



## Overview of the United Kingdom's Asylum System\*

In Britain in the space of 20 years the number of asylum seekers have risen from 4,223 in 1982 to 110,700 in 2002<sup>1</sup>. Accordingly the United Kingdom (UK) has been developing its laws to deal with the influx of asylum seekers.

The general scheme of immigration control, establishing who could come into the UK and in what circumstances is set out in the *Immigration Act 1971* (as amended) and the *Immigration Rules* made under it. The 1971 Act did not deal with asylum, and rules made under it simply indicated that full account was to be taken of the UK's obligation under the United Nations *Convention on the Status of Refugees* (or "Refugee Convention") of 1951, as amended by a protocol of 1967, when a person seeking to enter, or being removed, claimed asylum or indicated a fear of persecution. The Rules also set out categories of people who can be granted leave, under different controls.

The *Asylum and Immigration Appeals Act 1993* established a statutory scheme for asylum determination and appeals. This Act made the Refugee Convention part of UK law, as a result the enforcement of the immigration law against persons who enter the country is suspended if they claim asylum while that claim is considered. Subsequently the *Human Rights Act 1998* introduced into UK law the *European Convention on Human Rights* which impacted on immigration law. Article 3 of the European Convention and its interpretation by the courts prohibits torture or inhumane and degrading treatment or punishment, and prevents the removal of people to a country where they might be exposed to such harm.

In 1999 the *Immigration and Asylum Act* became law.

In 2002 the *Nationality, Immigration and Asylum Act (NIA Act)* became law. This Act seeks to bring in enforced community service in exchange for hard case support. Many charities have refused to implement government plans for such enforced community service.

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\* By Anna-Louise van Gelder, February 2003. Reviewed by Peter Stapleton, August 2004. Edited by Minh Nguyen. Email [researcher@uniya.org](mailto:researcher@uniya.org) for further information, documents or details.

<sup>1</sup> UK Home Office, Refugees Statistics, Asylum Statistics: 4th Quarter 2002 UK Home Office, February 2003.

The *Asylum and Immigration Act* became law in July 2004. This Act seeks to speed up the appeal system process, amongst other things.

## **1 What arrangements does the UK have with its neighbours to stop asylum seekers reaching the border? Do they engage in upstream disruption?**

The UK has in place arrangements with France, in relation to some of the entry points into the UK located in France. Accordingly the *NIA Act* attempts to curb illegal immigrants and asylum seekers from entering the UK through northern France by the following measures: increasing security at Frethun rail freight terminal; placing UK immigration controls in Calais; tighter immigration controls at all Channel ports; lending the French authorities detection equipment (eg. laser heart beat detectors to check vehicles before being allowed into the Channel tunnel).

The closing of the Sangatte Red Cross centre in Dover was completed in early 2003. The UK authorities hope that this will contribute to reducing the numbers of asylum seekers crossing the Channel from France to the UK. The Centre officially stopped accepting new asylum seekers in October 2002, which the Home Office claims had an immediate effect of reducing the numbers of ferry passengers claiming asylum in Dover. Numbers dropped from 1,300 per week in April 2002 to 100 per week in October 2002.<sup>2</sup>

## **2 What proactive steps outside its territory does the UK take to stop undocumented, unauthorised persons reaching the border?**

Apart from the matters referred to in Question 1 above the UK government has stated that it is using detection equipment along the Northern European coastline seeking to prevent would-be illegal immigrants setting off for the UK.<sup>3</sup>

## **3 What arrangements are there at the border to return immediately those who present manifestly unfounded claims to asylum?**

The first stage in the process which leads to removal is the initial decision on an asylum seeker's claim, made by a case worker or immigration officer in the Immigration Service. Once asylum is claimed, whether at a border (port applicants) or within the UK (in-country applicants), the individual has an initial screening interview. This interview is followed by a more in-depth interview no sooner than 7 days after lodgement of the asylum claim so that the asylum seeker has time to seek legal advice.

The initial grounds for removal relate to people who arrive at a seaport or airport and apply for leave to enter the country. If, after consideration, an application is refused then the person will be liable for removal under a procedure known as "port removal", against which they have limited rights of appeal. "Port removal" is a term used to describe those asylum seekers removed directly from the port at which they arrive, it also describes those who are granted "temporary admission" for a period of time while their claim for asylum is considered, before being removed when the claim is unsuccessful.

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<sup>2</sup> Home Office, Press Release 289/2002, 5 November 2002.

<sup>3</sup> Home Office Minister, Press release, 15 June 2004.

However, this procedure has changed after the passage of the *NIA Act* with the introduction of a ‘clearly unfounded’ category. Currently the primary ground for certifying a case as "clearly unfounded" is the source country of the asylum seeker. The government has indicated there may be other grounds for certifying a case, but the criteria or statement of these grounds has not yet been revealed.

Asylum cases found to be ‘clearly unfounded’ will be returned to their country of origin before they can appeal (this will be known as ‘non-suspensive appeal’ as removal is not delayed while an appeal is heard).

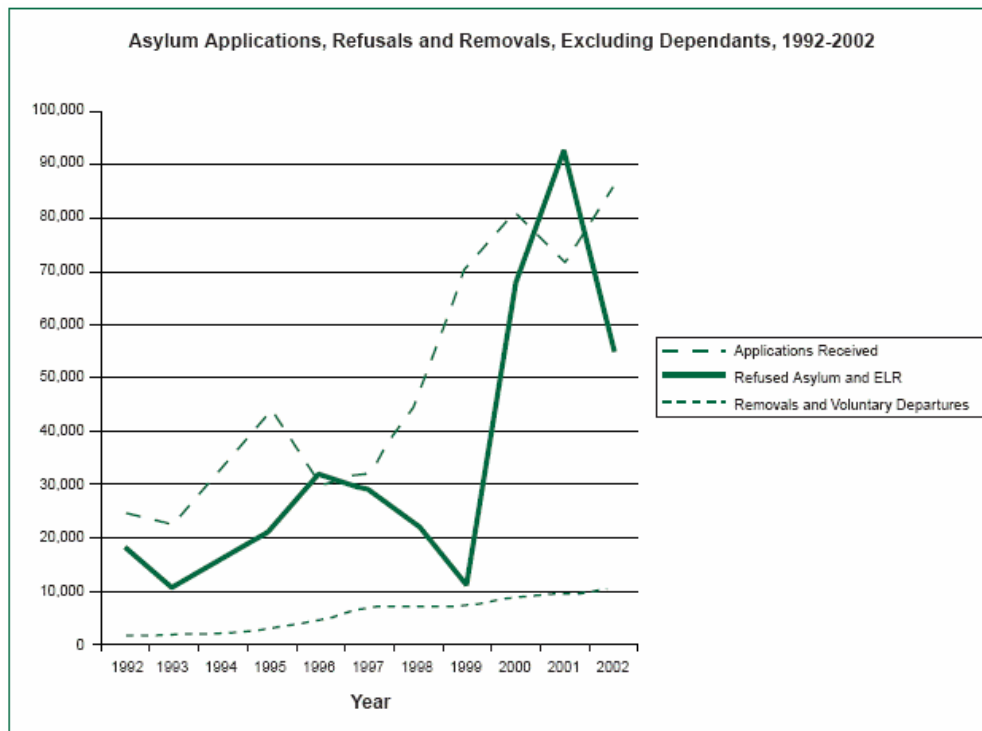
#### 4 Is there any appeal or review of this summary procedure?

Although cases deemed ‘clearly unfounded’ do have the right of appeal, this right can only be exercised from the country to which the asylum seeker has been removed.

#### 5 What is the difference in treatment for asylum seekers arriving by land, by sea and by air?

There is no difference in their treatment throughout the determination procedure, however under the *NIA Act*, in-country applicants may be denied access to benefits previously given under the National Asylum Support Service (NASS).

#### 6 How many unauthorised/undocumented arrivals are turned around at the border each year? Does the country have a comprehensive visa system?



Source: UK Select Committee on Home Affairs, ‘Asylum Removals’, 4th Report, April 2003.

In 2002, according to provisional figures 85,865 applications for asylum in the UK were made, excluding dependants. Including dependants the figure for 2002 was 110,700. Excluding appeals, 54,650 were refused asylum/exceptional leave to remain. There were 10,410 Removals and voluntary departures.<sup>4</sup>

The UK operates a strict, comprehensive and highly regulated visa system. A person who is not a British citizen nor a Commonwealth citizen with the right of abode nor a person who is entitled to enter or remain in the UK by virtue of the provisions of the *Immigration (European Economic Area) Regulations 2000* or *Commission Regulation 1251/70* requires leave to enter the UK. A variety of conditions can be imposed on an individual granted entry clearance, including time limits, employment, financial and security conditions.<sup>5</sup>

## 7 Once admitted to the territory, what is the procedure for checking health, security and identity? Is there detention? Is it judicially reviewable? How many are admitted each year?

**Procedure:** During their initial interview with an immigration officer, asylum applicants are asked about their identity, nationality, travel route and method of entry into the UK.

Applicants are expected to bring supporting documentary evidence and are finger-printed (refusal to consent to finger printing can lead to direct refusal of asylum application). On the basis of this interview, the immigration officer will decide whether the applicant is allowed temporary entrance into the UK or is detained.<sup>6</sup>

Detailed information about when and how health and security checks are carried out is not available. However, the majority of the literature implies that security checks are carried out parallel to the determination procedure, while the immigration officer at the initial interview can request a medical inspection of an asylum seeker.

**Detention:** Under the 1971 *Immigration Act* persons are liable to be detained if:

- They have failed to comply with the terms of their temporary admission or release;
- Their identity or basis of claim has not satisfactorily been established;
- They are awaiting removal.

The decision to detain is made by the interviewing immigration officer, and is based on the officer's opinion that the asylum seeker is likely to abscond whilst awaiting a decision. Those most likely to be detained are safe third country applicants and those caught using fake documents. When a decision to detain is made, a 'reasons for detention' form is issued. The *Immigration and Asylum Act 1999* contained changes to detention procedures, including asylum seekers being given a detailed 'reasons for detention' form, a right to automatic bail hearings initially after 5 - 9 days, followed by a further hearing after 33 - 37 days should

<sup>4</sup> UK Select Committee on Home Affairs, "Asylum Removals", 4th Report, April 2003.

<sup>5</sup> For more information see the visa information webpage of the Immigration and Nationality Directorate of the Home Office [194.203.40.90/default.asp?PageId=3187](http://194.203.40.90/default.asp?PageId=3187).

<sup>6</sup> The UK Refugee Council publication *Claiming Asylum in the UK* outlines the initial interview and determination procedure in explicit detail. It is available at: [www.refugeecouncil.org.uk/downloads/briefings/claiming\\_as\\_uk\\_jan2002.pdf](http://www.refugeecouncil.org.uk/downloads/briefings/claiming_as_uk_jan2002.pdf)

detention continue. However, these changes were never implemented and are now unlikely to be with the implementation of the *NIA Act*.

The effect of the new *NIA Act* on judicial review is unknown, particularly considering that the *Immigration and Asylum Act 1999* changes were never implemented. Adding to the confusion is that the 'Immigration rules - appeals' section of the Home Office website have been completely removed. The Refugee Council is withholding public comment until these rules are re-published.

**Statistics:** See table in question 6 above. The UK ranks 10th in asylum applications received in Europe per capita.<sup>7</sup>

In May 2004 the Home Office published its latest asylum figures for the first quarter of 2004. Asylum applications for January to March, 2004 fell by 17.5%. If quarterly figures stay at this level the end of the year would see the lowest number of applications since 1998, when the Home Office recorded around 46,000 asylum applications.

## 8 Once health, security and identity are established, what is the procedure for processing an asylum claim? Detention? Residence provided? Social security? Right to work? Legal assistance?

**Determination procedure:** the Home Office under the following procedures can consider asylum applications:

1. *Certified asylum claims:* if the Home Office examines and refuses a claim under the fast-track procedure, it is considered certified (rejected). There are a variety of reasons for a claim being certified, including:
  - if the applicant is from a safe country of origin (see below information for details);
  - if the applicant has entered the country illegally (includes those without a valid passport and those entering the country on false documents and failing to immediately declare this at immigration);
  - if the applicant's case is considered by the Home Office to be outside the criteria of the Geneva Convention;
  - if the Home Office considers that the reasons for seeking asylum no longer apply;
  - if the applicant applies late, for example after being denied leave to enter, or after a deportation or removal order has been served;
  - if the applicant's application is deemed to be fraudulent, manifestly unfounded or vexatious.<sup>8</sup>
2. *Safe third country:* applicants who have travelled through any European country, the USA, Canada, Switzerland, or Norway before arriving in the UK can have their claims refused on safe third country grounds.

<sup>7</sup> T. Heath and R. Hill, Home Office Bulletin Asylum Statistics UK 2001, 31 July 2002, [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk).

<sup>8</sup> UK Refugee Council, *Claiming Asylum in the UK*, January 2002, pp.4-5, [www.refugeecouncil.org.uk/downloads/briefings/claiming\\_as\\_uk\\_jan2002.pdf](http://www.refugeecouncil.org.uk/downloads/briefings/claiming_as_uk_jan2002.pdf)

3. *Fast track centre*: applicants from designated countries are detained at Oakington detention centre for up to one week, during which time a decision is made on their case. These decisions are fast tracked and the majority are negative. Refused cases have appeal rights, which are also fast-tracked. Under the new legislation, fast-tracked asylum seekers will be housed in accommodation centres (instead of detention centres) whilst their claims are processed and appeals heard.

4. *Designated safe countries of origin*: under UK law, certain countries can be designated 'safe' if there is generally considered to be no serious risk of persecution within the country. This is generally known as the 'white list' and currently includes Bulgaria, Cyprus, Ghana, India, Pakistan, Poland and Romania. All applications from these designated countries are automatically refused, unless it can be shown that the particular circumstances of the applicant have made them a victim of persecution as defined by the Refugee Convention.

**Detention:** Legal powers to detain are contained in the *Immigration Act 1971* and the *Immigration & Asylum Act 1999*. These statutes allow detention of certain classes of people while decisions are made about their immigration status. The criteria of the detention have been set by policy statements. However, the courts and the European Convention of Human Rights have imposed limits on detention.

The most recent statistics show that 795 asylum seekers were in detention on 28 December 2002 which compares with 1,280 on 29 December 2001.<sup>9</sup>

Under the 1971 *Immigration Act* the UK detains asylum seekers for a variety of reasons (see answer to question 7). As of September 2002, 1,445 asylum seekers were detained in the UK. 285 detainees were held at Oakington, 1,015 at Immigration Service Removal Centres, 35 at Immigration Short Term Holding Facilities and 115 at prisons. 85% of detainees were male as at 28 September 2002. Excluding asylum seekers detained at Oakington 35% of detainees had been detained for less than one month, 20% between 1 – 2 months, 21% between 2-4 months and 24% for 4 months or more.

Oakington received 2,520 cases in the third quarter (July-September 2002). Initial decisions were made on 2,335 (93%) cases with 2,315 refused asylum or Exceptional Leave to Remain, and 15 cases granted asylum. Appeals were received in 2,145 (92%) cases.<sup>10</sup>

**Residence:** The National Asylum Support Service (a branch of the Home Office) is the administrative body responsible for assessing and allocating support and accommodation to asylum seekers while their claim is processed. Accommodation may be provided by a local authority, housing association or private landlord, and is located outside London and the south-east of England. There are a variety of types of accommodation available ranging from hostels offering full board (for single people) to self catering houses and flats (for families). Once the asylum seeker has arrived at the accommodation, the provider is responsible for advising them on how to access services, including health care and education for children.

An applicant's personal preference is not taken into account in the allocation of

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<sup>9</sup> UK Select Committee on Home Affairs, 4th Report, April 2003, para.77.

<sup>10</sup> Home Office, Asylum Statistics 3rd Quarter, 2002, available at: [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)

accommodation, although special needs are considered. Asylum seekers are able to apply for a 'subsistence-only' package if they are able to stay with family or friends. Under the new legislation, the Government is setting up a variety of accommodation centres, with a total capacity of 3,000 persons, to accommodate new asylum seekers from initial application, through the determination procedure and appeal. The centres are on a trial basis only, and will provide full board, as well as health care, interpretation and education services. English language and IT training, as well as volunteering in the local community are currently being considered. Asylum seekers will not be detained in accommodation centres, they will be free to come and go (although will need to report to the administrative office once a day) and will receive a small cash allowance, be able to receive visitors and have access to legal services.

**Social security:** NASS also provides asylum seekers with financial support. This was originally provided in the form of vouchers, which could be exchanged for goods, but has now been replaced by cash. To be eligible for support asylum seekers must prove that they are destitute. There are currently two methods by which NASS-supported asylum seekers can access their cash support - the 'receipt book method' and the 'smart card method' (which will eventually replace the receipt book method). The receipt book method, which has been in operation since April 2002, enables asylum seekers to exchange a voucher for cash at designated post offices.

The receipt book process is now being replaced by a more secure smart card method which enables asylum seekers who have been issued with the new Application Registration Card to obtain their cash support by presenting their ARC at their designated post office. The ARC replaces the Standard Acknowledgement Letter (SAL), which is an acknowledgement that the individual has applied for asylum. Eventually all NASS supported asylum seekers will have an ARC and be able to obtain cash using this method.

Weekly levels of subsistence payment are based on 70% of UK standard income support for adults, and 100% for children. The rates are:

Persons aged 25 or over: £37.77  
Persons aged 18-24: £29.89  
Single parent: £37.77  
Child aged 16-17: £32.50  
Child under 16: £ 3 3.50

There are a variety of complaints about the accommodation and financial assistance available to asylum seekers in the UK.<sup>11</sup>

Under section 55 of the *NIA Act* destitute asylum applicants can be denied access to asylum support if they are unable to establish that they applied for asylum "as soon as reasonably practical" after entering the UK. However the Court of Appeal in May 2004 found that in the case of 3 destitute asylum seekers their human rights had been breached. Following this ruling the Home Office determined to reinstate basic levels of support to asylum seekers, even if they do not make their asylum claim immediately.<sup>12</sup>

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<sup>11</sup> For a critical analysis of the levels of support available to asylum seekers see the joint report by the Refugee Council and Oxfam, *Poverty and Asylum in the UK*, 2002, available at: [http://www.refugeecouncil.org.uk/downloads/rc\\_reports/oxfam\\_rc\\_poverty\\_report\\_july2002.pdf](http://www.refugeecouncil.org.uk/downloads/rc_reports/oxfam_rc_poverty_report_july2002.pdf)

<sup>12</sup> Press Release The Guardian 26 June 2004.

**Right to work:** As of 23 July 2002 asylum seekers no longer had the right to work or undertake vocational training. Previously, asylum seekers were able to work or undertake vocational training if they had been waiting 6 months or more for a decision on their case.

**Legal assistance:** Asylum seekers are entitled to publicly funded legal advice, which is provided by specifically funded independent legal advisors (eg. Refugee Legal Centre, Immigration Advisory Service) or by franchised advice organisations and private lawyers. Legal services are provided at all stages throughout the asylum procedure, including advice and representation. Asylum seekers can apply for publicly funded legal representation at appeals, however there are strict legal merits and means tests.

## 9 Is there a distinction drawn between those arriving with a visa and those without?

If an asylum seeker arrives on a valid passport and visa the likelihood of being detained is very slight as identity has been established and security has been checked. However, from 8 January 2003, a distinction was drawn between in-country and port applicants' eligibility for welfare support; with in-country applicants no longer eligible to apply for National Asylum Support Service benefits.

## 10 Is there a distinction drawn between those arriving directly from a country of persecution, and those engaged in secondary movement? If so, how is this distinction drawn? Who draws the distinction? Is the decision reviewable?

There is a distinction drawn between those arriving directly from a country of persecution, and those engaged in secondary movement. Applicants who have travelled through any European country, the USA, Canada, Switzerland or Norway before arriving in the UK can have their claim refused on safe third country grounds. The Home Office will not consider the claim and will actively try to return the asylum seeker to the relevant safe third country.

Asylum seekers in this situation do have appeal rights, but they can only be exercised once the individual has left the UK. The Home Office states:

Refugees are not required to have come directly from their country of origin. However section 31(2)<sup>13</sup> [of the *Immigration and Asylum Act*] states that if a refugee stopped in another country outside the UK while enroute to this country, the defence in section 31(1)<sup>14</sup> only applies if the refugee shows that he or she could not reasonably have expected to be given protection under the Refugee Convention in that other country.

Whenever an asylum seeker legally enters a foreign country, even if for a limited period only, he or she could have made an asylum claim in that country. Other asylum seekers will enter third countries illegally, perhaps crossing a land border from their own country to a neighbouring country. They should then claim asylum in that country.

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<sup>13</sup> *Immigration and Asylum Act* 1999.

<sup>14</sup> *Ibid.*

The asylum seeker may have been in transit through the third country and might not have come into contact with immigration officials and might not therefore have had the opportunity to make an asylum claim. Under these circumstances, and taking into account all the information available, it may be considered reasonable for the defence of section 31 of the *Immigration and Asylum Act* to apply.<sup>15</sup>

## **1 1 Does one have to be strictly a refugee to be able to remain, or are there other humanitarian classifications available? If so, who decides, what are the criteria and is the decision reviewable?**

Originally there was one other classification an asylum seeker may be granted once rejected as a refugee, namely Exceptional Leave to Remain (ELR). This was a discretionary grant of leave bestowed by the Home Secretary on an individual when their asylum claim did not fully satisfy the criteria for asylum, but the applicant is granted leave to remain in the UK on compassionate or humanitarian grounds. These grounds include the following:

- Asylum seekers who do not meet the criteria of the 1951 *Convention* but nevertheless need protection;
- Human rights grounds, for asylum seekers who will be subjected to inhumane and/or degrading treatment and/or torture (in line with Article 3 of the *European Convention on Human Rights*);
- Asylum seekers who will face disproportionate punishment for a non-political crime (eg. execution for avoidance of compulsory military drafting);
- Credible medical evidence that return to country-of-origin will result in substantial damage to the psychological or physical health of the applicant and/or their dependents; and
- In cases where a decision has not been made for 7 years.

Individuals granted ELR were able to reside in the UK for 4 years, after which they can apply for Indefinite Leave to Remain. The proportion of ELR claims had risen from 10% of overall asylum applications to 25% in the last five years. Asylum seekers denied ELR were able to appeal to Immigration Adjudicators, but do not have access to any further appeal.

In late 2002 the government issued a Written Statement which declared that as from 1 April 2003 a new category of leave named "Humanitarian Protection" would be granted to those who "though not refugees would, if removed, face in the country of return a serious risk to life or person arising from the death penalty, unlawful killing or torture, inhumane or degrading treatment or punishment". Further "Discretionary Leave" instead of exceptional leave, will be granted to some people who "do not qualify for Humanitarian Protection or leave under the Immigration Rules". The principal difference between the 2 categories is that those who qualify for Humanitarian Leave will be granted 3 years of leave and then if still in need of protection will be eligible to apply for settlement in the UK. Under Discretionary Leave, leave of 3 years or less can be granted, after which a person will only be able to apply for a further period of leave, rather than for settlement.<sup>16</sup>

<sup>15</sup> Home Office 2002, [www.parliament.the-stationery-office.co.uk/pa/ld200102/ldselect/ldcom/100/10001.htm](http://www.parliament.the-stationery-office.co.uk/pa/ld200102/ldselect/ldcom/100/10001.htm)

<sup>16</sup> Selection Committee on Home Affairs 4th Report "Asylum Removal" paragraph 16.

**12** How many asylum and humanitarian claims are decided each year?  
See Table, question 6.

**13** Does the country take a quota of off-shore refugees each year as well as on-shore asylum seekers? If so, is there a nexus between the numbers?

In 2003, the UK agreed to accept quotas of off-shore refugees, up to 500 in 2003-4, to enter and settle in the UK through the UNHCR.<sup>17</sup> There is no nexus between the numbers of on- and off-shore refugees.

**14** How long does an asylum claim take?

The Home Office, and the Refugee Council figures show a discrepancy between the lengths an asylum claim takes from initial application to appeal.

The Home Office target is to make initial decisions within 2 months and appeals decisions within a further 4 months. The 2001 Home Office Bulletin Asylum Statistics UK<sup>18</sup> states that 60% of applications received in 2001/02 had initial decisions reached and served within 2 months, 78% within 4 months, and 84% within 6 months. These Home Office statistics also state that 43% of appeals received in 2001/02 were determined within 17 weeks (including appeals dealt with by the second tier of the Immigration Appellate Authority).

The Home Office *3rd Quarter 2002 Asylum Statistics*<sup>19</sup> states that 77% of applications received in the period April-June 2002 had initial decisions reached and served within 2 months. These Home Office statistics also highlight that 44% of asylum appeals received from April-June 2002 were determined within 17 weeks (including appeals dealt with by the second tier of the Immigration Appellate Authority).

However, the Home Office does not publish statistics on the complete length of time from initial decision to end of appeal. This means that they leave out the possibly lengthy time it can take an asylum seeker to receive a date for their first interview, or hearing before an adjudicator. The Refugee Council claims that the average length of an asylum claim from initial application to final appeal is 13 months (including waiting time for interviews, hearings etc). However, the Home Office has publicly refuted this claim.

**15** How many levels of appeals are there?

The Immigration Appellate Authority (IAA) has two tiers, Immigration Adjudicators and the Immigration Appeals Tribunal. The Immigration Appellate Authority is part of the Tribunals Group of the Court Service. The Court Service is an executive agency of the Lord Chancellor's Department.

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<sup>17</sup> UNHCR, "UK gets wide support for UNHCR resettlement scheme for vulnerable refugees", UNHCR News Stories, 4 September 2003.

<sup>18</sup> T. Heath and R. Hill, Home Office Bulletin Asylum Statistics UK 2001, 31 July 2002, [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk).

<sup>19</sup> Home Office, Asylum Statistics UK 3rd Quarter 2002, [www.homeoffice.gov.uk/rds/pdfs2/asylumq302.pdf](http://www.homeoffice.gov.uk/rds/pdfs2/asylumq302.pdf).

**Immigration Adjudicators** are the first tier in considering appeals against initial decisions made by Immigration Officers and the Home Secretary. They are appointed by the Lord Chancellor and form an independent judicial body. There are currently 323 part-time and 76 full-time adjudicators, as well as a Chief Adjudicator – His Honour Henry Hodge OBE. Adjudicators hear immigration and asylum appeals, and have jurisdiction over all of the UK with permanent centres in central London (21 courts), Hatton Cross near London Airport (20 courts), as well as Birmingham, Leeds, Manchester and Glasgow. There are also sittings at various satellite courts across the country.

All refused asylum seekers are entitled to an adjudicator. With the exception of those who arrive from a designated third country, and who are removed back there without a substantive consideration of their asylum claim, all appellants are entitled to remain in the UK pending the resolution of their appeal.

Applicants must normally lodge initial appeals within seven working days, but valid out-of-time appeals must nevertheless be sent to the special adjudicator to decide whether it would be just to allow them to proceed, so long as the delay was through no fault of the applicant.

The time limit for appealing is limited to two days when the applicant is detained, having been refused leave to enter at a port, and the application is certified. The Home Office must provide relevant papers to the special adjudicator within 42 days.

The appeal will be held at an IAA appeal centre, at an open hearing attended by the appellant and/or their representative and a Home Office presenting officer to speak for the Home Secretary.

Legal aid is not available for representation at appeal hearings, but free representation can be obtained from the Refugee Legal Centre and the Immigration Advisory Service (note however, it is merits and means tested, and difficult to get).

At an appeal hearing, the appellant's representative questions the appellant, if they choose to give evidence, and their witnesses. Then it is the turn of the Home Office presenting officer. At the end of the hearing, the Home Office presenting officer and the appellant's representative make 'submissions' to the special adjudicator. This means they will sum up what has been said and tell the special adjudicator what they want him or her to decide. The special adjudicator will then decide the appeal, the decision is called a determination and will not usually be made in court but made later (this is called reserving the judgement). Once the decision is made a written determination of the appeal will be posted to the parties.

Either party may then apply for leave to appeal further to the Immigration Appeals Tribunal. This must be done within five working days of receipt of the determination.

Some appeals are 'certified'. This is done when the Home Secretary decides to refuse asylum. If the special adjudicator agrees with this decision, there is no further right of appeal to the Immigration Appeal Tribunal. If the special adjudicator does not agree with the certification of the appeal by the Home Secretary, there is a right of leave to appeal further to the Immigration Appeals Tribunal.

The **Immigration Appeals Tribunal** is the second tier of the Immigration Appellate Authority, and is also an independent judicial body. It deals with applications for leave to appeal and appeals against decisions made by Immigration Adjudicators. The Tribunal consists of a President, 13 full-time Chairpersons, 6 part-time legally qualified chairpersons and 34 members. Jurisdiction covers the UK and the Tribunal sits in London and Glasgow.

Further appeals can be made to the Court of Appeal and High Court. The Chairperson of the Immigration Appeal Authority considers the grounds of appeal and decides whether or not to grant leave to appeal to the Tribunal. The Chairperson must make this decision within ten working days of receiving the application. There is no formal hearing at this stage.

If leave is granted, the case will be heard by a legally qualified chairman as head of a three-person panel (one legal and two lay members), appointed by the Lord Chancellor. Notice of the hearing must be served within five working days and determined within 42 days of receipt of the original application.

At the hearing, the appellant's representative and the representative for the Home Office make submissions to the Tribunal about the appeal. The appellant can choose whether to give evidence. The Tribunal then decide the appeal, usually reserving the judgement. Once the decision is made, copies are sent to the parties.

**Further Appeals:** Either party may apply to the Tribunal for leave to appeal to the Court of Appeal on a point of law within ten working days of receipt of the Tribunal's determination. The Tribunal will not normally hold a hearing, but must decide and give reasons for its decision within another ten working days. They may also apply directly to the Court of Appeal. The same principles regarding representation and legal aid apply as at the adjudicator stage.

**Judicial review:** Asylum seekers are also entitled to apply to the High Court for leave to move for judicial review of any decision taken during the process, provided they have exhausted their statutory rights. Judicial review considers the lawfulness and/or reasonableness of a decision taken – it does not re-assess an asylum claim.

## 16 In what circumstances could a person be held in detention while the claim is processed?

Under the *Immigration Act* 1971 persons are liable to be detained if:

- They have failed to comply with the terms of their temporary admission or release;
- Their identity or basis of claim has not satisfactorily been established;
- They are awaiting removal.

## 17 How many overstayers a year does the country have?

Information not available.

## 18 Once an asylum seeker is rejected, are they taken into detention? If so, what are the conditions and is the decision appealable? If not, how do they arrange the removal of persons?

Asylum removals (including voluntary departures) rose slightly in 2001 to 9,285 (minimal considering there were 71,365 applications of which 58% or 41,392 were rejected). 980 voluntary removals were facilitated by IOM under the Assisted Voluntary Returns Program.<sup>20</sup>

The Home Office and European Commission's European Refugee Fund jointly fund this program. Asylum seekers departing voluntarily are provided transport and assistance on their return. However, in order to facilitate an increasing number of returns, negative appeal decisions will increasingly be delivered in person to assist the process of detention and removal. Refused asylum seekers will be taken directly to removal centres to await deportation. They will have no right of appeal. The Government policy document *Secure Borders, Safe Haven*<sup>21</sup> states that the primary focus of detention will continue to be its use in support of the UK removal strategy. By Spring 2003, the Home Office aims to have 4,000 detention places available for failed asylum seekers awaiting removal.

## 19 What are the terms of a recognised asylum seeker (or humanitarian entrant) remaining in the country? Is there a time limit on the visa? Family reunion? Right to travel? Right to work? Social security assistance?

Recognised refugees and those granted ELR are entitled to the same social and economic rights as UK citizens, and have full access to medical treatment, education, housing, employment services and family reunion. Entitlements of those granted the new 'humanitarian protection' visa have not yet been announced.

Government funding is given to refugee community organisations and the voluntary sector to provide support and advice on language tuition, education, re-training and employment opportunities. Currently, a National Refugee Integration Forum is running. It draws together local authorities, Government departments, community, voluntary and private sectors to monitor and contribute to the development of a comprehensive integration strategy for refugees and those granted ELR. It is due to report early next year on: accommodation, community development, community safety and racial harassment, education of children, employment and training, health and social care, positive images, research, and unaccompanied minors.

## 20 How stringent is the law for removal of non-citizens who have committed criminal offences and served their sentences? Is there any appeal from the decision to deport?

Refugee protection is revoked for individuals in the UK who are found guilty of a criminal offence and receive a custodial sentence of at least 2 years (does not include suspended sentences) and who are deemed to pose a danger to the community.

<sup>20</sup> T. Heath and R. Hill, Home Office Bulletin Asylum Statistics UK 2001, 31 July 2002, [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk).

<sup>21</sup> Home Office, *Secure borders, safe haven: integration with diversity in modern Britain*, February 2002, p.67, available at: <http://www.official-documents.co.uk/document/cm53/5387/cm5387.pdf>

Additionally, refugee protection is revoked for a person convicted outside the UK of an offence, sentenced to a period of imprisonment of at least 2 years (does not include suspended sentences), and who would have been sentenced to a period of imprisonment of at least 2 years had their conviction been in the UK of a similar offence.

The presumption that a person constitutes a danger to the community is refutable and does not apply while an appeal against conviction or sentence is pending or could be brought. The Secretary of State issues a certificate that this presumption applies to the person, and subject to rebuttal, removal procedures shall begin.

## **21** How does the country ensure compliance with the Convention Against Torture, the ICCPR, and the Convention on the Rights of the Child before ordering forcible removal of a failed asylum seeker?

Compliance was previously ensured with the Exception Leave to Remain category. The Humanitarian Protection category now replaces ELR, and the Government has stated that it will be used to ensure continued compliance with various UN and EU Conventions.

## **22** Is there any distinctive jurisprudence by the domestic courts or parliaments qualifying or restricting the terms of the Refugees Convention? Make particular reference to 'particular social group', persecution by non-state actors, and Convention reasons being the main cause of persecution or human rights abuse.

Information not available.

## **23** How does the country apply the cessation clause once there is a change in the situation of the home country? Does the country insist on the refugees re-establishing their individual claim or does the country permit the refugee to remain pending proof of a substantial, durable solution in the home country?

Under the new 'Humanitarian Protection' category people will be individually reassessed in an 'active interview' and those who no longer have protection needs will have their leave to remain refused.

## **24** Does the country countenance anything like the pacific solution?

On the 5 February 2003, *The Guardian* newspaper leaked details of a confidential joint Cabinet Office and Home Office report entitled *A New Vision for Refugees*. The leaked report contained suggestions of creating regional protection areas run by the UNHCR and located near unstable nations. Designated asylum seekers arriving in the UK could be transferred to these areas where their applications could be processed or the position in their home country stabilised. The scheme envisages that those in need of longer-term protection could be resettled in Britain and other European nations under a burden sharing quota scheme determined by each country's population. It is important to note that this information has been neither confirmed nor denied by the relevant departments.

## Websites for further information

### British websites

Asylum Support: <http://www.asylumsupport.info>  
Electronic Immigration Network: <http://www.ein.org.uk>  
Home Office: [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)  
Immigration Appellate Authority: <http://www.iaa.gov.uk>  
Refugee Council: [www.refugeecouncil.org.uk](http://www.refugeecouncil.org.uk)

### European websites

Amnesty International, European Union Office: <http://www.amnesty-eu.org>  
Eurasylum Portal: <http://www.eurasylum.org/portal/DesktopDefault.aspx>  
European Commission: <http://europa.eu.int>  
European Migration Information Network: <http://www.emin.geog.ucl.ac.uk>  
European Parliament: <http://www.europarl.eu.int>  
European Refugee Fund: <http://www.european-refugee-fund.org>  
Harvard Law School, Guide to EU Documents and Treaties:  
[http://www.law.harvard.edu/library/ref/ils\\_ref/eu\\_guide/eu\\_legal\\_research\\_treaties.htm](http://www.law.harvard.edu/library/ref/ils_ref/eu_guide/eu_legal_research_treaties.htm)  
Jesuit Refugee Service, European Office: <http://www.jrseurope.org>  
Migration Policy Group: <http://www.migpolgroup.com>  
Odysseus Network, Academic Networks for Legal Studies on Immigration and Asylum in Europe: <http://www.ulb.ac.be/assoc/odysseus/index2.html>  
RefugeeNet: <http://www.refugeenet.org>  
University of Kent, EU Information: <http://www.ulb.ac.be/assoc/odysseus/index2.html>

### General Websites

Amnesty International: [www.amnesty.org](http://www.amnesty.org)  
Human Rights Watch: [www.hrw.org](http://www.hrw.org)  
Jesuit Refugee Service: [www.jesref.org](http://www.jesref.org)  
Lawyers Committee for Human Rights: <http://www.lchr.org>  
Migration Information Source: <http://www.migrationinformation.org>  
Migration Policy Institute: <http://www.migrationpolicy.org>  
Refugee Studies Centre, University of Oxford: <http://www.rsc.ox.ac.uk>  
United Nations High Commissioner for Refugees: [www.unhcr.ch](http://www.unhcr.ch)  
US Committee for Refugees: [www.refugees.org](http://www.refugees.org)  
Vera Institute of Justice: <http://www.vera.org>