detention Action* judgment.

## D. Guarantees for vulnerable groups

### 1. Identification

#### Indicators: Special Procedural Guarantees

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers?  Yes  For certain categories  No  
❖ If for certain categories, specify which: Unaccompanied children
2. Does the law provide for an identification mechanism for unaccompanied children?  Yes  No

There is no specific mechanism to identify adult asylum seekers who need specific procedural guarantees. The inadequacy of the screening interview to identify such vulnerabilities is discussed above (see section on [Registration](#) and section on [Accelerated Procedure](#)). The standard questionnaire used asks only basic questions about health. As previously stated reports on the DFT procedure agree that torture survivors were placed in the DFT, against policy, partly because there is no effective mechanism to identify them.<sup>160</sup>

### Age assessment

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>161</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

<sup>157</sup> *Detention Action v Secretary of State for the Home Department* [2014] EWHC 2245 (Admin), para 96.

<sup>158</sup> Tamsin Alger and Jerome Phelps, *Fast Track to Despair*, *Detention Action*, 2011, available at: <http://bit.ly/1Lhrll6>.

<sup>159</sup> *Detention Action*, *DFT Briefing*, 2013, available at: <http://bit.ly/1JX05NV>.

<sup>160</sup> E.g. Independent Chief Inspector of Borders and Immigration, *Asylum: A Thematic Inspection of the Detained Fast Track*, ICIBI, 2012; Tamsin Alger and Jerome Phelps, *Fast Track to Despair*, *Detention Action*, 2011.

<sup>161</sup> Home Office, *Processing children's asylum, claims*, 12 July 2016, available at: <http://bit.ly/2iO8XKe>.

to the local authority for an age assessment. However, the result of immediate treatment as an adult while this process is ongoing means that people who are in fact under 18 may be detained.

In 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>162</sup> Permission to appeal has been granted and the case will be heard in the Court of Appeal in 2017. The Home Office policy guidance has not been amended to reflect this judgment.

If the Home Office have 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>163</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>164</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, 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>165</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>166</sup> The quality of age assessments has been heavily criticised for several years.<sup>167</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>168</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>169</sup>

The Strategic Migration Partnership in **Wales** issued its own guidance in 2015.<sup>170</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>171</sup>

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<sup>162</sup> *R (AA) v Secretary of State for the Home Department* [2016] EWHC 1453 (Admin), High Court, 20 June 2016, available at: <http://bit.ly/29enloB>.

<sup>163</sup> ADCS, *Age assessment guidance and information sharing guidance*, available at: <http://bit.ly/2kpC77s>.

<sup>164</sup> Home Office and ADCS, *Age assessment: Joint working guidance*, June 2015, available at: <http://bit.ly/2k7FIHt>.

<sup>165</sup> ADCS, *Age assessment guidance*, October 2015, available at: <http://bit.ly/1MUduDi>.

<sup>166</sup> *R (on the application of A) v London Borough of Croydon and R (on the application of M) v London Borough of Lambeth* [2009] UKSC 8, Supreme Court, 26 November 2009.

<sup>167</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>168</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>169</sup> See Independent Age Assessment at: <http://bit.ly/2lVjO8n>.

<sup>170</sup> Wales Strategic Migration Partnership, *Age assessment of unaccompanied asylum seeking children*, June 2015, available at: <http://bit.ly/2jU3Jhb>.

<sup>171</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.

A tribunal is also entitled to decide a person's age as a question of fact in the context of an asylum claim, where age is relevant to the claim, for instance because it has a bearing on other findings such as the credibility of the asylum seeker, but the age found is not binding outside that context, and does not bind a local authority. Since the Supreme Court decisions, the child is now able to obtain a binding finding of fact from the court. This is important because previously a young person could be in the position where the tribunal, and thus the Home Office, accepted that they were under 18, but the local authority did not. The Home Office has no power to support a child, and the local authority in that situation would not do so, yet the child had no power to obtain a resolution.<sup>172</sup> This judicial review power is now transferred to the Upper Tribunal.<sup>173</sup>

## 2. Special procedural guarantees

### Indicators: Special Procedural Guarantees

1. Are there special procedural arrangements/guarantees for vulnerable people?  
 Yes     For certain categories     No  
❖ If for certain categories, specify which: People for whom detention is accepted to be damaging; Unaccompanied children, torture survivors

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>174</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>175</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>176</sup>

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

There are no other procedural guarantees in law for vulnerable adult applicants relating to decision-making or application process, except that they should not, according to policy, be detained. Rule 35 of the Detention Centre Rules provides that where there is evidence that a detainee has been tortured, or for any other reason their health would be injuriously affected by detention, a report should be made to the caseworker for release to be considered. Independent evidence of torture or severe mental illness is also a ground for removal from the DFT.<sup>177</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>178</sup> The Independent Monitoring Board for **Harmondsworth** IRC reported concern that 'doctors

<sup>172</sup> Laura Brownlees and Zubier Yazdani, *The Fact of Age*, 2012, Children's Commissioner.

<sup>173</sup> First Tier Tribunal and Upper Tribunal (Chambers) Order 2010, available at: <http://bit.ly/1fm4pJl>.

<sup>174</sup> The Home Office, *Asylum Policy Instruction: Gender Issues in the Asylum Claim: process*, 2010, Section 2 available at: <http://bit.ly/1dK8QNj>.

<sup>175</sup> Para 5.7, *Asylum Policy Instruction Asylum Interviews*, March 2015, available at: <http://bit.ly/1BaVlvv>.

<sup>176</sup> Home Office *Asylum process guidance: registering asylum claims* para 7.

<sup>177</sup> Home Office, *Detention Centre Rules*, Rule 35 available at: <http://bit.ly/1N8GLM7>.

<sup>178</sup> House of Commons Hansard 24 Jan 2013: Column 431W.

declare that a detainee is unfit for detention, yet the detainee remains detained, sometimes for significant periods of time'.<sup>179</sup>

After the Home Office conducted its own audit, new guidance was issued in January 2013 on the operation of Rule 35. This guidance advises Home Office caseworkers how to evaluate a Rule 35 medical report to determine whether it constitutes independent evidence of torture so as to warrant release. However, the detention of people with mental illness remains a major source of concern and is covered further in the section on [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>180</sup> In practice, local authority support is difficult to obtain, and policies vary in different local authority areas.

### 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>181</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>182</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

<sup>179</sup> Independent Monitoring Board Harmondsworth Immigration Removal Centre, *Annual Report 2014*.

<sup>180</sup> Para 3.2, Home Office *Asylum process guidance: routing asylum applications* and Section 5, *Processing an Asylum Application from a Child*.

<sup>181</sup> Para 2.4, Asylum Policy Instruction *Medico-Legal Reports From The Helen Bamber Foundation and the Medical Foundation Medico Legal Report Service*, July 2015.

<sup>182</sup> Asylum Policy Instruction (non- Medical Foundation cases).

the report to the claim. The solicitor has authority to spend £400 (approx. €470) 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>183</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>184</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>185</sup>

Case law requires that medical reports are taken into account in deciding the applicant's credibility.<sup>186</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 the asylum seeker says.<sup>187</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>188</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>189</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>190</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 included failing to apply the correct legal test and failing to recognise the expertise of those who prepared the reports.<sup>191</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>192</sup>

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<sup>183</sup> *Asylum Policy Instruction Medico-Legal Reports from the Helen Bamber Foundation and the Medical Foundation Medico-Legal Report Service*, July 2015.

<sup>184</sup> Referrals to The Medical Foundation Medico Legal Report Service, available at: <http://bit.ly/1QG2Pml>.

<sup>185</sup> Rule 34, Detention Centre Rules 2001 SI 238.

<sup>186</sup> See e.g. *JL (medical reports – credibility) China* [2013] UKUT 145 (IAC), Upper Tribunal, 8 April 2013, available at: <http://bit.ly/2jUess3>.

<sup>187</sup> See e.g. *Mibanga v Secretary of State for the Home Department* [2005] EWCA Civ 367, Court of Appeal, 17 March 2005, available at: <http://bit.ly/2kpyrCo>.

<sup>188</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>189</sup> *KV (scarring - medical evidence) Sri Lanka* [2014] UKUT 230 (IAC), Upper Tribunal, 23 May 2014, available at: <http://bit.ly/2kU9Hil>.

<sup>190</sup> See e.g. *R (Kakar) v Secretary of State for the Home Department* [2015] EWHC 1479 (Admin), High Court, 22 May 2015.

<sup>191</sup> Freedom from Torture, *Proving torture: Demanding the Impossible*, November 2016, available at: <http://bit.ly/2gib2OM>.

<sup>192</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>.

#### 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>193</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.

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>194</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 s.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>195</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>196</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>197</sup> Specialist training was provided by the Immigration Law Practitioners Association (ILPA)<sup>198</sup> but attending this is not a requirement to advise refugee children. ILPA has also produced a good practice guide,<sup>199</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 check in the previous two years. A publicly funded immigration adviser of an asylum-seeking child is under an obligation to refer the child for public law advice where the child has difficulties with the local authority carrying out its duties towards them under the Children Act 1989.<sup>200</sup> A child is entitled to have

<sup>193</sup> Para 352ZA, Immigration Rules, Part 11, available at: <http://bit.ly/1JRSeKu>.

<sup>194</sup> Section 55, BCIA 2009, available at: <http://bit.ly/1L4XIOC>.

<sup>195</sup> *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4, Supreme Court, 1 February 2011, available at: <http://bit.ly/2juhDe8>.

<sup>196</sup> Laura Brownlees and Terry Smith, *Lives in the Balance*, Refugee Council, 2011, available at: <http://bit.ly/1GV9YsZ>.

<sup>197</sup> ECRE, *Right to Justice: Quality Legal Assistance for unaccompanied children*, July 2014, available at: <http://bit.ly/2iS0rdn>.

<sup>198</sup> ILPA is a voluntary association of practising lawyers, academics and others. Its activities include promoting and developing good practice.

<sup>199</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>200</sup> The Civil Specification 2010, section 8, Immigration, paragraph 8.

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>201</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>202</sup>

Unaccompanied children seeking asylum whose claims are refused are very rarely returned to their country of origin unless they are believed to be over 18. It is standard practice to grant periods of limited leave. Until 2013, this was discretionary leave until the age of 17½. Since 2013 the leave has been referred to as UASC leave – this is granted for 30 months or until the age of 17½, whichever is shorter.<sup>203</sup> Leave can be renewed up to 17½, but then there must be an active review in which their need for protection is considered again, and if this is turned down they may be faced with removal.

Where asylum claims fail, sometimes a family is given discretionary leave on the basis of Article 8 ECHR. The High Court has held that the practice of giving children this limited leave (3 years was the normal policy at the time of the case) conflicts with the duty in s.55 of the Borders Citizenship and Immigration Act 2009 to have regard to the welfare of children.<sup>204</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.

Through s.15(2) of the Immigration Act 2014 the limitation appeal rights for children refused asylum but granted 12 months or less leave, has been repealed, meaning all asylum refusals, unless certified, will attract an immediate right of appeal. However, the claims of some minors are certified, and so these children are without a right of appeal.<sup>205</sup>

3,175 unaccompanied children sought asylum in the UK in 2016. 908 age disputes were resolved.<sup>206</sup>

## 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>207</sup> Where an asylum seeker makes further representations that are sufficiently different from previous submissions in that the content has

<sup>201</sup> The Civil Legal Aid (Immigration Interviews) (Exceptions) Regulations 2012 SI No. 2683, available at: <http://bit.ly/1Bs5dX3>.

<sup>202</sup> The Children’s Society, *Cut off from Justice*, June 2015, available at: <http://bit.ly/2jw8U7K>.

<sup>203</sup> Para 352ZE, Immigration Rules, available at: <http://bit.ly/1JRSeKu>.

<sup>204</sup> *R (SM, TM JD and others) v Secretary of State for the Home Department* [2013] EWHC 1144 (Admin), High Court, 8 May 2013, available at: <http://bit.ly/2kQ6lgW>.

<sup>205</sup> A practitioner organisation contacted for this updated report informed us that this has been observed particularly with children from Albania.

<sup>206</sup> Home Office Research and Statistics Directorate, *Immigration Statistics: Asylum applications received from UASCs and Age disputes raised and resolved*, Vol 4 Tables 8 and 10 2016.

<sup>207</sup> Para 353, Immigration Rules Part 12, available at: <http://bit.ly/1MOpjX>.



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>208</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. Normally around 86% of further submissions are refused outright.<sup>209</sup> 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>210</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>211</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 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 s.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>212</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 s.4 while waiting for a decision on whether those further submissions constitute a fresh claim.<sup>213</sup> In effect, this means that people with further submissions may be left destitute.

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<sup>208</sup> *WM (DRC) v Secretary of State for the Home Department* [2006] EWCA Civ 1495, Court of Appeal, 9 November 2006, available at: <http://bit.ly/2jVIRJ5>.

<sup>209</sup> FOI Request No 35829.

<sup>210</sup> *R (on the application of YH) v SSHD* [2010] EWCA Civ 116.

<sup>211</sup> Asylum Policy Instruction on *Further Submissions* February 2016 <http://bit.ly/2jweaZ5>.

<sup>212</sup> *MK and AH v SSHD* [2012] EWHC 1896 (Admin).

<sup>213</sup> Asylum Support Appeals Project, *Further submissions and access to asylum support*, 30 July 2010, available at: <http://bit.ly/1GjqdLD>.

A person may not be removed before a decision is taken on any submissions they have outstanding.<sup>214</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>215</sup>

## 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>216</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, Jamaica, Macedonia, Moldova, Bolivia, Brazil, Ecuador, South Africa, Ukraine, India, Mongolia, Bosnia-Herzegovina, Mauritius, Montenegro, Peru 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 a successful challenge Bangladesh was removed from the list of designated countries.<sup>217</sup> Jamaica remains listed, although the Supreme Court in *R (on the application of Brown) Jamaica* [2015] UKSC 8 held that the designation of Jamaica as a place in which there was ‘in general’ no serious risk of persecution was irrational and therefore unlawful

<sup>214</sup> Para 353A, Immigration Rules, available at: <http://bit.ly/1JRSeKu>.

<sup>215</sup> Home Office, *Processing children’s asylum claims*, 12 July 2016, available at: <http://bit.ly/2jz4uD>.

<sup>216</sup> Nationality Immigration and Asylum Act 2002 S.94, available at: <http://bit.ly/1eqvY4g>.

<sup>217</sup> *R (on the application of Zakir Husain) v SSHD* [2005] EWHC 189 (Admin).

because there is a real risk in Jamaica to all who are homosexual, lesbian, bisexual or transsexual.<sup>218</sup> Apparently in response to the Supreme Court judgment, but without referring to it, the Home Office has issued guidance on assessing claims from Jamaica based on sexuality<sup>219</sup> and on fear of organised criminal gangs.<sup>220</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 section on [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>221</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 new provision in the Criminal Justice and Courts Act 2015 makes such interventions more risky by establishing a presumption that intervenors pay their own costs and costs of other parties caused by their intervention, not in all cases but where one of a number of conditions is met.<sup>222</sup>

Asylum applicants in 2016 from countries designated as safe were as follows:

Country	Asylum applicants
Albania	1,488 (5% of the total applicants)
India	1,488 (5%)
Jamaica	229
Ukraine	98
South Africa	60
Mauritius	55
Brazil	31
Kosovo	25
Mongolia	12
South Korea	7*
Bolivia	5
Serbia	4
Ecuador	3
Macedonia	2
Peru	2
Bosnia-Herzegovina	1

<sup>218</sup> Para 36, *R (on the application of Brown) Jamaica* [2015] UKSC 8.

<sup>219</sup> Country Information and Guidance Jamaica: Sexual Orientation and Gender Identity Version 1.0 July 2015.

<sup>220</sup> Country Information and Guidance Jamaica: Fear of organised criminal gangs Version 1.0 July 2015.

<sup>221</sup> *R on the application of MD (Gambia) v SSHD* [2011] EWCA Civ 121.

<sup>222</sup> Section 87 AITOCA, available at <http://bit.ly/1Sat3Lt>.

Moldova	1
Montenegro	0

\*Note that there were 7 applicants from North Korea

Asylum applicants in 2016 from countries designated as partially safe were as follows:

Country	Asylum applicants
Nigeria	1,140 (3.7% of the total applicants)
Ghana	289
Gambia	156
Kenya	85
Malawi	69
Sierra Leone	46
Mali	9
Liberia	6

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

## 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>223</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;
- (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.

The Asylum and Immigration (Treatment of Claimants) Act 2004 (AITOCA) provides for the use of a safe third country concept.<sup>224</sup> All EU Member states (except Croatia) as well as Norway, Iceland and Switzerland are listed in the statute. There is a power to add further countries by order of the Secretary of State. The only one to have been added is Switzerland. There is no obligation to review the lists, and there is no appeal against the inclusion of a country on the list.

Safe third country removals take place on an individual basis to other countries. The Home Office November 2013 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 Switzerland as examples of such designations.<sup>225</sup>

<sup>223</sup> Para 345C, Immigration Rules, available at: <http://bit.ly/2krAPs1>.

<sup>224</sup> Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, available at: <http://bit.ly/1fty2Jc>.

<sup>225</sup> Home Office, *Safe third country cases*, 15 November 2013, available at: <http://bit.ly/2jvqbkW>, Part 7.

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>226</sup>

### 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>227</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.

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>228</sup>

## G. Relocation

The UK has not opted into the relocation scheme, despite a recommendation from the House of Lords to do so.<sup>229</sup> However, the UK’s national obligations under s.67 of the Immigration Act 2016 (“Dubs Amendment”) have taken steps to relocate unaccompanied children from Greece and Italy, as well as France (see section on [Dublin: General](#)).

In November 2016, the Home Office published guidelines on the eligibility criteria for children in Calais to benefit from transfers under s.67,<sup>230</sup> which incorporate a number of criteria resembling the Council Relocation Decisions, as well as their interpretation following the EU-Turkey statement. Children aged over 12 but under 15 are only eligible if they come from a nationality benefitting from a 75% or higher recognition rate. In addition, all children must have arrived in Calais before 20 March 2016, the date of entry into force of the commitments outlined in the EU-Turkey statement.

Approximately 200 children have been transferred to the UK in 2016 under this provision. The Immigration Minister confirmed in a statement to Parliament that a further 150 children will be brought

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<sup>226</sup> *Ibrahimi and Abasi v Secretary of State for the Home Department* [2016] EWHC 2049 (Admin), paras 136-137 and 176.

<sup>227</sup> Para 345D, Immigration Rules, available at: <http://bit.ly/2krAPs1>.

<sup>228</sup> Para 345B, Immigration Rules, available at: <http://bit.ly/2krAPs1>.

<sup>229</sup> House of Lords, *The United Kingdom opt-in to the proposed Council Decision on the relocation of migrants within the EU*, 15 July 2015, available at: <http://bit.ly/2kfSpgF>.

<sup>230</sup> Home Office, *Guidance: Implementation of section 67 of the Immigration Act 2016 in France*, November 2016, available at: <http://bit.ly/2kQjF8C>.

under the amendment, a figure that has been reached after consultation with local authorities, as the section itself prescribes.<sup>231</sup>

## H. 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>232</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.

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>233</sup> Until 31 March 2014, advice on welfare, the asylum process and life in the UK was delivered through the One Stop Services (OSS) run by charitable organisations and funded by the Home Office. In mid-2013, the Home Office re-tendered the contract for asylum welfare advice and support services as two separate contracts as (i) Consolidated Advice and Guidance Service (CAGS) and (ii) Consolidated Asylum Support Application Services (CASAS). The scope of the new contracts is more limited than the previous OSS contracts. While the OSS contracts were broad, allowing for a range of work without specifying it in detail, the newer contracts are more specific, the effect being to exclude work that was done by organisations under the OSS contracts. The organisation Migrant Help obtained the contract for both and most of the asylum support advice services which were run by other agencies are no longer funded. A key omission from the new contracts is advocacy, both in relation to the Home Office and at appeal tribunals.

<sup>231</sup> House of Commons, Immigration: Written statement by the Minister of State for Immigration, HCWS467, 8 February 2017, available at: <http://bit.ly/2IAofoP>.

<sup>232</sup> Para 357A, Immigration Rules, Part 11B, available at: <http://bit.ly/1KKr1zi>.

<sup>233</sup> Para 358, Immigration Rules, Part 11B, available at: <http://bit.ly/1KKr1zi>.

Since 1 April 2014, there is therefore a reduction in face to face advice on the asylum system in advice locations outside the initial accommodation centres. Information on the asylum process continues to be given in the initial accommodation centres, both in person and by video presentation.<sup>234</sup> Information is also available about the asylum process on the new Asylum Help website.<sup>235</sup> 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>236</sup>

At the Asylum Intake Unit a Point of Claim leaflet is provided, which explains the next steps if the case is put into the regular procedure, and what it means to be granted or refused asylum. Unaccompanied children are also given a leaflet about the Refugee Council Children's Panel.<sup>237</sup> A letter prior to the screening appointment also gives information and the Home Office website explains what documents the asylum seeker needs to bring to the screening interview, and rights and responsibilities throughout the asylum process in English only.<sup>238</sup>

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

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

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

Access to information is affected by the award in 2012 to private companies of the contracts for accommodation and transport (the so-called COMPASS contracts). Local sub-contractors may not have a track record of experience in the asylum field. Accommodation providers are required to provide a 'move in' and 'briefing' service which should cover registration with a local general doctor, registration of children at a local school, making contact with local NGOs, National Health Services, social services, police, legal advisers and leisure services.<sup>239</sup> This obligation is interpreted differently by each of the contracted accommodation providers who provide information at varying degrees of quality.

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<sup>234</sup> Researcher discussion with NGOs.

<sup>235</sup> Asylum Help, available at: <http://bit.ly/1tUedxr>.

<sup>236</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>237</sup> The leaflet is not available online but contains contact details, amongst other information. More information available at: <http://bit.ly/2krGHS7>.

<sup>238</sup> Home Office, *How to claim asylum*, available at: <http://bit.ly/1G7rHtp>.

<sup>239</sup> COMPASS Project, Schedule 2: accommodation and transport – statement of requirements.

UNHCR works with the Home Office on its decision processes and supports its Quality Initiative. In some instances the Home Office is required to involve UNHCR, for instance if considering cessation of refugee status.<sup>240</sup> Individuals contact UNHCR through its website, and there are no reports of access being frustrated. However, the UN's special rapporteur on women and violence was refused entry to **Yarl's Wood Detention Centre**.<sup>241</sup>

## I. 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>242</sup>  Yes  No  
 ❖ If yes, specify which: Albania, India, Jamaica, Ukraine, South Africa, Mauritius, 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 “s.4 support” and which covers accommodation and non-cash support (see section on [Reception Conditions](#)).<sup>243</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>244</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>245</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 (s.4 support see section on [Reception Conditions](#)) but does not in itself entail a grant of status.

<sup>240</sup> Home Office, *Asylum Policy Instruction, Cancellation, Cessation and Revocation of Refugee Status*, para 2.4.

<sup>241</sup> Channel 4, ‘UN rapporteur banned from Yarlswood detention centre’, 15 April 2014, available at: <http://bit.ly/1hSxhT3>.

<sup>242</sup> Whether under the “safe country of origin” concept or otherwise.

<sup>243</sup> UK Visas and Immigration, *Asylum support, section 4 policy and support*, available at: <http://bit.ly/1Ht8SBE>.

<sup>244</sup> Home Office, *Concession to the Immigration Rules for Syrian nationals*, 29 February 2016, available at: <http://bit.ly/2jGM4Nn>.

<sup>245</sup> *KB (Syria) v SSHD* [2012] UKUT 00426.



The Home Office uses charter flights to effect the return of large numbers of refused asylum seekers to one country. Sometimes charter flights are stopped by the courts when a group of those who were due to be removed are shown to be potentially at risk. In February 2013 for example the High Court held that Tamil refused asylum seekers would be at risk of persecution or serious harm, and the planned charter flight was stopped. The impact of decisions which stop flights depends upon the terms of the decision. In this case, the terms of the decision mean that, until any further order in the case, any Tamil refused asylum seeker may be able to successfully argue that they would be at risk, and prevent their own removal. However, the injunction which was issued in the case above applied only to the passengers on that particular flight.<sup>246</sup> Concerns were voiced by NGOs in the UK about the possibility of further removals of Tamils to Sri Lanka, in the light of evidence from UNHCR and the European Court of Human Rights judgment in *R.J. v France*.<sup>247</sup>

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 2016 were:

Appeal success rates for key nationalities: 2016		
Country of origin	Successful appeals	Success rate
Eritrea	1,187	75%
Sudan	159	58%
Afghanistan	395	49%
Libya	136	49%
Sri Lanka	412	47%
Iran	542	44%

Source: Home Office, Immigration Statistics Q4 2016.

With regards to the processing of asylum applications from persons fleeing Syria, the Home Office is not postponing or freezing decisions. While there is no consistent practice, it appears that some applications are being granted very quickly. In 2016, there were 1,579 grants of refugee status to Syrians, and the overall rate of rejection was 14%. Those rejected would normally have a right of appeal, (the exception being the 3 Syrians in 2016 whose applications were treated as clearly unfounded); however, after having exhausted all available remedies, they will not be granted any special form of humanitarian status.

On 29 January 2014, the Home Secretary announced that the UK Government would establish a programme to offer resettlement in the UK to some of the most vulnerable Syrian refugees: the “vulnerable person relocation (VPR) scheme.” The Home Secretary said that it would prioritise cases involving victims of sexual violence, the elderly, victims of torture, and the disabled. Those resettled are granted five years Humanitarian Protection and have access to public funds and the labour market. There was said to be no quota.<sup>248</sup> Press reports suggested that the scheme would cater for around 500 refugees.<sup>249</sup> Up to the end of 2016 5,454 people had been resettled on the VPR scheme.<sup>250</sup> In response to campaigns and public pressure following the drowning of Aylan Kurdi and the mass movement of refugees from the Middle East to Europe, on 7 September 2015 the UK government announced a

<sup>246</sup> Channel 4 News, ‘Sri Lanka: high court blocks Tamil deportations’, 27 February 2013, available at: <http://bit.ly/1Gw3DCM>.

<sup>247</sup> ECtHR, *R.J. v France*, Application No. 10466/11, Judgment of 19 September 2013.

<sup>248</sup> United Kingdom, House of Commons Standard Note (2014) *In Brief: Syrian refugees and the UK*, Standard Note: SNIA/6805, 30 July 2014, Ben Smith and Melanie Gower, International Affairs and Defence Section and Home Affairs Section, available at: <http://bit.ly/1ChawUp>.

<sup>249</sup> United Kingdom, Guardian News (2014) *UK agrees to take up to 500 of the most traumatised Syrian refugees*, 28 January 2014, available at: <http://bit.ly/1dN2XXL>.

<sup>250</sup> Home Office, *Immigration statistics: 4<sup>th</sup> quarter 2016*.

relaxation of the criteria for the VPR and an increased target of 20,000 Syrian refugees over five years.<sup>251</sup>

The government launched a Community Sponsorship scheme as part of the SVPR 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>252</sup>

The European Commission proposed for a non-binding recommendation for an EU-wide resettlement scheme offering 20,000 places for people with a clear protection need. This was to be allocated among 28 Member States on the basis of a distribution key over two years. The UK's commitment was to take 2,200.<sup>253</sup> The UK did not opt into the EU agreement to receive first 40,000 then 120,000 refugees. Instead the UK government increased its commitment to the Syrian Vulnerable Persons Resettlement Programme to 20,000 over five years.<sup>254</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.

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<sup>251</sup> The Guardian, 'UK to take up to 20,000 Syrian refugees over five years, David Cameron confirms', 7 September 2015, available at: <http://bit.ly/1VJezE1>.

<sup>252</sup> More information available at: <http://bit.ly/29VQxZI>.

<sup>253</sup> Council of the European Union, *Conclusions of the representatives of the governments of the Member States meeting within the Council on resettling through multilateral and national schemes 20 000 persons in clear need of international protection*, 11130/15 ASIM 62 RELEX 633, 22 July 2015. See AIDA Annual Report 2014/15.

<sup>254</sup> The Guardian, 'EU governments push through divisive deal to share 120,000 refugees', 22 September 2015, available at: <http://bit.ly/1KyGijN>.

## Reception Conditions

### A. Access and forms of reception conditions

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

##### Indicators: Criteria and Restrictions to Reception Conditions

1. Does the law make material reception conditions to asylum seekers in the following stages of the asylum procedure?
- |                           |   |   |                             |
|---------------------------|---|---|-----------------------------|
| ❖ Regular procedure       | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions            | <input type="checkbox"/> No |
| ❖ Dublin procedure        | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions            | <input type="checkbox"/> No |
| ❖ Admissibility procedure | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions            | <input type="checkbox"/> No |
| ❖ 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?  Yes  No

In all procedures for determining a first claim, where asylum seekers are not detained, if they are destitute they are entitled to accommodation and/or a weekly sum of money. While the assessment of their eligibility for support is going on, they may receive support on a temporary basis (s.98 support).<sup>255</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>256</sup> Although there is a policy that a destitute asylum seeker should be seen the same day so that they can register their asylum claim and claim s.98 support, in practice there are obstacles as e.g. a same day appointment may be refused, they may not be believed, or not be told of this possibility and not be aware of it.<sup>257</sup> Once the assessment is complete, an asylum seeker who is accepted to be destitute receives what is commonly referred as s.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>258</sup> The entitlement to s.95 support continues until 28 calendar days after a form of leave is granted or, if the claim is refused, until 21 calendar days after a non-appealable decision or the expiry of the time allowed to appeal the most recent decision (this is called Appeal Rights Exhausted: ARE).

In practice asylum seekers are required to prove that they are destitute and this is strictly enforced. All assets which are available to them are taken into account, whether in the UK or elsewhere, if they consist of cash, savings, investments, land, cars or other vehicles, and goods held for the purpose of a trade or other business.<sup>259</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>260</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.

Obstacles to claiming support include that the application form is 33 pages long,<sup>261</sup> is in English only and from 1 April 2014 is only available online. A 17 page guidance document gives advice on how to

<sup>255</sup> Section 98, IAA 1999, available at: <http://bit.ly/1C2MkVQ>.

<sup>256</sup> Application for asylum support: Form ASF 1, available at: <http://bit.ly/1RfS1qt>.

<sup>257</sup> Independent Chief Inspector of Borders and Immigration, *An Inspection of Asylum Support*, July 2014.

<sup>258</sup> Section 95, IAA 1999, available at: <http://bit.ly/1C2MkVQ>.

<sup>259</sup> Reg.6, Asylum Support Regulations 2000 SI 704, available at: <http://bit.ly/1C2R7GQ>.

<sup>260</sup> Reg. 20 as amended, Asylum Support Regulations 2000 SI 704, available at: <http://bit.ly/1C2R7GQ>.

<sup>261</sup> Application for asylum support: form ASF1, 11 January 2016, available at: <http://bit.ly/1RfS1qt>.

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. If the applicant fails to satisfy the request for further information, the Home Office can decide not to consider the application under s.57 and this decision cannot be appealed.<sup>262</sup>

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

Once an asylum claim is refused and appeal rights exhausted, s.95 support stops, except for families with children. In August 2015 the government launched a consultation proposing to stop the support of families also when claims are refused.<sup>263</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<sup>264</sup> outlined the measures, although that part of the Act is yet to be enacted and details will not be known until a month prior to the introduction, expected in March or April 2017. Asylum seekers then become absolutely destitute, with no entitlement to accommodation or money. People in this position may be reliant on friends, who may themselves be in asylum support accommodation which prohibits guests, and who thus risk losing their support by hosting a friend. Many destitute refused asylum seekers rely on charities for food vouchers, food parcels, sometimes accommodation or small amounts of money. One reason that the backlog of unresolved asylum cases has caused such public concern is that refused asylum seekers, who may still be trying to establish their claim, may spend years in destitution. Six or seven years in destitution is common, and there are people who survive this limbo for periods up to 15 years. A study in **Manchester** found that one in ten refused asylum seekers had been destitute for more than 10 years.<sup>265</sup> Many such charities gave evidence to Parliament during the course of the Bill's passage.<sup>266</sup>

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>267</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.

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<sup>262</sup> Section 57, NIAA 2002, available at: <http://bit.ly/1TAHzxu>.

<sup>263</sup> Schedule 11, Immigration Act 2016, available at: <http://bit.ly/1KUtVAq>.

<sup>264</sup> *Ibid.*

<sup>265</sup> British Red Cross and Boaz Trust, *A Decade of Destitution: Time to Make a Change*, 2013.

<sup>266</sup> See the legislative process at: <http://bit.ly/2IPMWQP>.

<sup>267</sup> Section 9, Care Act 2014.

A minority of refused asylum seekers qualify for no-choice accommodation and a form of non-cash support from the Home Office called an Azure card (s.4 support) if they meet one of the qualifying conditions set out in the next paragraph.<sup>268</sup> The card can only be used at a limited number of designated shops. This card has a weekly value of £35.39 (approximately €42) per person but cannot be used to obtain cash or to pay any living expenses not incurred at the designated shops, e.g. not bus fares. This is so even if the designated shops are miles from their accommodation and they have small children. Users are also prohibited from purchasing petrol, diesel, gift cards, alcohol or cigarettes.

s.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>269</sup> In practice this latter category is used mostly where the asylum seeker has further representations outstanding. The principle underlying this is that if a person does not meet one of the other conditions, and does not have further representations outstanding, it is not considered a breach of their human rights to leave them destitute, because it is considered that they can return to their home country. The period of s.4 support is tied to meeting the condition. So people may submit further representations; obtain s.4 support, move, and a few weeks later receive a refusal of their further representations and so return to destitution. This process may be repeated.

The absence of a safe and viable route of return is rarely accepted unless there is a Home Office policy of non-return in relation to the country in question. Attempting to prove that they have taken all reasonable steps to return is problematic for those who come from countries with which diplomatic relations are suspended, or whose embassies have complex requirements which are difficult to fulfil, or who belong to a group which is denied documents by their country of origin. There are also practical problems, given that they are destitute, in obtaining the fare to visit their embassy, the resources to send faxes, make phone calls, and so on.

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

For all refused asylum seekers who cannot fulfil the conditions for s.4 support, with the exception of families who have retained s.95 support, (see below) there is no support available. If, for whatever reason, they are unable to return to their country of origin, these asylum seekers are left destitute and homeless. The numbers of refused asylum seekers who are absolutely destitute in the UK is unknown. The British Red Cross provides regular updates on the asylum seekers it helps because of destitution.<sup>270</sup>

There is a provision for support to be refused if asylum has not been claimed as soon as reasonably practicable, unless to do so would breach the person's human rights.<sup>271</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>272</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.

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<sup>268</sup> 2424 households were living on s.4 support at the end of December 2016 *Home Office Statistics Q4 2016*. The numbers of refused asylum seekers in the UK are unknown, but the proportion on s.4 is small. See the *Still Human Still Here* submission to Home Affairs Select Committee inquiry on Asylum, 2013.

<sup>269</sup> Immigration and Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005.

<sup>270</sup>

<sup>271</sup> Nationality, Immigration and Asylum Act 2002 s.55 and *Limbuella v Secretary of State for the Home Department* [2005] UKHL 66.

<sup>272</sup> *Limbuella* [2005] UKHL 66.

Quality of decision making on support applications has been a significant obstacle, particularly in relation to the destitution test. A study showed that in 80% of appeals against refusal of s.95 support, and 84% of appeals against refusal of s.4 support, the applicant was found to be destitute after all.<sup>273</sup> The Chief Inspector found that decision quality was reasonable, but that there were problems with delay in making decisions. Guidelines were that applications should be decided within 2 days where the person was homeless and otherwise within five days. However, these were not being met in a significant number of cases.<sup>274</sup> Between 1 April and 30 September 2016, the Asylum Support Tribunal allowed 55% of the appeal cases it decided where the client was represented by the Asylum Support Appeals Project (85% of cases) and remitted a further 13% back to the Home Office to retake the decision.<sup>275</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 2016 (in £ and in €):
 

❖ Section 95 support per person:	£160.12 / €184.80
❖ Section 4 Azure card support per person:	£153.35 / €177.00

S.95 Cash support amounts to £160.12 (184.80€) per calendar month per person. Prior to August 2015 there were different rates, depending on the claimants' ages and household compositions, but this is no longer the case.<sup>276</sup>

The amounts of s.95 support are set by regulations, while s.4 rates are a matter of policy.<sup>277</sup> Small additional payments are available for pregnant women (£3 per week) if they claim this. They may also claim a maternity allowance of £250 (s.4) or £300 (s.95). In August 2013 the Home Office revised its guidance to make it explicit that pregnant women can be provided with the cost of a taxi journey when they are or may be in labour.<sup>278</sup> Parents on Azure card support may claim an additional £5 on the card per week for children under 12 months, £3 per week for children between 1 and 3 years, and a clothing allowance for children under 16. None of these payments are made automatically, and if the asylum seeker is not aware of them or has difficulties in applying, the payments are not made. S.4 support is paid at a flat rate of £35.39 per person per week. This is lower than asylum support under s.95.

In practice, families who have dependent children before they have exhausted all appeal rights normally stay on cash support (s.95) after their claim has been refused for as long as they remain in the UK or until the youngest child turns 18, although this can be removed if they do not abide by conditions.<sup>279</sup>

Home Office guidance provides that asylum seekers may stay in initial accommodation for a short time after their initial support under s.98 has been ended.<sup>280</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>281</sup>

<sup>273</sup> Sophie Wickham and Rossen Roussanov, *UKBA decision making audit one year on: still no credibility*, Asylum Support Appeals project, 2013, available at: <http://bit.ly/1H3h00u>.

<sup>274</sup> Independent Chief Inspector of Borders and Immigration, *An Inspection of Asylum Support*, July 2014

<sup>275</sup> Asylum Support Appeals Project *Quarterly monitoring report July-September 2016*, available at: <http://bit.ly/2IL3E3d>.

<sup>276</sup> *Asylum support: accommodation and financial support for asylum seekers*, House of Commons briefing paper no.1909.

<sup>277</sup> Currently Asylum Support (Amendment No.2) Regulations 2015, SI 2015/944.

<sup>278</sup> Asylum Process Guidance – additional services or facilities under the 2007 Regulations.

<sup>279</sup> Melanie Gower, *Asylum: Financial Support for Asylum Seekers*, House of Commons note SN/HA/1909, 2013.

<sup>280</sup> Para 1.1.2, Asylum Support Policy Bulletins Instructions, available at: <http://bit.ly/1LjSzbh>.

<sup>281</sup> Home Office, *Asylum Support Bulletin 73: Access to Support*.

The amount of support is not adequate to meet basic living needs. S.95 support for a single adult was originally set at 70% of the social welfare benefit payment for nationals which is calculated to meet only basic living needs. It was reduced from 90% because asylum seekers' fuel bills are met by the government, whereas nationals on welfare benefits are not. However in 2010/2011 the link with benefits for nationals was broken and asylum support rates remained static until August 2015 when the rates for children and single parents were reduced to a flat rate the same as single people aged 18 or over. Asylum support is now 52% of the rate of welfare benefit for a UK national. People on s.4 support receive even less, and the requirement to use their Azure card at designated shops devalues their support further, since many could obtain cheaper and more suitable goods at local shops.<sup>282</sup> A Parliamentary Inquiry stated that even on the pre-August 2015 rates children were living in poverty.<sup>283</sup> The inquiry called for the end of cashless support (Azure cards). Children of families on s.95 and s.98 support receive free school meals, but children of families on s.4 do not.

Before the reduction in asylum support rates the adequacy of s.95 support was the subject of a court challenge. Judgment was given in the High Court on 9th April 2014.<sup>284</sup> The judge held that the decision to keep s.95 support at its present rate was unlawful because:

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

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

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

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

The Secretary of State was required to remake the decision in the light of the court's guidance. Following review the government 'concluded that families were receiving more cash support to meet their essential living needs than they need, because the existing rates do not reflect the possibility of economies of scale within households'.<sup>285</sup>

A further challenge in 2016 to the level of support, focusing on the duty to children and the process of calculating the rates, was unsuccessful.<sup>286</sup>

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<sup>282</sup> Sile Reynolds, *Your inflexible Friend: the cost of living without cash*, Asylum Support Partnership 2010, available at: <http://bit.ly/1LqREKU>.

<sup>283</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>284</sup> *R (On the Application Of Refugee Action) v The Secretary of State for the Home Department* [2014] EWHC 1033 (Admin), available at: <http://bit.ly/1iweLSx>.

<sup>285</sup> *Asylum support: accommodation and financial support for asylum seekers*, House of Commons briefing paper no.1909.

<sup>286</sup> *R (Ghulam, K and YT & RG) v Secretary of State for the Home Department* [2016] EWHC 2639 (Admin), High Court, 24 October 2016, available at: <http://bit.ly/2iSRwbn>.

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

We are not convinced that a separate support system for failed asylum seekers, whom the Government recognise as being unable to return to their country of origin, is necessary. The increasing period of time which asylum seekers have to wait for an initial decision suggests that staff resources could be better used by being allocated to asylum applications. S.4 is not the solution for people who have been refused but cannot be returned and we call on the Government to find a better way forward.<sup>287</sup>

Further problems come from faults in the operation of the system, particularly when changes occur, such as moving from s.95 to s.4, or getting refugee status. Families may be left for weeks without any form of support through administrative delays and mistakes.<sup>288</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

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

- a. Committed a serious breach of the rules of their collective accommodation;
- b. Committed an act of seriously violent behaviour whether at the accommodation provided or elsewhere;
- c. Committed an offence relating to obtaining support;
- d. Abandoned the authorised address without first informing the Home Office;
- e. Not complied with requests for information relating to their eligibility for asylum support;
- f. Failed, without reasonable excuse, to attend an interview relating to their eligibility for asylum support;
- 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>289</sup>

In the past the Home Office relied on checks by a credit check agency, interviews with supported people, and investigations into the existence of bank accounts as a method of determining asylum support fraud. Of 200 cases in a pilot investigation conducted with the Identity and Passport Service, none had their support withdrawn as a result of fraudulent activity. Subsequent court action revealed that checks of bank accounts did not constitute sufficient evidence to justify withdrawing support.<sup>290</sup> It is not common for support to be withdrawn in practice. Where it does happen, the most common reason is

<sup>287</sup> House of Commons Home Affairs Committee, *Asylum, Seventh Report of Session 2013-14*. HC71.

<sup>288</sup> See e.g. Refugee Council, *England's forgotten refugees*, May 2016, available at: <http://bit.ly/1U4c3VH>.

<sup>289</sup> Regulation 20, Asylum Support Regulations 2000, available at: <http://bit.ly/1C2R7GQ>.

<sup>290</sup> Asylum Support Partnership, *Response to the UKBA consultation Reforming Asylum Support: effective support for those with protection needs*, 2010.



as a sanction for breach of conditions of support, for instance being absent from the accommodation or allowing others to stay in it.<sup>291</sup> According to Home Office published figures, the power to withdraw support has not been used since 2010.<sup>292</sup>

Asylum seekers can appeal to the First Tier Tribunal (Asylum Support) in London against a decision to withdraw their support.<sup>293</sup> On application the Home Office sends travel tickets to attend the hearing.<sup>294</sup>

As described above, refused asylum seekers on cashless support (s.4) are in practice on lesser conditions than those pursuing a first claim who are on s.95 cash support. Previously, users of the Azure card (excluding families and pregnant women) could only carry forward a maximum weekly sum of £5. This restriction was abolished in February 2015.

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

No emergency measures have been applied in reception centres due to large numbers of arrivals, though as mentioned in the section on [Types of Accommodation](#), 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, which is the usual status of asylum seekers, is usually conditional on residence at a particular address, and there is a requirement to keep the Home Office informed of any change of address.

Asylum seekers accommodated by the Home Office are not permitted to stay away from their accommodation, and the Home Office will cease providing accommodation in practice if an asylum seeker stays elsewhere for more than a few days. Refugee Council and Maternity Action research found an example of a woman in hospital after giving birth who was contacted by the Home Office and told that she must return to her accommodation or risk losing it. She left hospital against medical advice as a result.<sup>295</sup>

Allocation to accommodation is by the private company which manages property in the relevant region on the basis of the availability of housing. The initial allocation to a region and to an initial accommodation centre is arranged after the screening interview. This has been mainly based on the availability of space, but the Home Office's current change process includes an intention to create some "specialisms" in regions. Specialisms have not yet been defined, although one regional office (**Leeds**) has been designated to deal with the main body of s.4 applications.<sup>296</sup> The availability of housing in a region depends on procurement by the private company, which is affected by local housing markets, and local authority policy.

<sup>291</sup> Asylum Support Appeals Project, *Factsheet 1*: s.95, available at: <http://bit.ly/1y7RlWd>.

<sup>292</sup> Home Office, *Immigration Statistics*, Q4, 2016, Table 16, available at: <http://bit.ly/2lOcVYQ>.

<sup>293</sup> Section 103, Immigration and Asylum Act 1999, available at: <http://bit.ly/1C2MkVQ>.

<sup>294</sup> Asylum Appeals Support Project, *Factsheet 3*, available at: <http://bit.ly/1y7RlWd>.

<sup>295</sup> Refugee Council and Maternity Action, *When Maternity Doesn't Matter*, 2013, available at: <http://bit.ly/1d692pA>.

<sup>296</sup> Researcher conversation with NGO.

The limits on asylum seekers' choice of location have been described in the section on [Criteria and Restrictions to Access Reception Conditions](#). When the provision of accommodation was transferred to private contractors in 2012, just over 2,300 people were required to move, including families with children at school. There is no appeal against the location allocated.

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

## B. Housing

### 1. Types of accommodation

Indicators: Types of Accommodation	
1. Number of reception centres: <sup>297</sup>	7
2. Total number of places in the reception centres:	Not available.
3. Total number of places in private accommodation: <sup>298</sup>	cc. 36,000
4. Type of accommodation most frequently used in a regular procedure:	
<input checked="" type="checkbox"/> Reception centre	<input type="checkbox"/> Hotel or hostel
<input type="checkbox"/> Emergency shelter	<input checked="" type="checkbox"/> Private housing
<input type="checkbox"/> Other	
5. Type of accommodation most frequently used in an accelerated procedure:	
<input checked="" type="checkbox"/> Reception centre	<input type="checkbox"/> Hotel or hostel
<input type="checkbox"/> Emergency shelter	<input type="checkbox"/> Private housing
<input type="checkbox"/> 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. Overcrowding can also be an issue as at least one initial accommodation centre has continued to accommodate more than the 200 people for which the property is given permission by the local authority.<sup>299</sup> Accommodation in the initial accommodation centres is usually full board with no cash provided.

Recently, the short term use of bed and breakfast accommodation has been more frequent. The drawback is that people accommodated in a hotel, even if only for one or two nights, have limited or no access to many of the reception-related rights granted to asylum seekers, with reported cases of persons having only restricted access to accommodation. The consequence of such temporary 'emergency' accommodation is that it additionally delays their access to the support system and other welfare services to which they are entitled, as it may take a couple of days before they access advice and complete an application for asylum support.<sup>300</sup> Asylum seekers should not stay in initial

<sup>297</sup> Home Affairs Select Committee Accommodation inquiry <http://bit.ly/2lzBq9F>

<sup>298</sup> Based on the number of people living in dispersed (section 95) accommodation at the end of December 2016: <http://bit.ly/2lzNckc>.

<sup>299</sup> National Audit Office, *COMPASS contracts for the provision of accommodation for asylum seekers*, 2014 at <http://bit.ly/1TB7uFx>.

<sup>300</sup> Information provided by Refugee Action.

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>301</sup> The consequence of such backlogs are varied, but the recent 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.

If the asylum seeker qualifies for support, they are moved into smaller units, mainly flats and shared houses, in the same region, but as regions are large this may not be within travelling distance of their solicitor if they have one. Accommodation is in the **North**, **Midlands** and **South West** of England and in **Wales** and **Scotland**, not in the South or in London. Asylum seekers have no choice of location. If asylum seekers are not detained after screening there is no distinction in the initial accommodation based on the claim or its route.

In the initial accommodation centres, there is no guarantee that single people will be accommodated on single sex corridors; this is the practice in some centres but not in others. In one centre single sex corridors were introduced after a woman was followed into the showers and watched by a male neighbour.<sup>302</sup> Rooms are usually shared with one other person, and beds may be bunk beds.<sup>303</sup> In some initial accommodation centres the accommodation is set out in shared flats.

Showers and toilets are shared between six or seven people. They are designated for men or women by signs on the door but there is no security. The bathrooms were said to be dirty by women interviewed for the Refugee Council and Maternity Action research. There is a lack of women-only space, and no facilities for babies such as baby baths or access to boiling water for sterilising bottles. Women reported feeling unsafe.<sup>304</sup>

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.

## 1.2. Accommodation after initial accommodation centres

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

The contract between the Home Office and the private companies requires that families shall be housed in self-contained accommodation.<sup>305</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>306</sup> Accommodation frequently fails to meet the needs of

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<sup>301</sup> Home Affairs Select Committee, *Asylum Accommodation*, January 2017, available at: <http://bit.ly/2IzBq9F>.

<sup>302</sup> Refugee Council and Maternity Action, *When Maternity Doesn't Matter*, 2013, available at: <http://bit.ly/1d692pA>.

<sup>303</sup> *Ibid*, for pregnant women who had to share a room and to sleep on top bunk.

<sup>304</sup> *Ibid*, 30.

<sup>305</sup> Home Office, *Compass Project: Schedule 2, Accommodation and Transport, Statement of Requirements*, B.8.

<sup>306</sup> Evidence given to the Parliamentary Enquiry on Asylum Support for Children and Young People.

supported persons, particularly those with children or mobility and health needs.<sup>307</sup> Asylum accommodation has been repeatedly criticised for failing to provide security, respect for privacy and basic levels of hygiene and safety, particularly for women.<sup>308</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.

S.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 Azure card. Consequently the recipient cannot choose to receive financial support only (as they can with s.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 s.4 having no cash with which to travel to visit.

## 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<sup>309</sup>  No
2. What is the average length of stay of asylum seekers in the reception centres?  
Average is not available although the standard is 19 days
3. Are unaccompanied children ever accommodated with adults in practice?  Yes<sup>310</sup>  No

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

In the centres food is provided at fixed times. There is little choice but sometimes people who make their needs known will be given food that is more suitable for them. Pregnant women have said how difficult it is to cope with fixed mealtimes, especially if they are not well during their pregnancy.<sup>311</sup>

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

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

Dispersed accommodation, in flats and houses among the general population, is where asylum seekers stay for most of the time while their claim is being decided. Basic furniture and cooking equipment is provided. Although nuclear families are housed together, two single parent families may be placed in one house together, and this has caused significant problems.<sup>312</sup> Additionally, the Asylum

<sup>307</sup> Evidence given to the Parliamentary Enquiry on Asylum Support for Children and Young People; Nina Lakhani, *Asylum seeker houses 'unfit for children'*, The Independent, 20 November 2012, available at: <http://ind.pn/1Sw1kos>.

<sup>308</sup> Christel Querton, *I feel like as a woman I'm not welcome: a gender analysis of UK law, policy and practice*, Asylum Aid, 2012, available at: <http://bit.ly/1ChGbFh>. National Audit Office, *COMPASS contracts for the provision of accommodation for asylum seekers*, 2014 available at: <http://bit.ly/1TB7uFx>.

<sup>309</sup> As described above, asylum seekers may be placed in Bed and Breakfasts or hotels for a few nights before being placed in reception accommodation.

<sup>310</sup> If the Home Office makes an initial assessment that the unaccompanied child is an adult.

<sup>311</sup> Refugee Council and Maternity Action, *When Maternity Doesn't Matter*, 2013.

<sup>312</sup> See Refugee Council, *Submission to the parliamentary inquiry into asylum support for children and young people*, 2012, available at: <http://bit.ly/1fmr9Jp>.

Accommodation report found 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 on for months; in April 2016 there were 1,500 people living in this type of accommodation.

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>313</sup> Financial pressures to obtain large stocks of low cost accommodation quickly to meet the COMPASS contract<sup>314</sup> in 2012 appeared to have had an adverse impact on the quality of the accommodation procured, and there seems to have been inadequate maintenance capacity to compensate for this.<sup>315</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>316</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>317</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.

As discussed in the section on [Criteria and restrictions to access reception conditions](#), there is no choice of accommodation, and families may be separated if they are not claiming asylum together. For instance where the father of a child is not an asylum seeker or is not part of the same asylum claim as the mother, mothers are placed in accommodation without their partners. This accommodation is, in most cases, in a different city, and sometimes in a different region, from where the child's father lives. Being close to the child's father is not normally accepted as a reason to be in a particular location. 'The strict rule that no-one else is allowed to stay overnight in Home Office provided accommodation deprives the new-born baby, and indeed other children in the family, of the opportunity to build a relationship with their father'.<sup>318</sup>

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

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<sup>313</sup> *Ibid*; National Audit Office, 2014.

<sup>314</sup> The allocation to private companies of asylum accommodation provision see section on the Provision of Information.

<sup>315</sup> National Audit Office, *COMPASS contracts for the provision of accommodation for asylum seekers*, 2014, available at: <http://bit.ly/1Lk1A9a>.

<sup>316</sup> Home Affairs Select Committee, *Asylum Seventh Report of Session 2013-14*, HC 71.

<sup>317</sup> Home Affairs Select Committee, *Asylum Accommodation*, January 2017.

<sup>318</sup> Refugee Council, *Submission to the parliamentary inquiry into asylum support for children and young people*, 2012.

## 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>319</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>320</sup> If permission is granted it is limited to applying for vacancies in listed shortage occupations. These are specialist trades and professions which are in short supply in the UK and are defined very specifically (e.g. consultant in neuro-physiology, electricity sub-station electrical engineer). Self-employment is prohibited.<sup>321</sup>

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

### 2. Access to education

#### Indicators: 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 s.4 support are not entitled to free school meals or other benefits and yet have no cash to pay for school meals. There are not generally preparatory classes to facilitate access. If children seeking asylum have special educational needs these may be assessed and met as for other children.

There is no explicit legal bar to asylum seekers entering into higher or further education, but the barriers are financial since in addition to the high fees and lack of access to loans they also have no access to mainstream benefits or work. Indeed, the UK maintains different provisions for 'home' students and

<sup>319</sup> Para 360, Immigration rules Part 11 B, available at: <http://bit.ly/1G7pcHm>.

<sup>320</sup> *ZO (Somalia) v Secretary of State for the Home Department* [2009] EWCA Civ 442.

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

'overseas' students for further and higher education. Regulations permit universities to charge higher fees to overseas students than to home students.<sup>322</sup> The regulations do not compel universities to charge these higher fees, but government subsidy is only paid for home students, and so for economic reasons universities charge the higher fees. Asylum seekers are routinely classed as overseas students, and are thus liable to pay overseas student fees for university education of £8,500 to £29,000 per year. This is prohibitive generally for someone seeking asylum.

In England, Wales and Northern Ireland some universities have agreed to treat asylum seekers (generally on a limited individual basis) as home students. 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>323</sup>

In **Scotland**, the child of an asylum seeker or a young asylum seeker (under 25) is treated as a home student if they meet a set of residence conditions including 3 years residence in Scotland.<sup>324</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>325</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 UK Council for International Student Affairs gives advice and information on student finance and fee status.<sup>326</sup>

As explained in the section on unaccompanied child asylum seekers, young people whose asylum claim has not been resolved are commonly given discretionary leave. They may apply to extend this before their 18<sup>th</sup> birthday, and so may be applying to higher education while still on discretionary leave. Young people in this position are also treated as overseas students. This can impose obstacles on young people who have sought asylum and are leaving local authority care.<sup>327</sup>

Under certain conditions asylum seekers are treated as home students for the purposes of further education. In England, this is so for those aged 16 to 18, or who have been waiting for a Home Office decision for more than six months, or who are on s.4 support or other statutory assistance. In Wales those on asylum support are treated as home students. In Northern Ireland asylum seekers and their families are treated as home students.<sup>328</sup> In **Scotland**, the conditions are as for higher education, and in addition full-time English courses for speakers of other languages and other part-time courses may be

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<sup>322</sup> The Education (Fees and Awards) (England) Regulations 2007 SI 779 reg.4; The Education (Fees and Awards) (Wales) Regulations 2007 SI 2310 reg.4. 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>323</sup> *R (Kebede) v Newcastle City Council* [2013] EWCA Civ 960.

<sup>324</sup> The Higher Education (Fees) (Scotland) Regulations 2011 SI 389 Reg. 4 and Schedule 1.

<sup>325</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>326</sup> Available at: <http://bit.ly/1xWsqix>.

<sup>327</sup> STAR, *How to Campaign for Equal Access: a Guide*, available at: <http://bit.ly/1Lv3DUQ>.

<sup>328</sup> Department of Employment and Learning, Circular FE 15/12.

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

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

## D. Health care

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

In England, there is free hospital treatment to asylum seekers with a current claim, those refused asylum seekers who are receiving s.95 or s.4 support and unaccompanied asylum seeking children.<sup>329</sup> Current asylum seekers are entitled to register with a general doctor although in practice many face barriers in registering.<sup>330</sup> Free hospital treatment is not generally available to asylum seekers who are not on s.95 or s.4 support. Hospital doctors should not refuse treatment that is urgently needed for refused asylum seekers who are not receiving s.95 or s.4 support, but the hospital is required to charge for it. The hospital also has discretion to write off the charges. Any course of treatment should be continued if it is under way at the time when asylum is refused, and thus when s.95 support stops for single people.<sup>331</sup>

Accident and emergency services (but not follow-up in-patient care) and treatment for listed diseases are free to all including refused asylum seekers who are not on asylum support. General doctors have the same discretion to register refused and unsupported asylum seekers that they have for any person living in their area.<sup>332</sup>

Access to mental health services is not guaranteed, and is often lacking.<sup>333</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.

<sup>329</sup> HM Government (2015) National Health Service (Charges to Overseas Visitors) Regulations 2015 No. 238, Part 4.

<sup>330</sup> Doctors of the World, available at: <http://bit.ly/2IL5nWf>.

<sup>331</sup> Para 7.51, Guidance on implementing the Hospital Charging Regulations 2015, Department for Health.

<sup>332</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>333</sup> Yohannes Fassil and Angela Burnett, *Commissioning mental health services for vulnerable adult migrants* August, 2014, available at: <http://bit.ly/2jHiNle>.



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>334</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>335</sup> Moves are not frequent once accommodation is allocated, but can happen for instance when an asylum seeker is allocated s.95 or s.4 housing away from the area where she has been previously living.

Charges for those with no leave to remain in the UK were introduced in April 2015.<sup>336</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>337</sup> Guidance was issued by the Government (Department of Health) in April 2016.<sup>338</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>339</sup>

In **Scotland** all asylum seekers are entitled to full free health care, including those refused asylum seekers not on s.4 support and including the spouse/civil partner and any dependent children of any of these people.<sup>340</sup>

In **Wales**, regulations which entailed charging refused asylum seekers were introduced, but after lobbying these charges were revoked.<sup>341</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>342</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>343</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

<sup>334</sup> Refugee Council and Maternity Action, *When Maternity Doesn't Matter*, 2013.

<sup>335</sup> *Ibid.*

<sup>336</sup> Section 38, Immigration Act 2014 and National Health Service (Charges to Overseas Visitors) Regulations 2015 No. 238.

<sup>337</sup> Department of Health: *Migrant Access to the NHS: Consultation*, July 2013, available at: <http://bit.ly/1JdI3Xw>.

<sup>338</sup> Department of Health, *Guidance on overseas visitors hospital charging regulations*, 6 April 2016, available at: <http://bit.ly/1mU47FG>.

<sup>339</sup> National Audit Office, *Recovering the cost of NHS treatment for overseas visitors*, October 2016, available at: <http://bit.ly/2e4ri6z>.

<sup>340</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>341</sup> NHS (Charges to Overseas Visitors) (Amendment) (Wales)(Regulations 2009).

<sup>342</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>343</sup> Home Office, *Healthcare needs and pregnancy dispersal policy*, available at: <http://bit.ly/1Vgcw9H>.

individual assessment showing this, the accommodation provider is required to take their vulnerability into account in providing accommodation.<sup>344</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>345</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 to be identified until the asylum seeker discloses a problem to a voluntary, community or community advice organisation.

The Home Office has introduced a 'protected period' of eight weeks for women not to be moved for four weeks before and after giving birth. However, the accommodation allocated during this time is in initial accommodation centres, in which conditions are often not conducive to the care of a new baby.<sup>346</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.

### **Reception and Care of unaccompanied children**

Those who are given the benefit of the doubt and those who are accepted as being under 18 are referred to a local authority social services department which becomes responsible for their care.<sup>347</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, issued in 2014, is currently being revised.<sup>348</sup> Some helpful information for local authorities has been provided as a result of the transfer scheme – see below.

In practice the experience of these children varies; some make good relationships with their carer and feel fully supported. Some are very confused and frightened, are not treated well, and do not have a named social worker responsible for them. The named social worker is responsible for the implementation of the care plan which details how the child should be looked after through the process. This includes helping them to find a legal representative. Many discharge this function through referral to the Refugee Council's Panel of Advisers; funded by the Home Office since 1994 to assist unaccompanied children through the asylum process including finding legal representatives for the children.

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

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<sup>344</sup> Asylum Seeker (Reception Conditions) Regulations SI 2005/7.

<sup>345</sup> *Ibid*, Home Office Asylum Process Guidance.

<sup>346</sup> Refugee Council and Maternity Action, *When Maternity Doesn't Matter*, 2013.

<sup>347</sup> *Asylum Policy Instruction: Processing an Asylum Application from a Child*.

<sup>348</sup> Home Office, *Care of unaccompanied and trafficked children*, July 2014, available at: <http://bit.ly/1tZSXZv>.

responsibility lies with the local authority where the child is first identified. When numbers started to rise in 2015-16, 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. A protocol, along with information and advice for social workers is available on the ADCS website.<sup>349</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>350</sup> The government (Department for Education) has given funding to the Refugee Council and ECPAT UK to assist carers and support workers in the care of unaccompanied children.<sup>351</sup>

The Coram Children's Legal Centre has identified 'lack of adequate advice, advocacy and legal representation' as a critical obstacle to children realising their rights.<sup>352</sup>

Once appeal rights have been exhausted the care of young people over 18 is often limited to those for whom a withdrawal of support would breach of their human rights. This tends to be a more minimal provision than that provided to children. Provisions of the Immigration Act 2016, when enacted, 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

Para 358 of the Immigration Rules is the only provision in law on information concerning reception conditions (see section on [Accelerated Procedure](#)). Para 344C requires a person who is granted asylum to be provided with access to information, as soon as possible, in a language that they may reasonably be supposed to understand which sets out the rights and obligations relating to refugee status.<sup>353</sup>

From 1 April 2014 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.<sup>354</sup>

Asylum seekers are asked at the screening interview if they wish to apply for support. Apart from the difficulties in claiming (see section on [Criteria and Restrictions to Access Reception Conditions](#)), there are no other significant reported problems in obtaining access to initial support including s.95. Initial information appears to be adequate.

There are widespread misperceptions about the conditions for s.4 support, and there is no specific contact point with the Home Office at which this information is provided, although s.4 decision-making has now become a specialism of the **Leeds** regional office as part of the asylum decision restructuring

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<sup>349</sup> ADCS, *National UASC transfer protocol*, 12 January 2017, available at: <http://bit.ly/2l53tMt>.

<sup>350</sup> Home Office, *Unaccompanied asylum seeking children and leaving care: funding instructions*, 20 October 2016, available at: <http://bit.ly/1dur6KX>.

<sup>351</sup> Refugee Council, *Caring for separated & trafficked children*, available at: <http://bit.ly/2mcHkk7>.

<sup>352</sup> Kamena Dorling and Anita Hurrell, *Navigating the System: Advice Provision for Young Refugees and Migrants*, 2012, Coram Children's Legal Centre.

<sup>353</sup> Para 344C, Immigration Rules Part 11, available at: <http://bit.ly/1JRSeKu>.

<sup>354</sup> Available at: [asylumhelpuk.org](http://asylumhelpuk.org).

exercise. Information has been provided by voluntary sector advisers, but this ceased from 1 April 2014 when a telephone-only application and advice system has been in place for s.4.

## 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, 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 GP (a general practitioner). In at least some regions the obligation to give access to legal advisers is met by an electronic appointments system in the initial accommodation centre. Through this, appointments are made with local solicitors 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 2016: <sup>355</sup>	13,230
2. Number of asylum seekers in detention at the end of 2016:	1,626
3. Number of detention centres: <sup>356</sup>	14
4. Total capacity of detention centres: <sup>357</sup>	c.4,000

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. The full capacity of the detention centres is used, with over 3,000 people in immigration detention at any one time, 49 to 51% of whom have sought asylum in the UK at some time.

In 2016, a total of 13,230 people who had sought asylum had been detained and there were 1,626 in detention at the end of the year. The centres consist of 10 Immigration Removal Centres, 3 short-term holding facilities, and Cedars, which is for families only. The total includes the conversion of a 600 bed prison, The Verne, into an immigration detention centre with effect from March 2014. On 9 January 2017 there were 484 immigration detainees in prisons. It is not known how many of those people had claimed asylum.

Detention during the asylum decision-making process is not usual. Most asylum seekers whose claim has not yet been decided are at liberty on a status known as temporary admission. The main exception is in accelerated procedures. 3,865 people were detained in the detained fast track in 2014, but this procedure was suspended in July 2015. In Dublin and non-suspensive appeal cases, although the individual is not always detained, detention is more common than in the regular procedure.

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

Asylum seekers may 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.

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

<sup>355</sup> Includes applicants detained in the course of the asylum procedure and persons lodging an application from detention before the data collection date. The largest number of detained asylum seekers are those who have been refused, pending removal. The figures are an under-recording because they record only those detained solely under Immigration Act powers and exclude those in police cells, Prison Service establishments, short term holding rooms at ports and airports (for less than 24 hours), and those recorded as detained under both criminal and immigration powers and their dependants. *Immigration Statistics Q4 2016 Tables dt 1 and dt 13* and see notes to detention tables.

<sup>356</sup> Including short-term holding facilities.

<sup>357</sup> There is an agreement for 600 immigration detention places in prisons.

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

In the year 2016 there were 2,062 enforced removals of people who had unsuccessfully sought asylum. 377 people who had unsuccessfully sought asylum took Assisted Voluntary Return. 1,007 others were confirmed to have departed voluntarily.<sup>358</sup>

In December 2015 the Home Office took over administration of the assisted voluntary return (AVR) programme, thus ending independent advice about this option.<sup>359</sup> The charity Refugee Action, who had previously been funded by the Home Office to deliver the scheme, continues to work on the issue and aims to promote good practice.<sup>360</sup>

## B. Legal framework of detention

### 1. Grounds of detention

#### Indicators: Grounds for Detention

1. In practice, are most asylum seekers detained
  - ❖ on the territory:  Yes  No
  - ❖ at the border:  Yes  No
2. Are asylum seekers detained in practice during the Dublin procedure?  Frequently  Rarely  Never
3. 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>361</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>358</sup> Immigration Statistics *Removals* Q4 2016 table 1.

<sup>359</sup> See Home Office, *Return home if you're in the UK illegally or have claimed asylum*, available at: <http://bit.ly/2kRh3qN>.

<sup>360</sup> Refugee Action, Voluntary Return Good Practice Project, available at: <http://bit.ly/2krTfsK>.

<sup>361</sup> Para 55.1.1, *Enforcement Instructions and Guidance – Chapter 55 Detention*, Home Office, 10 December 2013, available at: <http://bit.ly/2jvWHDj>.

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>362</sup>
- (b) Regular reporting;<sup>363</sup>
- (c) Bail with sureties;<sup>364</sup>
- (d) Residence restrictions.<sup>365</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.

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>366</sup>

## 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

<sup>362</sup> Section 36, AITOCA 2004, available at: <http://bit.ly/1Sat3Lt>.

<sup>363</sup> Para 21(2), Immigration Act 1971 Schedule 2, available at: <http://bit.ly/1JKaigx>.

<sup>364</sup> Section 61, Schedule 10, Immigration Act 2016, available at: <http://bit.ly/2jqhiEv>.

<sup>365</sup> Para 21(2), Immigration Act 1971 Schedule 2, available at: <http://bit.ly/1JKaigx>.

<sup>366</sup> Detention Action, *Without detention: Opportunities for alternatives*, September 2016, available at: <http://bit.ly/2kS7qoR>.

policy guidance, should be treated as vulnerable are the same in relation to detention generally as in the Detained Fast Track.<sup>367</sup> In practice vulnerable individuals are detained.

Following a review of the treatment of vulnerable people in detention (the Shaw Review) in January 2016,<sup>368</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<sup>369</sup> issued in response to the report makes it more difficult to secure release based for example on their experiences of torture or of their deteriorating mental health. This is the subject of ongoing litigation.<sup>370</sup>

The Immigration Act 2016 has introduced an obligation on the Home Office to issue guidance on the detention of vulnerable groups.<sup>371</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>372</sup>

During the passage of the Immigration Act 2016, the government announced a time limit for the detention of pregnant women.<sup>373</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 a review of the welfare of vulnerable persons in detention (“Shaw review”), published in January 2016.

The Home Office published specific guidance concerning the detention of pregnant women in July 2016.<sup>374</sup>

The most recent inspection of **Yarl’s Wood IRC**, the detention centre for women, found that 99 pregnant women had been detained during 2014.<sup>375</sup> The most recent inspection of **Dungavel House IRC** found that a documented victim of torture and a woman with serious health problems had been detained.<sup>376</sup> A Report by the Detention Forum found both the policy and its application inadequate. Of their sample of 31 detainees, 77% had experienced poor mental health.<sup>377</sup>

Research for the organisation Women for Refugee Women found that of the 46 women detainees interviewed, prior to their arrival in the UK, 72%, had been raped, 11 of them by soldiers, police or prison guards, and 41%, had been subjected to other forms of torture, most by state officials. Over 80% had been either raped or otherwise tortured.<sup>378</sup> A smaller sample in a further study in 2014 made similar findings. Of the 34 women who disclosed their experiences of persecution to the researchers, 19 said

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<sup>367</sup> See para 55.10, *Enforcement Instructions and Guidance – Chapter 55 Detention*, Home Office.

<sup>368</sup> Stephen Shaw, *Review into the Welfare in Detention of Vulnerable Persons*, Cm 9186, January 2016, available at: <http://bit.ly/2kqYkln>.

<sup>369</sup> Home Office, ‘*Adults at Risk in immigration detention*’, 6 December 2016, available at: <http://bit.ly/2l4ZXkS>.

<sup>370</sup> Medical Justice is challenging the policy: <http://bit.ly/2l4d85J>.

<sup>371</sup> Section 59 Immigration Act 2016, available at: <http://bit.ly/2jqhiEv>.

<sup>372</sup> Section 60 Immigration Act 2016, available at: <http://bit.ly/2jqhiEv>.

<sup>373</sup> More information available at: <http://bit.ly/2lcjhBE>.

<sup>374</sup> Home Office, *Enforcement instructions and guidance – Chapter 55a Detention of pregnant women*, 12 July 2016, available at: <http://bit.ly/2jDmhBK>.

<sup>375</sup> HM Inspector of Prisons, *Report on an Unannounced Inspection of Yarl’s Wood Immigration Removal Centre*, 13 April – 1 May 2015, available at: <http://bit.ly/1jcXlkH>.

<sup>376</sup> HM Inspector of Prisons, *Report on an Unannounced Inspection of Dungavel House Immigration Removal Centre*, 9 -20 February 2015, available at: <http://bit.ly/1CXuYdk>.

<sup>377</sup> Detention Forum, *Rethinking ‘Vulnerability’ in Detention: a Crisis of Harm Report by the Detention Forum’s Vulnerable People Working Group* July 2015, available at: <http://bit.ly/1MnTX0E>.

<sup>378</sup> Women for Refugee Women, *Detained: Women Asylum Seekers Locked up in the UK*, 2014, available at: <http://bit.ly/1db63fw>.



they had been raped; 21 had experienced other sexual violence; 28 said that they had experienced gender-related persecution consisting of rape, sexual violence, forced marriage, forced prostitution, or female genital mutilation. 21 women said that they had been tortured in their home countries.<sup>379</sup> Previous research for Medical Justice found that only 5% of pregnant women detained were in fact removed from the UK, the ground for which they were placed in detention.<sup>380</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>381</sup> and this was the purpose of the **Cedars** detention centre (which closed in October 2016). 74 children were recorded as leaving detention in 2016; 52 were given temporary admission or temporary release (into the community) and 17 removed from the UK. Of the remainder one was granted leave to remain and four recorded as 'other'.<sup>382</sup>

The instances of applicants detained as adults and found to be children has reduced since the case of AA in June 2016. Figures published by the Children's Rights Alliance for England (CRAE) state that between 1 January and 31 July 2016 the Refugee Council assisted 16 young people detained as a result of the Immigration Officer's decision to treat as adult based on appearance only. Of these, seven were assessed as children and a further eight treated as children pending further assessment.<sup>383</sup>

### 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>384</sup> Torture survivors continue to be detained even after Rule 35<sup>385</sup> reports (see section on [Special Procedural Guarantees](#)).<sup>386</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>387</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 IRCs. They recommended that at the

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<sup>379</sup> Women for Refugee Women, *I am Human: Refugee Women's Experiences of Detention in the UK* 2015, available at: <http://bit.ly/1WChYDI>.

<sup>380</sup> Natasha Tsangarides and Jane Grant, *Expecting Change: The Case for Ending the detention of pregnant women*, Medical Justice, 2013, available at: <http://bit.ly/1H8tt30>.

<sup>381</sup> *Enforcement Instructions and Guidance Chapter 45 Families and Children, Family Returns Process operational Guidance*.

<sup>382</sup> Home Office, *Statistics – Children in Detention, Q4 2016*, available at: <http://bit.ly/2IYPrA5>.

<sup>383</sup> CRAE, *State of Children's Rights in England 2016*, November 2016, available at: <http://bit.ly/2khAmqi>.

<sup>384</sup> For example, *R (S) v Secretary of State for the Home Department* [2011] EWHC 2120 (Admin) (5 August 2011); *R (BA) v Secretary of State for the Home Department* [2011] EWHC 2748 (Admin) (26 October 2011); *R (HA) v Secretary of State for the Home Department* [2012] EWHC 979 (Admin) (17 April 2012); *R (D) v Secretary of State for the Home Department* [2012] EWHC 2501 (Admin) (20 August 2012); *R (on the application of Lamari) v SSHD* [2013] EWHC 3130 and *R (on the application of Das) v SSHD* [2014] EWCA Civ 45, *R (on the application of MD) v SSHD* [2014] EWHC 2249 (Admin). See Jed Pennington, *Deplorable Failure, Bureaucratic Inertia and Callous Indifference: The Immigration Detention of Mentally Ill People by the UK Border Agency*, *Journal of Immigration Asylum and Nationality Law* (2013) Vol. 27 no.1 pp. 41-46.

<sup>385</sup> Home Office, *Detention Centre Rules, Rule 35* available at: <http://bit.ly/1N8GLM7>.

<sup>386</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>387</sup> *Review of Mental Health Issues in Immigration Removal Centres Immigration & Border Policy Directorate*, The Home Office A report prepared for Home Office by Dr David Lawlor, Dr Mannie Sher and Dr Milena Stateva, 2014, published 2015.

very least the policy around mental health should be changed to that which was in place before August 2010, which stated that individuals with a mental health condition should only be detained under exceptional circumstances.<sup>388</sup>

The Home Secretary in February 2015 announced an independent review into the welfare of those in immigration detention.<sup>389</sup> This review (“Shaw Review”) was published by the Home Office in January 2016 and initial reactions were broadly welcoming, as the review found that too many people were detained and made a total of 64 recommendations, some of them relating to policy (including an absolute prohibition on detaining pregnant women) and many relating to particular groups of people described as vulnerable. The government response was very much shorter, contained few concrete policy changes, although announced it would publish a new ‘Adults at Risk’ policy. When this policy was published,<sup>390</sup> some of its contents were heavily criticised as a move that would result in fewer safeguards, not more.<sup>391</sup>

Detention of people with serious medical conditions, serious mental illness or serious disability, is only considered unsuitable if the condition ‘cannot be satisfactorily managed’ in detention.<sup>392</sup> However, the centres are not equipped for elderly people and those with disabilities and few Immigration Removal Centres (IRCs) have 24 hour health care. The policy has been criticised by the UN Committee against Torture<sup>393</sup> by the All Party Parliamentary inquiry into Immigration Detention,<sup>394</sup> and by the Detention Forum.<sup>395</sup>

Until 2013 healthcare in IRCs was provided by private companies contracted to the UK Border Agency. In 2013, health care in England was transferred to the National Health Service commissioning provisions. This was a change which had been argued for by medical professionals, Parliamentarians and others. However, the NHS has contracted the healthcare in IRCs to commercial companies which have been running detention and escort services and not to specialist health providers. As a result, staff and facilities for identifying and treating mental illness and distress vary greatly between IRCs.<sup>396</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 111 in the second quarter of 2015, with 554 individuals at risk. Detention centres have a local group of approved visitors, who provide an external point of reference for detainees and the centre. Visitors increasingly report that detainees are experiencing high levels of anxiety and distress, are self-harming, have symptoms of depression or post-traumatic stress disorder (PTSD), or are suffering from severe and enduring mental illness.<sup>397</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>388</sup> *The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom* A Joint Inquiry by the All Party Parliamentary Group on Refugees & the All Party Parliamentary Group on Migration 2015, available at: <http://bit.ly/1GLjtbG>.

<sup>389</sup> Home Office, ‘Home Secretary announces independent review of welfare in detention’, 9 February 2015, available at: <http://bit.ly/1Gw1Hbo>.

<sup>390</sup> Available at: <http://bit.ly/2cpNKYm>.

<sup>391</sup> Including Medical Justice, Briefing on ‘Adults at risk in immigration detention’ draft policy, available at: <http://bit.ly/2kROeef>.

<sup>392</sup> UK Visas and Immigration, *Enforcement Instructions and Guidance*, Chapter 55.10, available at: <http://bit.ly/1FwiCIP>.

<sup>393</sup> UNCAT, *Concluding observations on the fifth periodic report of the United Kingdom*, adopted by the Committee at its fiftieth session, 6-31 May 2013.

<sup>394</sup> *The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom* A Joint Inquiry by the All Party Parliamentary Group on Refugees & the All Party Parliamentary Group on Migration 2015 <http://bit.ly/1GLjtbG>.

<sup>395</sup> *Rethinking ‘Vulnerability’ in Detention: a Crisis of Harm Report by the Detention Forum’s Vulnerable People Working Group* July 2015.

<sup>396</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>397</sup> Ali McGinley and Adeline Trude, *Positive duty of care? The mental health crisis in immigration detention*, AVID and BID, 2012.

#### 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
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. While data on length of immigration detention is now available for the last six years, the figures do not distinguish between asylum seekers and other immigration detainees. The percentage of people in immigration detention who have sought asylum at some stage is around 50%. Periods of immigration detention including asylum seekers and other foreign nationals vary enormously from a few days to several years.

During 2016, 28,661 people left immigration detention. Of these:

Duration of stay of persons released from detention: 2016		
Duration of stay in detention	Number of persons	Percentage
Less than 29 days	18,281	64%
From 29 days to 2 months	5,271	18%
From 2 to 4 months	3,261	11%
From 1 to 2 years	179	
At least 2 years	29	

Source: Home Office, Immigration Statistics, Q4 2016.

However, there is no published record of how many of these people had sought asylum. The longest periods of detention are usually of people awaiting deportation after having served a criminal sentence.

#### C. Detention conditions

##### 1. Place of detention

##### Indicators: Place of Detention

1. Does the law allow for asylum seekers to be detained in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)?  Yes  No
2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure?  Yes  No

In 2014, the Home Office, for the first time, published the number of immigration detainees held in prisons. Following a Freedom of Information Act request, figures for April – September 2016 have been made available. In January 2017 484 individuals were detained under Immigration Act powers in prisons in **England and Wales**.<sup>398</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 (IRCs) in preparation for removal together with other third country nationals who are there for immigration

<sup>398</sup> AVID, *Prison statistics*, available at: <http://bit.ly/1N0tKpz>.

reasons. They are not detained in prisons purely in order to process an asylum claim or to remove them after they have been refused asylum.

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

There is an agreement between the National Offender Management Service and the Home Office for immigration detainees up to a specified limit (presently 600) to be held in the prison estate. As of late 2012 the Home Office has been operating a revised policy on transfers to an IRC at the end of a prison sentence, meaning that transfers to IRCs have effectively stopped, with the exception of temporary transfers for court hearings or embassy interviews.<sup>399</sup> Again, it is not known how many of these people have at any time claimed asylum. It was accepted by the High Court in December 2014 that there was a blanket policy of holding foreign nationals who have served their prison sentence in prison pending deportation, and not transferring them to IRCs.<sup>400</sup> A 'blanket policy', i.e. one that applies in all circumstances, is not lawful. The government is entitled to have a policy which generally applies, but must consider individual circumstances in the light of that policy, so the practice is unlawful to the extent that a blanket policy is applied. Detention policy specifies the criteria for detaining a person in a prison for immigration reasons after they have served their criminal sentence, but the policy allows for people to be detained in prison 'before' consideration is given to transferring them to an IRC – thus allowing continued detention in prison without an obligation promptly to transfer to an IRC. It also expressly provides that, if prison beds available for immigration detention are not filled by those in the risk categories, those beds should be filled by immigration detainees who do not meet the criteria for detention in prison.<sup>401</sup>

Detention Centre	Population detained
Harmondsworth	Men
The Verne	Men
Yarl's Wood	Mainly women. One family unit, and small short term holding facility for single men detained as clandestine migrants on freight lorries
Dungavel House	Mainly men. Unit for up to 14 women
Tinsley House	Mainly adult men, also a family suite
Campfield House	Men
Cedars	Families. Closed in 2016
Brook House	Men
Morton Hall	Men
Colnbrook	Men, with an open unit for 8 women.

<sup>399</sup> *Denial of justice: the hidden use of UK prisons for immigration detention Evidence from BID's outreach, legal & policy teams* Bail for Immigration Detainees September 2014.

<sup>400</sup> *R (Idira) v Secretary of State for the Home Department* [2014] EWHC 4299 (Admin).

<sup>401</sup> Chapter 55.10.1, *Enforcement Instructions and Guidance*.

## 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. 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 |

The purpose built IRCs (**Colnbrook**, **Brook House** and the later wings at **Harmondsworth**) are built to Category B (high security) prison designs, and are run by private security companies. While some efforts are made by contractors to distinguish regimes from those in prisons, in practice the physical environment means that most detainees experience these centres as prisons.<sup>402</sup> The **Verne** and **Morton Hall** are also converted prisons, albeit with lower security.

The Detention Centres Rules provide that there must be a medical team in each detention centre, and that each detainee must be medically examined within 24 hours of arrival.<sup>403</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>404</sup> The All Party Parliamentary Group and the Tavistock Institute are among those who have recently reported on failings in medical care in detention.

The Independent Monitoring Board for **Harmondsworth** (the largest IRC) has reported serious shortcomings in medical provision, with a situation described as ‘chaotic’.<sup>405</sup> The prison inspector had previously reported major concern with ‘an inadequate focus on the needs of the most vulnerable detainees, including elderly and sick men, those at risk of self-harm through food refusal, and other people whose physical or mental health conditions made them potentially unfit for detention’.<sup>406</sup> The IMB noted that in 2014 there were plans to improve health services following the 2013 report, although the improvements had not yet happened. Some centres have better health resources than this. For instance the inspector reported good facilities in **Morton Hall**, with the hours from a visiting doctor increased in response to need, a good pharmacy and good management of lifelong conditions. ‘Health services staff had received effective in-house training in recognising the signs of torture and trauma. Custodial staff received insufficient mental health awareness training.’<sup>407</sup> Most inspection reports refer to limited training or shortcomings in access to medical care. In some centres there are in-patient units for people who need medical care, but again the quality of care varies from centre to centre and within one centre

<sup>402</sup> For instance as found by the Gatwick Detainees Welfare Group (GDWG): *A Prison in the Mind: Mental health implications of detention in Brook House Immigration Removal Centre*, 2012, available at: <http://bit.ly/1THGggs>.

<sup>403</sup> *The Detention Centre Rules 2001* SI No. 238, available at: <http://bit.ly/1iFchXN>.

<sup>404</sup> Medical Justice, *Detained and Denied: the clinical care of detainees living with HIV/AIDS*, 2011, available at: <http://bit.ly/1QLSKoq>.

<sup>405</sup> Independent Monitoring Board, *Harmondsworth IRC, Annual Report 2014*, available at: <http://bit.ly/1PRbX74>.

<sup>406</sup> HM Inspector of Prisons, *Report on an unannounced inspection of Harmondsworth Immigration Removal Centre, 5-16 August 2013*, available at: <http://bit.ly/1JdRITq>.

<sup>407</sup> HM Chief Inspector of Prisons, *Report on an announced inspection of Morton Hall Immigration Removal Centre, 4-8 March 2013*, available at: <http://bit.ly/1LvKfgJ>.

over time. Counsellors are available in some centres (e.g. **Colnbrook**). In **The Verne** the inspector reported that health services were adequate but there were significant problems of access.<sup>408</sup>

Detainees can activate a Rule 35 report by reporting to an officer that their health is injuriously affected by detention, but, Rule 35 reports rarely result in release (see section on [Guarantees for Vulnerable Groups](#)). The effectiveness of rule 35 is questioned in inspection reports and most of the independent reports cited in this section.

The rules require that each detainee should have the opportunity of at least one hour in the open air every day. This can be withdrawn in exceptional circumstances for safety or security. Most IRCs have a gym or fitness suite (**Dungavel, Harmondsworth, Morton Hall**) and outdoor exercise space. Access is variable, ranging from being generally accessible during daylight hours to restricted. The HM Inspector of Prisons 2013 reports noted that access to the gym in Morton Hall was quite easy,<sup>409</sup> but had become more difficult in Harmondsworth where there was a range of activities available,<sup>410</sup> but only a three hour period during the day when detainees were expected to carry out any activity. In **The Verne** the inspector observed very good access to supervised fitness and sports activities.<sup>411</sup> In some IRCs the opportunity for exercise is part of the daily routine (**Brook House, Colnbrook**), however in these two centres the detainees spend the majority of the day locked in their rooms. Physical freedom is very variable between centres. In some wings in **Harmondsworth** detainees were locked into rooms at night time, in some wings they were locked into the wing at night but not into individual rooms. In **Dungavel** detainees are not locked into their rooms. In Tinsley House corridors are locked at 11pm but detainees can leave their rooms.

Women and children are detained separately from men except where there are family units. The **Cedars**, the family facility opened in 2010, was closed in 2016 and a new facility is planned at **Tinsley House** to replace it.<sup>412</sup> There are units for families at **Tinsley House**, which is a short-term holding facility. Some asylum-seeking families may be detained on arrival at **Tinsley House**, as well as before removal.

Other than the family units, there are not special facilities for vulnerable people. Some centres are poorly equipped to accommodate people with disabilities (e.g. **Colnbrook**).<sup>413</sup> Medical facilities are as described above. In theory health care provided to detainees is not limited to emergency health care; however, in practice detainees have difficulty obtaining access to care.

In 2013 it was revealed that there had been sexual abuse of women detainees in **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>414</sup> After a legal battle the High Court compelled disclosure of a report showing that the allegations were not properly investigated.<sup>415</sup> Women for Refugee Women's report on detention in **Yarl's Wood** revealed that there was a culture of inappropriate sexual conduct in the centre, which included unwanted contact and

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<sup>408</sup> *Report on an unannounced inspection of The Verne Immigration Removal Centre*, HM Chief Inspector of Prisons 2 – 13 March 2015, 15.

<sup>409</sup> *Ibid.*

<sup>410</sup> HM Inspector of Prisons, *Report on unannounced inspection of Harmondsworth Immigration Removal Centre, 5-16, August 2013*, available at: <http://bit.ly/1IZxB2M>.

<sup>411</sup> *Report on an unannounced inspection of The Verne Immigration Removal Centre*, HM Chief Inspector of Prisons 2 – 13 March 2015, 48.

<sup>412</sup> Written Ministerial Statement by Robert Goodwill MP, July 2016, available at: <http://bit.ly/2jHytVM>.

<sup>413</sup> HM Chief Inspector of Prisons, *Report on an unannounced inspection of Colnbrook Immigration Removal Centre, 28 January – 8 February 2013*, available at: <http://bit.ly/1Rpc8m8>.

<sup>414</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>415</sup> MPs to investigate Serco over sex assault claim at Yarl's Wood centre, *The Guardian* 17 May 2014, available at: <http://bit.ly/1jGXUeB>.

exploitation by centre staff.<sup>416</sup> An undercover documentary filmed for Channel 4 also revealed abuse in **Yarl's Wood**.<sup>417</sup>

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

There are NGOs who provide support to detainees. Each IRC has a visitors group, which is an organisation of volunteer visitors who provide support, practical help and friendship to detainees.<sup>418</sup> Some visitors groups engage in policy and advocacy work and research.<sup>419</sup> Bail for Immigration Detainees (BID) provides advice and information for detainees generally including self-help packs to make bail applications.<sup>420</sup> The charity Medical Justice works for good medical care for immigration detainees and to obtain evidence of torture and the release of those who are ill.<sup>421</sup> UNHCR does not have the capacity to represent people in detention and in practice detainees rarely seek help from the UNHCR.

The NGO BID has carried out surveys twice a year since 2010 and found that, in relation to immigration detainees held in IRCs, usually between 43% and 69% of detainees had legal representatives. The latest figure, in December 2016,<sup>422</sup> was 53%. Around a quarter to a third are paying a solicitor privately. 20% 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.

Provision of showers, laundry facilities, etc. is usually to an adequate level so that detainees have access, but standards of cleanliness and repair are variable, with some detention centres having a much better maintained environment and others poor. In particular some of the older prison buildings can be poorly maintained and drab. Sometimes a room or cell for two is used for three people.<sup>423</sup>

Detainees normally wear their own clothes. IRCs make an attempt to meet dietary needs of detainees. The food was said in the latest inspections to be poor at **Morton Hall** and **Colnbrook**,<sup>424</sup> adequate at **Harmondsworth**, mainly unsatisfactory at **Brook House**<sup>425</sup> and lacking cultural diversity at **Yarl's Wood**.<sup>426</sup>

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<sup>416</sup> Women for Refugee Women, *I am Human: Refugee Women's Experiences of Detention in the UK* 2015, 14, available at: <http://bit.ly/1WChYDI>.

<sup>417</sup> Channel 4, 'Yarl's Wood: undercover in the secretive immigration centre', 2 March 2015, available at: <http://bit.ly/1E6X4pz>.

<sup>418</sup> See <http://www.aviddetention.org.uk/>

<sup>419</sup> E.g. Detention Action, <http://detentionaction.org.uk/>.

<sup>420</sup> Bail for Immigration Detainees, <http://www.biduk.org/>.

<sup>421</sup> See Medical Justice, <http://www.medicaljustice.org.uk/>.

<sup>422</sup> BID, *Legal Advice Survey*, December 2016, available at: <http://bit.ly/2hN03wA>.

<sup>423</sup> HM Inspector of Prisons, *Report on unannounced inspection of Harmondsworth Immigration Removal Centre, 5-16 August 2013*, available at: <http://bit.ly/1I9wbV5>.

<sup>424</sup> HM Inspector of Prisons, *Unannounced inspection of Colnbrook*, May 2016, available at: <http://bit.ly/2ajmrNx>.

<sup>425</sup> HM Chief Inspector of Prisons, *Report on an unannounced inspection of Brook House Immigration Removal Centre, 28 May – 7 June 2013*, available at: <http://bit.ly/1JdWXgw>.

<sup>426</sup> HM Inspector of Prisons, *Report on unannounced inspection of Yarl's Wood Immigration Removal Centre, 13 April -1 May 2015*, available at: <http://bit.ly/1IQVwQe>.

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>427</sup> Access to social media and skype are prevented.<sup>428</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>429</sup> New guidance was issued by the Home Office in 2016, aiming to make the access in detention centres more consistent and ensure that sites were not inappropriately blocked, although it does not apply to those held in prisons.<sup>430</sup> Facilities at **The Verne** were said by the inspector not to meet demand, a particular issue at that centre because of its remoteness and thus the difficulty of visiting.<sup>431</sup> In common with **Morton Hall**, **The Verne** has a poor mobile phone signal.

## D. Procedural safeguards

### 1. Judicial review of the detention order

#### Indicators: Judicial Review of Detention

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

Detainees have a right to be informed of the reason for their detention. This is generally done by ticking a box on a standard list of reasons, and sometimes is inaccurate or omitted. The reasons for detention should be subject to regular monthly reviews by detention officers, and a breach of this requirement can make the detention unlawful if the effect is that the continued legality of the detention has not been effectively considered.<sup>432</sup>

A detainee can apply for bail at any time, although if they are detained while their application is being considered they must have been in the UK for seven calendar days. Application can be made to the Chief Immigration Officer (CIO), who is part of the Home Office or to the FTT (IAC). Since the decision to detain was made by the Home Office, it is not common for bail to be granted by the CIO.

Since July 2014, a Tribunal is prevented from granting bail if removal directions are in force for a date less than 14 days from the application, unless the Secretary of State consents to bail. The Immigration Act 2014 also prohibits the Tribunal from granting bail at a hearing within 28 days of a previous refusal of bail unless there is a proven change of circumstances.<sup>433</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

<sup>427</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>428</sup> HM Inspector of Prisons, *Report on unannounced inspection of Yarl's Wood Immigration Removal Centre, 13 April - 1 May 2015*, available at: <http://bit.ly/11QVwQe> and *Report on an unannounced inspection of The Verne Immigration Removal Centre*, HM Chief Inspector of Prisons 2 – 13 March 2015.

<sup>429</sup> The APPG Inquiry into the Use of Immigration Detention in the United Kingdom, 43.

<sup>430</sup> Home Office, Detention Services Order 04/2016, available at: <http://bit.ly/1qqEDZu>.

<sup>431</sup> *Report on an unannounced inspection of The Verne Immigration Removal Centre*, HM Chief Inspector of Prisons 2 – 13 March 2015.

<sup>432</sup> *Kambadzi v SSHD* [2011] UKSC 23.

<sup>433</sup> Section 7 Immigration Act 2014, available at: <http://bit.ly/1cPORMc>.



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>434</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>435</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>436</sup> BID has reported delays in providing a bail address.<sup>437</sup>

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

There is no automatic independent judicial consideration of the lawfulness of detention. Bail must be applied for by the detainee. However, the Home Office is obliged to review the reasons for continued detention monthly. The Supreme Court has emphasised that this is a public law duty which should operate as an active safeguard against unlawful detention.<sup>438</sup> In practice this duty may be neglected and the reviews may be carried out in a cursory way or even omitted. The Chief Inspector has urged the Home Office to address this by carrying out proper reviews of the basis for detention in accordance with the Detention Centre Rules, such that release is granted where this is warranted.<sup>439</sup>

The lawfulness of detention may be subject to judicial review in the High Court, with the permission of that court. The criteria for lawfulness are, as mentioned above, that it is for a statutory purpose, and for approved policy reasons, and the length of detention must not be unreasonable (see section on

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<sup>434</sup> Adeline Trude, *The Liberty Deficit, Bail for Immigration Detainees*, 2012, available at: <http://bit.ly/1L2oUai>; Bail Observation Project, second report, 2013.

<sup>435</sup> *Ibid.*

<sup>436</sup> Adeline Trude, *The Liberty Deficit, Bail for Immigration Detainees*, 2012, available at: <http://bit.ly/1L2oUai>.

<sup>437</sup> *No Place to Go: delays in Home Office provision of s.4 (1)(c) bail accommodation*, available at: <http://bit.ly/1OXSoZQ>.

<sup>438</sup> *Kambadzi v SSHD* [2011] UKSC 23.

<sup>439</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>.

**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>440</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>441</sup> Guidance issued in 2012 to immigration judges for the conduct of bail hearings advised that: 'detention for three months would be considered a substantial period of time and six months a long period.'<sup>442</sup> However, if the matter goes to court the court will consider all the circumstances.<sup>443</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 detention centres (IRCs). Detainees cannot obtain legal aid to instruct a lawyer other than those with a contract for that centre. Delays in getting an appointment at a legal surgery mean that in practice they may face removal before they can obtain an appointment, although some centres operate a priority system for people who have removal directions. The Independent Monitoring Board at **Harmondsworth** immigration removal centre records a wait of 3 weeks for a legal appointment,<sup>444</sup> and BID's survey showed that 69% had to wait more than a week.<sup>445</sup> Notice of removal may be as short as 72 hours, and five days is common. In one of the more recent inspections of an IRC, **The Verne**, the inspectorate found that 'Many detainees did not have legal representation and could wait up to 10 days for a legal surgery appointment'.<sup>446</sup>

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>447</sup>

<sup>440</sup> *R (Hardial Singh) v Governor of Durham Prison* [1983] EWHC 1 (QB)

<sup>441</sup> Para 55.3.2.4, Chapter 55, Home Office Enforcement Instructions and Guidance.

<sup>442</sup> Mr Clements, President of the First Tier Tribunal, Immigration and Asylum Chamber, *Bail Guidance for Judges Presiding over Immigration and Asylum Hearings*, 2012, Ministry of Justice, available at: <http://bit.ly/1BGLbIM>.

<sup>443</sup> See for instance for a recent application of the policy, *Xue v SSHD* [2015] EWHC 825 (Admin) in which claimant was unlawfully detained for 11 months.

<sup>444</sup> Independent Monitoring Board, *Harmondsworth IRC, Annual Report, 2011*, available at: <http://bit.ly/1K6hZvY>.

<sup>445</sup> *Bail for Immigration Detainees, Immigration Detainees' Experiences of Getting Legal Advice Across the UK Detention estate: summary results for surveys 1 – 6*, 2013.

<sup>446</sup> *Report on an unannounced inspection of The Verne Immigration Removal Centre*, HM Chief Inspector of Prisons 2 – 13 March 2015, 13.

<sup>447</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>448</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>449</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>450</sup>

#### 2. Long-term residence

##### Indicators: Long-Term Residence

- |   |     |
|---|-----|
| 1. Number of long-term residence permits issued to beneficiaries in 2016: | N/A |
|---|-----|

The UK has not opted into the Long-Term Residence Directive.

<sup>448</sup> See Home Office, *Asylum Policy Instruction: Settlement protection*, 2 February 2016, available at: <http://bit.ly/2kSFC3n>.

<sup>449</sup> See e.g. JCWI research on ‘Right to rent’ <http://bit.ly/2kBLCNw> and Independent Chief Inspector of Borders and Immigration report on the ‘hostile environment’ <http://bit.ly/2eeZ7Qw>.

<sup>450</sup> See Section 7, *Asylum Policy Instruction: Settlement protection*, Home Office, 2 February 2016.

### 3. Naturalisation

#### Indicators: Naturalisation

- |   |                             |
|---|-----------------------------|
| 1. What is the waiting period for obtaining citizenship?  | 1 year post settlement      |
| 2. Number of citizenship grants to beneficiaries in 2016: | Not available for refugees. |

77,664 grants of citizenship were made based on residence in the UK in 2016. This figure will include refugees but also many other categories.

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 (€1,452.61).<sup>451</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>452</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.

### 4. 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:<sup>453</sup>

- ❖ Cessation provisions of the Refugee Convention;
- ❖ Exclusion in line with the Refugee Convention;
- ❖ Misrepresentation of the facts leading to refugee recognition;
- ❖ The applicant is a danger to the UK.

The procedure is set out in Home Office guidance.<sup>454</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

<sup>451</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>452</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>453</sup> Rules 339A to 339AB Immigration Rules, available at: <http://bit.ly/2krAPs1>.

<sup>454</sup> *Asylum policy instruction: Revocation of refugee status*, Home Office, 19 January 2016, available at: <http://bit.ly/2kkxPvi>.

after any submissions from the refugee have been received, given 10 days to submit its view, which must be taken into consideration.<sup>455</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.

## 5. 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 and procedure for withdrawal / revocation of international protection are outlined in the section on [Cessation and review of international protection status](#).

The legal framework for withdrawal of leave is s.76 of the Nationality, Immigration and Asylum Act 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>455</sup> Para 3.6, *Asylum policy instruction: Revocation of refugee status*, Home Office, 19 January 2016, available at: <http://bit.ly/2kkxPvi>.

## 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. 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>456</sup> Whilst the judge was critical of the policy, it has not led to a change.

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 2016, 8,703 applications were made, of which 63% were granted (6,624).<sup>457</sup>

The family reunion process was inspected by the Independent Chief Inspector of Borders and Immigration in 2016.<sup>458</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 "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>459</sup>

<sup>456</sup> *AT (Family Reunification: Eritrea)* [2016] UKUT 227 (IAC), Upper Tribunal, 24 March 2016, available at: <http://bit.ly/2kvjm1S>.

<sup>457</sup> Home Office, *Immigration statistics 4<sup>th</sup> quarter 2016*, available at: <http://bit.ly/2IKdtOU>.

<sup>458</sup> Independent Chief Inspector on Borders and Immigration, *An inspection of family reunion applications*, January – May 2016, available at: <http://bit.ly/2khoPav>.

<sup>459</sup> *Ibid.* See also Refugee Council, 'Watchdog: Government should show more compassion in reuniting refugees', 15 September 2016, available at: <http://bit.ly/2kWbXFX>.

The Home Office also revised its policy and guidance; it was reissued in 2016 although the policy remained the same.<sup>460</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>461</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>462</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.

### 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>463</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.

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<sup>460</sup> Home Office, *Family reunion: for refugees and those with humanitarian protection*, 29 July 2016, available at: <http://bit.ly/2kWnTaM>.

<sup>461</sup> para 5.37, *An inspection of family reunion applications*, Independent Chief Inspector on Borders and Immigration, January – May 2016.

<sup>462</sup> *Family reunion: for refugees and those with humanitarian protection*, Home Office, 29 July 2016, 24.

<sup>463</sup> UKVI, *Travel Documents Guidance Notes*, March 2016, available at: <http://bit.ly/2jGkr2M>.



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.

The procedure for all travel documents is via an online or paper form.<sup>464</sup>

## 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 2016	1,990

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 's.95' support (see [Forms and Levels of Material Reception Conditions](#)).

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 particular difficulties.

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,<sup>465</sup> and efforts through parliamentary means to extend the period,<sup>466</sup> the issue continues to affect many new refugees and other beneficiaries of leave, resulting in homelessness and destitution.<sup>467</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.

<sup>464</sup> UKVI, Application Form TD11 BRP, March 2016, available at: <http://bit.ly/2kWsDh4>.

<sup>465</sup> Refugee Council, *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>466</sup> Refugee Council, *Briefing on Asylum Support amendments to the Immigration Bill*, February 2015, available at: <http://bit.ly/2k2u1QU>.

<sup>467</sup> Refugee Council, *England's Forgotten Refugees*, May 2016, available at: <http://bit.ly/1U4c3VH>.

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>468</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.

### 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. 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 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.

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<sup>468</sup> Paragraph 334B, Immigration Rules, available at: <http://bit.ly/2mmJR4>.