

Removals

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Overview

The removal of asylum seekers whose claims are determined to be unfounded has become a controversial issue, yet the procedure is a crucial part of a fair and efficient asylum system. It is generally accepted that the credibility of any asylum system is partly dependent upon being able to remove those not considered in need of protection; the British Refugee Council and the United Nations High Commission for Refugees, for example, recognise the importance of removals.¹ It has, however, been notoriously difficult to enforce these procedures, with large numbers of asylum seekers eligible for removal remaining in the host country, as the statistics illustrate. The methods used by government agencies to improve the enforcement of removal have generated considerable concern about the potential for mistreatment and abuse of the individuals and families seeking asylum during the removal procedure. This opposition presents a dilemma for governments, labelled the liberal democratic paradox,² between ensuring the asylum system is fair and efficient at the same time as avoiding mistreatment of those asylum seekers that are to be removed.

The first section of the briefing defines the terminology surrounding removals and clarifies some areas of overlap and conflation. The following section outlines the statistical context of the issue in the UK, illustrating the gap between the number of failed claims and number of removals as well as addressing the impact of the performance targets introduced by the government in order to close this gap. The third section describes the legal process and methods of removal and the following section discusses a number of the barriers to removal responsible for the aforementioned statistical gap. The final section addresses issues surrounding the treatment of asylum seekers during the process of removal.

¹ See the Refugee Council's evidence to the **House of Commons Home Affairs Committee** (July 2003) *Asylum removals - Fourth report of session 2002-03* and **UNHCR** (2005) *UNHCR observations on the European Commission's proposal for a Directive on common standards and procedures in Member States for returning illegally staying third-country nationals*

² **Gibney and Hansen** (2003) *Deportation and the Liberal State*

Definitions

Before addressing the policy and process involved in the removal of asylum seekers from the UK, it is necessary to clarify some of the concepts and definitions that underpin this debate. Terms such as return, removal and deportation are often used interchangeably in the public and academic debate yet in a legal sense they have specific meaning and refer to specific processes or groups of people. The following aims to provide some clarification of this terminology and an indication of how the terms are used in the remainder of this briefing.

Return

This term has the widest possible application and refers to any form of migrant returning to their homeland or a transit country. *Return* can be temporary or permanent, voluntary or enforced, assisted or unassisted. Conceptually, return merely represents the process of return migration;³ *repatriation* is a distinct form of return that involves return migration only to country of origin. In academic literature, return is most often associated with the large scale return migration of refugees to a post-conflict society, or economic migrants that have worked and saved their earnings for the prospect of a better life for their family in their home country.⁴ This body of literature tends to focus on the consequences of return - social reconstruction and reintegration as well as the transfer of resources back to migrants' country of origin - rather than the process itself.

Voluntary return

The term *voluntary return* is conventionally used to refer to formal government schemes that seek to facilitate return migration. There are a number of examples of assisted returns programmes for resettled refugees following conflict resolution, notably to Bosnia and Kosovo.⁵ This is absolute voluntary return in which those opting to return have made an explicit decision to do so and have an alternative to remain in the UK. However, the term voluntary return is also applied to schemes that focus on individuals that do not have this choice to remain, such as asylum seekers whose claims have failed. Because of the difficulties of enforced removal these schemes are intended to induce the removal of individuals that no longer have the legal right to be in the UK. In such cases, where voluntary return is backed by enforced removal, the element of choice is not an absolute one as to whether the individual chooses to remain in the UK or not; the element of choice is related to how and when an individual is removed.

This distinction may generate confusion over terminology as well as some criticism over the use of the word 'voluntary' when followed by 'return'. A 2002 report by the International Centre on Migration Policy Development (ICMPD) does not accept this understanding of voluntary, defining voluntary return in the absolute sense and in direct opposition to forced return, the latter including the 'threat of the use of coercive measures'.⁶ On this understanding, some of the UK government *Assisted Voluntary Return (AVR)* schemes that are open to failed asylum seekers would not be considered voluntary. To try and clarify that which is encompassed by the term voluntary return, Morrison has identified 'three gradations of voluntariness':⁷

³ The International Centre for Migration Policy Development (2002) *Study On Return - A Swiss Perspective*

⁴ See Megan Bradley (2006) *Return of forced migrants* and Black et al (2004) *Understanding Voluntary Return*

⁵ Black et al (2006) *Return of forced migrants*

⁶ The International Centre for Migration Policy Development (2002) *Study On Return - A Swiss Perspective*

⁷ Morrison, John (2000) *External evaluation of the voluntary return project for refugees in the United Kingdom*

- A clear and open choice to return or stay permanently in the host country
- A choice of returning now in a voluntary fashion or risking forcible return later
- No opposition from the returnee to removal nor any enforcement by authorities

AVR-type schemes that are aimed at asylum seekers represent the second degree of voluntariness. While understanding the limited voluntary nature of these schemes, for the purpose of this briefing the term voluntary return will be used to describe all AVR schemes in order to distinguish the procedure from physically enforced removal procedures. These schemes have been developed by the Home Office in partnership with, amongst others, the International Organisation for Migration (IOM) and offer assistance to individuals that could be subject to enforced removal to voluntarily set in motion the process of their return migration.⁸ Applicants have to meet particular criteria and are assisted with various costs associated with their removal and reintegration in the country to which they are removed.

Removal

Technically, *removal* is a specific form of return as it involves the return of a migrant to their country of origin or a country through which they have transited. In the UK, however, it is a very distinct sub-category of return. While a migrant with any immigration status can potentially be 'removed', removals are most frequently carried out with respect to asylum seekers whose claim has failed or is withdrawn, immigrants who overstay or contravene the conditions of the legal status or any form of migrant involved in criminal activity or actions that are considered 'not conducive to the public good'.⁹ Individuals satisfying one of the above criteria will receive a *removal direction*, the legal basis for removal. Removal is distinct from other forms of return in that ultimately it is enforced and usually permanent.¹⁰ What removal actually refers to is enforcement (or threat of enforcement) of the return of a person who has no legal right to be in the UK, has not met certain conditions that their residence is dependent upon and consequently is required to leave. When removal is an available option for government authorities it indicates that in the final instance, the individual in question has 'no choice to remain' in the UK, even in the case of 'voluntary removal' as explained above.

Where authorities enter the process of enforced removal it represents the fact that the individual required to leave the UK is unwilling to do so. Voluntary return, for the purposes of this briefing refers to a process by which an individual is expected to leave the UK and subsequently does so willingly. Individuals that have claimed asylum through the UK asylum system or currently have a claim in the system may be subject to enforced removal or opt for voluntary return. This briefing, therefore, is concerned with both enforced and voluntary return.

Types of enforced removal

There are four distinct processes of enforced removal, all of which could potentially apply to asylum seekers, which are defined below.¹¹

- Port removal – This applies to people who are refused entry to the UK. It does not necessarily indicate that their removal is immediate or that they remain 'at port' until

⁸ See Home Office website (<http://www.ind.homeoffice.gov.uk/lawandpolicy/voluntaryreturn/>) and IOM website (<http://www.iom.int/jahia/page747.html>)

⁹ Joint Council for the Welfare of Immigrants (2006) *Immigration, nationality and refugee law handbook*

¹⁰ Deportation is the only removal procedure that expressly prohibits re-admission; however any form of removal will influence future immigration decisions, *ibid.*

¹¹ These definitions are taken largely from Joint Council for the Welfare of Immigrants (2006) *Immigration, nationality and refugee law handbook*

removed. Some individuals that arrive in the UK are temporarily admitted while decisions are made over their eligibility to enter.

- Administrative removal – People can be removed through this procedure if they contravene any conditions attached to their residence in the UK, their leave to remain in the UK has expired or they have obtained any form of leave to remain through deception.
- Illegal entry – This applies to individuals that physically enter the country illegally, rather than are illegally resident (which can be the case above).
- Deportation – People can be removed through deportation if a) they are recommended for deportation following a criminal conviction, b) their presence is not considered 'conducive to the public good' or c) they are a family member of a person in the previous two categories.

The overwhelming majority of asylum seekers removed from the UK are subject to the procedure of port removal, given that their temporary admission to the UK was granted in order for the claim for asylum to be determined. When this claim fails they are effectively and legally 'refused entry' to the UK, despite the fact that they physically entered the country when their claim for asylum was made. In most cases, any appeal will have a 'suspensive effect' on the power to remove. Asylum seekers may also be subject to administrative removal if it is ascertained that leave to enter or remain was obtained by deception. It is possible that asylum seekers could be removed by the illegal entry procedure if they entered the UK illegally and subsequently claimed asylum. It is also possible that asylum seekers could be deported after their claim has been determined if they were to fit into the three criteria for deportation outlined above.

The importance of definitions and terminology

As noted above, terms associated with removals are often conflated or used interchangeably. This can cause problems for the accuracy and clarity of public and policy debate. The terms as set out above are legally distinct. Yet it is important to note political reasons for the use of particular terms by particular actors, something that reflects that liberal paradox outlined in the introductory section of this briefing. The connotations of the term deportation are historical. In Germany, the word has such a strong association with practices of the Nazi regime that is not used at all in political circles when discussing removals.¹² In the UK, the term has a similarly recidivist tone and, since the introduction of the administrative removal procedure in 2000 has been used significantly less as a term and a procedure.¹³ On the other hand, agencies that are opposed to removal practices in general continue to use the word deportation for the very same reasons as it implies that in removing people authorities are criminalising them and this is something to which they object. Similarly, the term voluntary removal has been introduced to suggest that the procedures that follow the refusal of an asylum claim do not always have to be enforced. It is important to remember that this is the conceptual and definitional context in which issues around removal are discussed and debated.

¹² Gibney and Hansen (2003) *Deportation and the Liberal State*

¹³ Joint Council for the Welfare of Immigrants (2006) *Immigration, nationality and refugee law handbook*

Statistical context

It was noted in the introduction that issues related to the removal of failed asylum seekers from the UK are a manifestation of what has been labelled the liberal democratic paradox. Recent statistics on asylum applications and subsequent removal bear this out. While numbers of asylum applications to the UK continued to rise until 2001 and the rate of successful applications fell fractionally, there was no subsequent significant increase in absolute numbers of removals. Consequently, the group of people that had been refused asylum but who remained in the UK was growing. As alluded to earlier, if a significant proportion of those refused asylum are not removed, then, as Ministers frequently comment, the credibility of any asylum system comes into question. At the peak of asylum applications to the UK in 2001, there was considerable negative press coverage over the government's handling of the asylum system and who was benefiting from it. In part to mitigate the political damage this was causing the government, Prime Minister Tony Blair publicly declared that targets would be set for removal.¹⁴ This subsequently developed into the *tipping point public performance target*, which aimed to remove more failed asylum seekers than the number of asylum applications predicted to fail each year. The government claimed to have reached this 'tipping point' for the first time across the year of 2006.¹⁵

This is the statistical context for debates over removals. The numbers represent a see-saw motion between a desire to uphold the credibility of the asylum system while not appearing to operate an authoritarian policy on large-scale removals. This section will detail what data are collected on removals from the UK, who 'the removed' are and to where they are removed. It will then discuss some of the difficulties collecting and interpreting statistics and finally outline the meaning, calculation and criticism of the tipping point public performance target.

What statistics are collected?

The recent headline figures of the number of asylum seekers removed from the UK is displayed in Table 1. There has been a broad trend of increased removals in absolute terms across the last decade reaching a peak of 18,235 in 2006. It is important to note that the number of dependants was only incorporated into the calculations from 2002. Headline asylum application figures continue to be calculated excluding dependants, though application statistics used to calculate the tipping point performance target also include dependants from 2002.

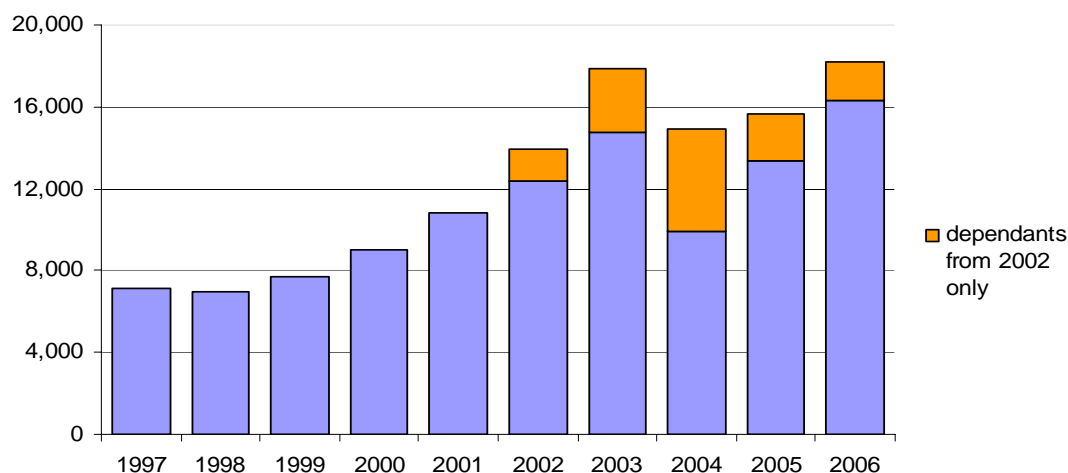
If dependants were excluded from the post-2002 figures or it was assumed that similar numbers of dependants were returned in years before 2002, the broad upward trend is less distinct. In any case, the figures are considered by the government as an illustration of improved enforcement procedures and more effective AVR schemes.¹⁶ However, the figures for return need to be seen in the context of overall asylum application and recognition rates. As noted above asylum applications in the UK increased up until a peak of 84,130 in 2001 and have since dropped significantly with 25,710 applications in 2005 (Home Office 2006). Recognition rates have hovered between 70 and 80 per cent over the last ten years, though the rate of successful appeals has increased from six per cent in 1997 to around 20 per cent for the last four years.

¹⁴ Gibney and Hansen (2003) *Deportation and the Liberal State*

¹⁵ Home Office (2007) *Press Release: Record High On Removals Of Failed Asylum Seekers*

¹⁶ Home Office (2007) *Press Release: Record High On Removals Of Failed Asylum Seekers*

Table 1: *Removals and voluntary departures of asylum seekers from the UK*¹⁷



This suggests that the numbers of removals do not reflect the removal of a majority of asylum seekers whose claims and appeals have failed (Home Affairs Committee). There is difficulty in making this assumption, because of the lack of embarkation controls and the difficulty of comparing different cohorts due to time lags in the system. This is discussed further below with relation to the tipping point performance target.

Across Europe, various governments' statistics suggest that there has been a consistent gap between the number of asylum seekers identified for removal and the numbers actually removed. Gibney and Hansen collate figures related to applications and removals for selected European countries and Canada up until 2000.¹⁸ It is their conclusion that these countries have received an increasing number of asylum applications, an increase that has not been matched by either refugee recognition rates or removals. A more comprehensive but less recent picture is provided by an ICMPD report which indicates a similar trend in terms of the gap between the number of people identified for removal and the actual number of removals carried out.¹⁹

Who are the removed and where are they removed to?

Statistics are also collected on the nationality and destination of those asylum seekers removed from the UK. These figures are available annually and quarterly from the Home Office Research Development and Statistics team. Table 2 shows the top ten nationalities of asylum seekers removed for the first quarter of 2007, the latest available figures.²⁰ While this tells us little beyond the facts for that quarter, it is indicative of the figures for the previous year. Asylum seekers from Turkey, Serbia & Montenegro, Iraq, Afghanistan and Pakistan have consistently made-up the top five for the previous eighteen months. A combination of the number of people with these nationalities applying for asylum and changing conditions on the ground in those countries is likely to affect this top ten.

¹⁷ Home Office (2006) *Asylum Statistics United Kingdom 2005* and Home Office (2007) *Public Performance Target*. Note that the 2006 figure represents the sum of the four quarterly figures, so is subject to change in the finalised annual figures to be released in August 2006.

¹⁸ Gibney and Hansen (2003) *Deportation and the Liberal State*

¹⁹ The International Centre for Migration Policy Development (2002) *Study On Return - A Swiss Perspective*

²⁰ Home Office (2007) *Asylum Statistics: 1st Quarter 2007 United Kingdom*

Table 2: *Top 10 asylum removal nationalities (principal applicants) Q1 2007*

Turkey	370
Afghanistan	290
Serbia & Montenegro	270
Iraq	160
Pakistan	150
Iran	145
India	140
Nigeria	140
Sri Lanka	110
Eritrea	100
Other nationalities	1,185
Total	3,055

The countries to which individuals are most frequently returned have largely mirrored the top ten nationalities of removed asylum seekers across the last four quarters. Although individuals can be returned to a safe country through which they have transited as well as to their country of origin, the overwhelming majority return to the country of their nationality. In 2005, over 77 per cent of removals involved the return of asylum seekers to their country of origin. Two anomalies were asylum seekers from Albania and Serbia Montenegro, with just over 50 per cent being returned to another, non-EU country.²¹

Difficulties in collecting statistics and problems with interpretation

There are numerous difficulties with collecting all asylum statistics that apply to the case of removals. Genuine errors and resource limitations can affect the accuracy of Home Office statistics as it is difficult to be statistically comprehensive on an issue as complex as asylum. As is discussed below in relation to the tipping point there is limitations in making links and comparisons across data sets as opposed to cohort tracking, something that is not considered a sensible use of resources. Furthermore, in 2003 the Home Affairs Committee suggested that unrealistic nominal targets for removal are insensitive to the changing global conditions that largely dictate flows of asylum-migration and have the capacity to lead to people being wrongly removed.²²

The tipping point public performance target

The government's target to remove more asylum seekers than the predicted number of failed asylum claims each month was introduced to assess the efficacy of government policies intended to increase removal numbers and assuage the public perception that a growing population of failed asylum seekers was being allowed to remain in the UK. In 2006 the target was met for the first time. This has been seen by the government as redemption for policies that are intended to encourage voluntary return and enforce removal as well as policies that have been introduced to reduce the number of people with 'unfounded asylum claims' reaching the UK. It has been suggested that the balance of these two policies is indicative of an efficiently functioning asylum system.²³

The performance target calculates the number of people removed from the UK each month (including dependants) as a percentage of the number of asylum claims predicted to be unfounded. The 'tipping point' is reached with a figure over 100 per cent and the performance target is then met. As Table 3 shows the target has been met in only three quarters of the

²¹ Home Office (2006) *Asylum Statistics United Kingdom 2005*

²² House of Commons Home Affairs Committee (July 2003) *Asylum removals: Fourth report of session 2002-03*

²³ Home Office (2007) *Press Release: Record High On Removals Of Failed Asylum Seekers*

previous 12, with performance in 2004 being less than half the government's target. However, taking at face value the two figures that are used to calculate the performance target, there

Table 3: *Tipping point public performance target 2004-2006*²⁴

Period	Predicted number (including dependants) of unfounded claims	Total removals (including dependants)	Performance
2004 Q1	7,910	4,090	52%
2004 Q2	7,135	3,790	53%
2004 Q3	7,980	3,595	45%
2004 Q4	7,660	3,435	45%
2004	30,685	14,910	49%
2005 Q1	6,265	3,485	56%
2005 Q2	5,305	3,765	71%
2005 Q3	5,545	4,225	76%
2005 Q4	5,010	4,210	84%
2005	22,125	15,685	71%
2006 Q1	4,375	5,085	116%
2006 Q2	4,155	5,250	126%
2006 Q3	4,690	3,815	81%
2006 Q4	4,560	4,085	90%
2006	17,780	18,235	103%

would appear to be a trend towards meeting the target. The predicted number of failed claims has fallen consistently since 2004; simultaneously the number of removals has increased across the same period. Despite the upward trend towards meeting the performance target, previous failure to do so means that the population of asylum seekers whose claims have failed but who remain in the UK has, by this method of calculation, been on the increase since 2004 and only now is beginning to be reduced.

A key component of the performance target calculation is the predicted number of unfounded claims. The Home

Office uses historical data to calculate the percentage of asylum applicants in a given month that are predicted to be unfounded.²⁵ An unfounded claim includes applicants that have withdrawn an application, been refused asylum and have not appealed or have no in-country right to appeal, or have had an appeal turned down. To predict the number of unfounded claims, the Home Office uses the outcome of initial decisions from the previous two quarters to predict the percentage of unfounded claims for the current quarter: this comprises refusals and withdrawals of initial claims. To take into account appeals this percentage is then multiplied by the percentage of those failed applicants that chose to appeal and multiplied again by the percentage of successful appeals. Finally, this figure is subtracted from the original percentage of unfounded claims. The calculation for the prediction of the number of unfounded claims is:

$$(\text{refused claims} + \text{withdrawn claims}) - (\text{percentage of initial refusals} \times \text{percentage of refusals appealed against} \times \text{percentage of appeals allowed})$$

For example, to calculate figures for December 2006: 66 per cent of initial decisions were refused across the previous six months and 3 per cent of claims were withdrawn; of the refusals, 56 per cent appealed and of these appeals 60 per cent were allowed. So the calculation for the predicted number of unfounded claims is:

$$(66\% + 3\%) - (66\% \times 56\% \times 60\%) = 22\%$$

There are a number of potential difficulties with the assumptions and implicit comparisons made in the calculation of the public performance target as well as some opposition as to

²⁴ Home Office (2007) *Public Performance Target*

²⁵ *Ibid.*

whether it should be considered a target that represents the performance of the Home Office at all. Firstly, the method of predicting the number of unfounded claims could be problematic. The asylum determination procedure judges claims on their individual merits, a judgement that will depend additionally on conditions in the applicant's country of origin. Furthermore, the constituent nationalities that comprise the total number of monthly asylum applicants vary each month. Taking these two facts into account it is difficult to predict the recognition rate for a current cohort based on a selection of individuals from a number of previous cohorts. The Home Office does acknowledge that there are problems with this cross-sectional approach but argues that using figures from across a six month period is sufficient for the predictions to be 'robust and stable and the impact of seasonal differences' to be reduced.²⁶ It may be countered that non-seasonal geo-political events have a more significant impact on fluctuations in asylum applications and recognition rates than anything that could be considered seasonal.

Secondly, using cross-sectional analysis instead of cohort analysis has particular implications for the statistical comparison being made. Those being removed in quarter four 2006, for example, could have realistically lodged their original asylum claim several years ago. Equally they could have lodged and withdrawn the claim in the previous quarter. Consequently the removal cohort is likely to be made up of individuals that could originally have lodged their claim at any time across several years. It is, therefore, problematic to suggest that a comparison of the removal of these individuals with the percentage of claims predicted to be unfounded in that particular month can be considered as a measure of the overall functioning and efficiency of the asylum system.

The performance target is indicative of whether the nominal population of asylum seekers with 'unfounded claims' resident in the UK has increased or decreased in any given month. There is certainly some political interest in this, but for the reasons given above it does not necessarily represent whether the asylum system as a whole is functioning efficiently. Furthermore, this figure can only be indicative of fluctuations in the remaining population of asylum seekers with unfounded claims, as the lack of embarkation controls at UK ports makes it impossible to count all those who leave voluntarily without informing the immigration authorities. A more instructive set of statistics on removals might be the proportion of asylum seekers with unfounded claims to actually be removed within a given time frame.

²⁶ *Ibid.*

Process and methods of removal

Decision to remove

In order for an asylum seeker to be successfully removed, the Home Office is under an obligation to ensure that the removal will not be in breach of international law. The 1951 UN Refugee Convention and the European Convention on Human Rights (ECHR) both contain articles pertinent to the removal of asylum seekers. Article 33 of the 1951 Refugee Convention refers to the principle of *non-refoulement*. States are prohibited from returning refugees to countries where their life or freedom would be threatened on account of one of the five Convention reasons, these being race, religion, nationality, membership of a particular social group or political opinion. This protection is not afforded to cases where a refugee is a danger to the security of a country, for example when they have been convicted of a serious crime. Article 3 of the ECHR complements the standard of *non-refoulement* by requiring that no one shall be subjected to torture or to inhuman or degrading treatment or punishment. For a removal to be in line with international law, these two principles always need to be taken into account by the government and removal orders are only meant to be issued when all legal avenues and remedies have been exhausted.²⁷

In addition to these international standards, the Home Office's Immigration Rules outline the factors that should be taken into account when deciding whether to remove someone eligible for 'administrative removal' or deportation. These include the age of the applicant; their length of residence in the UK; the strength of their connections with the UK; their personal history and any domestic or compassionate circumstances.²⁸ In other removal cases (port removal and illegal entry) there are no equivalent factors set out in the immigration rules; however legal representatives are able to put forward arguments relying on similar criteria.²⁹

Procedures

The Border and Immigration Agency (BIA) of the Home Office is responsible for removing asylum applicants without permission to stay in the UK at the end of the asylum process. The BIA has an established network of thirty-one local enforcement and removal offices, which deal with the all the procedural aspects of removal, including organising travel documents, arranging transport to airports and purchasing flight tickets.³⁰

When a decision that a person is to be removed has been made, a notice will be issued to the person concerned informing them of the decision and of any right of appeal. Following the issue of such a notice, an Immigration Officer may authorise detention or make an order requiring them to report regularly to the police, pending the removal.³¹ In cases where a person is not detained, they will normally be issued a notice that they must attend a port at a particular time in order to be removed, as a condition of their existing temporary admission.³²

Since March 2007 it has been Home Office policy to give failed asylum seekers at least 72 hours notice before removal. This timeframe has to include two working days to allow an

²⁷ Joint Council for the Welfare of Immigrants (2006) *Immigration, nationality and refugee Law handbook*

²⁸ Home Office (2007) *Immigration Rules, Chapter 13*

²⁹ Joint Council for the Welfare of Immigrants (2006) *Immigration, nationality and refugee Law handbook*

³⁰ Home Office (2007) *List of local enforcement offices*

³¹ Home Office (2007) *Immigration Rules, Chapter 13*

³² Joint Council for the Welfare of Immigrants (2006) *Immigration, nationality and refugee Law handbook*

asylum seeker to make an application for judicial review.³³ Same day removal occurs only in exceptional circumstances and must be sanctioned by an officer at Assistant Director level or above within the Home Office/BIA, with a reference to that officer made in writing to the applicant.³⁴

Travel documents are required for all asylum seekers facing removal and are arranged by immigration staff at one of the Local Enforcement Offices. In cases where an asylum seeker does not possess any travel documents, the Home Office can issue its own one-way identity documents. However, certain states only accept returned asylum seekers with documentation from their own country and in these instances the Home Office is required to obtain documentation from the asylum seeker's original national authorities – usually the consular mission in the UK - which can considerably delay the removal process.³⁵

Removal directions

Removal directions are given to all four types of removal outlined in the definitions section of this briefing, i.e. someone who is refused leave to enter; is served with notice of illegal entry; is liable to be removed 'administratively' under Section 10 of the 1999 Act, or has had a deportation order signed against them. The removal directions are passed to the captain of a ship, the pilot of a plane or the train operator, as well as being issued to the person facing removal.³⁶

Detention

The use of detention is an integral part of the Home Office's strategy to facilitate the removal of asylum seekers with unfounded claims. This is illustrated most notably in the name change from 'detention centres' to 'Immigration Removal Centres' (IRCs) introduced under the Nationality Immigration and Asylum Act 2002 and in the government's commitment to increasing the capacity of the detention/removal estate.³⁷

In a recent enquiry into the treatment of asylum seekers, the Joint Committee on Human Rights recommended that the Home Office should refrain from detaining asylum seekers with no imminent prospect of removal and allow detainees sufficient time to mount legal challenges to removal.³⁸

Use of force

Removal may be carried out by force if necessary. Chapter 40 of the Operational Enforcement Manual states that where a person shows violent tendencies or a determination not to be removed, a 'discipline escort' may be required. Where more than two escorts are deemed necessary or in particularly disruptive cases, a prior planning meeting is usually arranged to discuss the case. The meeting may include the escorts, BIA representatives and where applicable, police officers, social services and the designated carrier.³⁹

³³ Home Office (March 2007) *Change of policy relating to the circumstances in which removal will be deferred following challenge by judicial review*

³⁴ Joint Council for the Welfare of Immigrants (2006) *Immigration, nationality and refugee Law handbook*

³⁵ *Ibid*

³⁶ *Ibid*

³⁷ For further information on the use of detention in the asylum process, refer to the second IAC briefing.

³⁸ Joint Committee on Human Rights (March 2007) *The treatment of asylum seekers*, Tenth report of session 2006-7

³⁹ Home Office (2007) *Operational Enforcement Manual, Chapter 40 - Overseas escorts*

'Reasonable force' may only be used where necessary to keep a detainee in custody, to prevent violence and to prevent the destruction of property. Reasonable force may include the use of mechanical restraints where such restraint is proportionate and is the minimum necessary to ensure safe removal. Only those control and restraint techniques and procedures that have been approved by the government can be used. Mechanical restraints include the use of handcuffs and in very exceptional cases, leg restraints. No other form of restraint is permitted.⁴⁰ To protect both escort staff and asylum seekers from unfounded allegations of mistreatment, CCTV equipment has been installed in escort vans.⁴¹

European Council Guidelines on Forced Return, adopted by the Council of Europe in May 2005, provide clear guidance on several areas pertaining to the handling of asylum seekers during removal. Guideline 19 states that any means of restraint must be proportionate, any coercive methods that are likely to obstruct airways should not be used and any medication should only be administered on the basis of a medical decision, i.e. not for the purposes of sedation.⁴²

Methods of transportation

The removal of failed asylum seekers is outsourced to private contractors and since April 2005, Group 4 Securicor⁴³ has been the main provider of all in-country escorting within the UK, as well as all escorted and non-escorted repatriation services overseas. The company is responsible for ensuring that all asylum seekers board a ship, aircraft or train in accordance with removal directions.⁴⁴ However, the final decision to carry individuals subject to removal is at the discretion of the airline and the pilot, or in the case of removals by sea or train; the captain or train operator.⁴⁵

Most removals take place via scheduled commercial flights. Some transport companies refuse to carry asylum seekers and many airlines place a limit on the number of immigration places available on each flight. A pilot can quite easily refuse to carry an asylum seeker facing removal on a scheduled flight, particularly if the asylum seeker causes a disruptive protest.⁴⁶

One solution to overcoming the problems associated with scheduled flights has been the extended use of charter flights for removal purposes. Over the last year the Home Office has significantly increased the number of charter flights to certain countries as part of a continued effort to reduce the number of asylum seekers with unfounded claims remaining in the UK. A total of 78 charter flights were arranged between February 2006 and March 2007, 60 of which were flights to Eastern Europe and 14 to Afghanistan. Other destinations included Kurdistan, Democratic Republic of Congo and Vietnam. Observers and anti-deportation campaigners expect the use of charter flights for the large-scale 'group' removal of refused asylum seekers to increase in the coming months.⁴⁷

⁴⁰ *Ibid*

⁴¹ Amnesty International (2005) *Seeking asylum is not a crime: detention of people who have sought asylum*

⁴² Council of Europe (4 May 2005) *Twenty guidelines on forced return*

⁴³ http://www.g4s.com/uk/uk-justice/uk-justice-detention_escorting.htm

⁴⁴ National Audit Office (July 2005) *Returning failed asylum applicants – Report by the Comptroller and Auditor General*, London: The Stationery Office

⁴⁵ House of Commons Home Affairs Committee (July 2003) *Asylum removals - Fourth report of session 2002-03*

⁴⁶ *Ibid*

⁴⁷ NCADC (April 2007) *Increased use of charter flights*

Where are people removed to?

To where an asylum seeker is removed is dependent upon which of the four removal procedures are used to enforce their departure. For deportation cases or those classified as administrative removal, asylum seekers can be sent to a country of which they are a national, or to which there is 'reason to believe' they will be admitted. For cases of port removal and illegal entry, asylum seekers can be removed to a country:

- of which they are a national;
- which has provided them with a travel document e.g. passport;
- from which they embarked for the UK; or
- to which there is 'reason to believe' they will be admitted.

If the Home Office is seeking to return someone to a country on the grounds that there is reason to believe they will be admitted, there must be clear evidence that the asylum seeker is likely to be accepted. It is not sufficient for the Home Office to claim that the person ought to be admitted.⁴⁸

If an asylum applicant enters the UK via a third country within in the European Union, the Home Office usually seeks to remove the asylum seeker under the terms of the Dublin II Regulation to the relevant country to decide the application – these are known as third country cases. Where the third country accepts the case, these applicants are relatively uncomplicated to remove. Asylum seekers from third country cases may not be removed from the UK whilst their applications are outstanding and until the whole appeal process has been exhausted.⁴⁹

Non-suspensive appeal (NSA) cases from one of the 24 countries⁵⁰ that the Home Office considers to be generally safe and certifies the claim as 'clearly unfounded' may be removed without an in-country appeal and can only appeal against a negative asylum decision from abroad.⁵¹ A draft order was laid in Parliament on 22 May 2007 proposing designation of NSA for the following countries:⁵²

- Bosnia-Herzegovina
- Gambia (in respect of men)
- Kenya (in respect of men)
- Liberia (in respect of men)
- Malawi (in respect of men)
- Mali (in respect of men)
- Mauritius
- Peru
- Sierra Leone (in respect of men).

Voluntary return

An asylum seeker may decide not to continue their asylum claim but to return to their country of origin instead. This could be because the situation in the country of origin has improved and they feel it is safe to return. If so, they may be eligible for assistance from the IOM. The IOM runs the Voluntary Assisted Returns and Reintegration Programme (VARRP), which enables

⁴⁸ Joint Council for the Welfare of Immigrants (2006) *Immigration, nationality and refugee Law handbook*

⁴⁹ National Audit Office (July 2005) *Returning failed asylum applicants – Report by the Comptroller and Auditor General*, London: The Stationery Office

⁵⁰ These being Albania, Bolivia, Brazil, Ecuador, India, Jamaica, Macedonia, Moldova, Mongolia, Montenegro, South Africa, Serbia, Ukraine, Ghana (male applicants only) and Nigeria (male applicants only).

⁵¹ Joint Council for the Welfare of Immigrants (2006) *Immigration, nationality and refugee Law handbook*

⁵² <http://press.homeoffice.gov.uk/press-releases/asylum-apps-continue-to-fall>

asylum seekers at any stage in their asylum claim to receive help and support in returning home.⁵³ The voluntary assisted return programme was established in 1999 following the Kosovo crisis. In July 2002 it became known as the Voluntary Assisted Return and Reintegration Programme - VARRP - with the addition of the Reintegration Fund.⁵⁴

The VARRP is open to asylum seekers of any nationality, whose asylum claim is under one of the following criteria:

- waiting for a Home Office decision;
- refused by the Home Office;
- appealing against an asylum decision;
- withdrawn asylum application;
- granted Humanitarian Protection or Discretionary Leave.

Once an application for voluntary return has been made to IOM there are checks to be made to ensure the person is eligible for the scheme. The time frame for the return depends on various factors such as Home Office approval, obtaining travel documents, availability of commercial flights and any special needs to be taken into consideration for the return travel. Applicants are entitled to withdraw from the programme at any stage; however the credibility of an outstanding asylum application may be adversely affected if the Home Office is made aware that the person has applied for the scheme.⁵⁵

The support offered under the VARRP includes assistance with obtaining travel documentation and financial support to cover the costs of the returnee's travel expenses as well as costs for immediate arrival and reception. The scheme also allows for longer term financial support for reintegration, for example assistance with setting up businesses, vocational training and education. The Home Office is currently offering an enhanced reintegration package worth £2,500 for every application made before the end of June 2007; after this date the package will be reduced to its original level of £1,000 per applicant. The support is delivered in the form of targeted payments rather than cash, to meet the costs for vocational training courses at colleges or to help buy equipment and supplies to set up a small business.⁵⁶

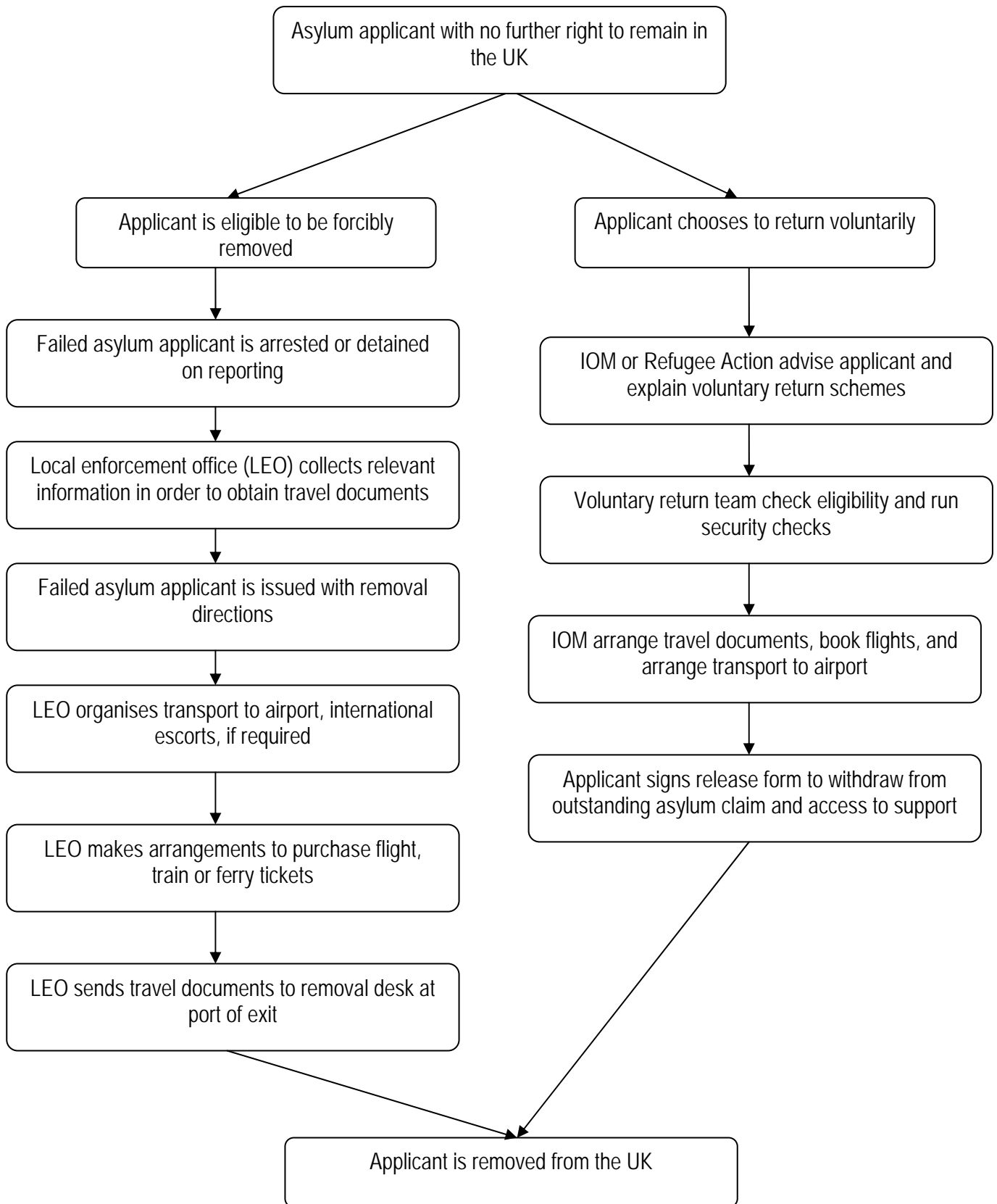
⁵³Joint Council for the Welfare of Immigrants (2006) *Immigration, nationality and refugee Law handbook*

⁵⁴Refugee Action (February 2005) *Choices - voluntary return conference report*

⁵⁵<http://www.ind.homeoffice.gov.uk/lawandpolicy/voluntaryreturn/varrpquestionsandanswers>

⁵⁶IOM (June 2007) *Enhanced package - press release*

Diagram of the asylum removal process⁵⁷



⁵⁷ Diagram adapted from: National Audit Office (July 2005) *Returning failed asylum applicants*

Barriers to removal

The statistical context provided in the previous section suggests that despite a nominal increase in the numbers involved in removal or voluntary return from the UK, there is still a gap between the number of unfounded claims across the last ten years and the numbers of removals actually carried out. The statistics appear to contradict the Immigration Minister's evidence given to the Joint Committee on Human Rights earlier this year that 'there are very few countries to which asylum seekers cannot be removed'.⁵⁸ This section outlines the barriers to removal that generate this statistical gap. Most of the barriers to removal affect the state's ability to actually enforce the removal of asylum seekers, some of which are practical and others self-imposed through the structures of a liberal democracy. In this respect, Gibney and Hansen suggest that the state has not lost control over entry to its borders, as often claimed; rather the state has lost control over movement within and from its borders.⁵⁹ Additionally, the actions of the state are often frustrated by a lack of co-operation from the other actors involved: the individual in question and the country to which they are to be removed.⁶⁰

Practical and institutional barriers

In a number of instances, removal to a particular country is impossible for practical or institutional reasons, irrespective of whether all the actors involved are co-operating and willing to comply with removal instructions.

- *Lack of travel documents and identification* – Many asylum seekers arrive in the UK without any (or adequate) travel or identity documents. The realities of global asylum-migration often necessitate clandestine movement to the country of asylum without documents or can mean that documents expire during protracted determination procedures, while some asylum seekers deliberately destroy their documents.⁶¹ Without identification, government authorities find it difficult to ascertain how an individual arrived in the UK or where he or she should be returned to. Additionally, without suitable or adequate documents, carriers, transit countries and countries of origin are unlikely to agree to play their part in the removal process.⁶²
- *Lack of institutional co-ordination* – As the section on removal procedures points out, the enforced removal can involve a number of different agencies. Evidence submitted to the House of Commons Home Affairs Committee by Neil Gerrard MP suggested that there is a bureaucratic gap between decision making and enforcement.⁶³ The National Audit Office also found that a lack of co-ordination between application, support and enforcement processes affected the efficiency of removal procedures.⁶⁴
- *Lack of international airport, safe route or carrier* – Removal can be physically impossible to countries that do not have an international airport or a safe port of entry.⁶⁵ This can be frequently the case in times of conflict. Furthermore, carriers may refuse to operate certain routes due to safety concerns.

⁵⁸ Joint Committee on Human Rights (March 2007) *The treatment of asylum seekers, Tenth report of session 2006-7*

⁵⁹ Gibney and Hansen (2003) *Deportation and the Liberal State*

⁶⁰ Noll (1999) *Rejected asylum seekers: the problem of return*

⁶¹ Gibney and Hansen (2003) *Deportation and the Liberal State*

⁶² House of Commons Home Affairs Committee (July 2003) *Asylum removals: Fourth report of session 2002-03*

⁶³ *Ibid.*

⁶⁴ National Audit Office (2005) *Returning failed asylum applicants*

⁶⁵ ECRE (2005) *The Way Forward: The Return of Asylum Seekers whose Applications have been Rejected in Europe*

- *Country of origin conditions* – There are notable cases where the uncertainty and insecurity of the conditions on the ground in an asylum seekers' country of origin simply do not permit the state to return the individual. To do so, it is argued, contravenes Article 3 of the European Convention of Human Rights.⁶⁶ It may be a cause of confusion to some that an individual that cannot be returned is not eligible for any form of leave to remain in the UK. The criteria that prohibit return are wider than those of the Refugee Convention that permit leave to remain. While leave to remain primarily requires the threat or evidence of individual persecution, the prohibition of return can be on more general grounds of safety and security.

Competence and compliance of main actors

Removal can take place without enforcement when the interests of all parties intersect and all are willing to comply with the removal directions. When this is not the case, enforcement or negotiation is required; in such instances, a lack of co-operation amongst the main actors, the host state, the individual and the receiving state, can further frustrate the enforcement of removal. The remainder of this section discusses the obstacles to full co-operation from the perspective of each of the main actors.

Host government The host government needs removal, it is argued, to provide credibility for the asylum system, to act as a disincentive for those not in need of protection hoping to gain entry to the UK through the asylum system and to assuage public opinion that such 'abuse' is not taking place.⁶⁷ The state, however, has an indifferent record on removal in terms of the numbers, with removal remaining at best a 'residual immigration control device'.⁶⁸ In part, this is a consequence of what Joppke calls 'the self-imposed limits of sovereignty' that rein in the powers of the state and give way to concerns over the humane treatment of those individuals subject to removal.⁶⁹ This relates back to the final practical barrier to removal outlined above. Despite the fact that an individual has been deemed not to be in need of protection, an additional decision has to be made over the feasibility and morality of returning this individual to his or her country of origin. In these cases, the powers of the government are overridden by the powers of judiciary and the body of human rights law from which it takes its cue. This often takes the form of a judicial review, something NGOs and refugee activists argue that is crucial to be made available to asylum seekers issued removal directions.

In addition to the judicial aspect to the self-imposed limits of sovereignty, there is also a political aspect represented by the 'schizophrenic attitude' of the public to immigration and removal.⁷⁰ Although public opinion across Western Europe and North America broadly supports tight immigration controls, there is less support toward and often indignation for the manner in which immigration removals, notably asylum removals, are carried out. This is exacerbated if such practices involve children or other vulnerable groups and can often generate significant local resistance to such practices. Examples of this phenomenon are discussed below.

⁶⁶ Amnesty International et al (2005) *Common principles on removal of irregular migrants and rejected asylum seekers*

⁶⁷ Gibney and Hansen (2003) *Deportation and the Liberal State*, p15

⁶⁸ *Ibid.*, p10

⁶⁹ Joppke, C. (1999) *Immigration and the Nation-State: The United States, Germany and Great Britain*

⁷⁰ Gibney and Hansen (2003) *Deportation and the Liberal State*, p12

Finally, further to the political costs, removal entails considerable economic costs to the state. The practice is particularly inefficient when removal requires enforcement, as is often the case. If an asylum seeker that is issued with a removal direction does not wish to be removed, the individual can be difficult for the authorities to locate. Furthermore, successful enforcement requires the employment of specialist security-related companies to work with the Home Office.⁷¹ A National Audit Office report on the costs of removing failed asylum seekers in the UK calculated that the Home Office spent £285 million on removals and further concluded that the Home Office could release up to £28 million per year if its procedures were more efficient.⁷² To mitigate the costs of locating people, the government has increasingly detained asylum seekers that are to be removed, a policy that has its own political and economic costs as well as generating concerns over the health and well-being of those detained.⁷³ These economic costs are often exacerbated when combined with some of the practical difficulties noted above, particularly the loss of travel documents.

These three reasons give some insight into the apparent reluctance or inability of the state to carry out removals to the extent of removing all asylum seekers with no legal right to remain in the UK. However, even when the state is willing the other actors involved in removal may not be.

Individual asylum seekers The fact that in most cases removal is enforced, suggests that not all asylum seekers that are required to leave the UK comply with the removal directions they receive. There are a number of reasons for this.

- Many asylum seekers, irrespective of the merits of their asylum claims have risked and sacrificed a great deal of their personal wealth and security in order to get the opportunity to seek asylum in the UK.⁷⁴ For these individuals it can be very difficult to accept a negative decision and contemplate the prospect of returning to where they began their journey. In addition to fears about their safety as a result of attempting to seek asylum *from* the actions of their state, many may feel shame or be subjected to resentment on returning to their local communities.⁷⁵ In these situations, the asylum seeker may assess the risks and judge that there is more to be gained from absconding, attempting to stay within their existing ethnic or national community within the UK or attempt to find work in the black economy.⁷⁶
- In some asylum cases, the determination procedure can take several years. In this time asylum seekers may feel they have integrated into the British society or feel that they now have a stake in their local communities.⁷⁷ This is epitomised in the case of asylum seeking families whose children may attend the local school and have received the majority or all their education in the UK.⁷⁸ In this instance, asylum seekers may not feel that their family is equipped to return to their country of origin and will subsequently resist attempts to be removed there.

⁷¹ Gibney and Hansen (2003) *Deportation and the Liberal State*, p11

⁷² National Audit Office (2005) *Returning failed asylum applicants*

⁷³ See previous IAC briefing on Detention

⁷⁴ Noll (1999) *Rejected asylum seekers: the problem of return*

⁷⁵ Blitz et al (2005) 'Non-voluntary return? The politics of return to Afghanistan'

⁷⁶ Black et al (2006) *Return of forced migrants*

⁷⁷ See evidence given by Nicola Rogers of the Immigration Law Practitioners Association to the **House of Commons Home Affairs Committee** (July 2003) *Asylum removals: Fourth report of session 2002-03*

⁷⁸ See evidence given to the **Joint Committee on Human Rights** (March 2007) *The treatment of asylum seekers, Tenth report of session 2006-7*

- There is some evidence to suggest that continued welfare support for asylum seekers whose claim has failed acts as a disincentive to voluntary removal.⁷⁹ Consequently, the more costly and procedurally difficult enforced removal is required where voluntary return does not materialise. Such evidence was behind the UK government's decision in 2004 to remove welfare support for those unwilling to comply with removal directions under Section 9 of the Nationality, Immigration & Asylum Act (Treatment of Claimants, etc.) 2004. This policy may have been intended to increase the take-up of voluntary return, yet it has been heavily criticised for leaving asylum seeking families destitute.⁸⁰

Receiving country The final condition required to ensure the removal of asylum seekers is the co-operation of the country to which asylum seekers are being returned. This can be the country of origin or a safe country through which the asylum seeker has travelled if the country of origin is deemed unsafe. However, just as the host country wishes to enact upon its sovereign right to remove those with no legal right to remain, receiving countries too have a stake in deciding who enters their territory. While Article 1(A) of the Geneva Convention prohibits the refusal to re-admit nationals of the country in question, this is often challenged by the receiving state who may claim that returnees do not have the correct documentation. The following are some of the considerations a receiving country may have in refusing entry.

- A receiving country may have a social or economic interest in limiting or controlling their population. In times of conflict, there may be reluctant to re-admit supporters of resistance groups. Other countries may be unwilling to re-admit large numbers of people for fears that they may not be able to be absorbed economically or they may compromise fragile security situations.⁸¹
- Receiving countries may also be unable to provide assurances about the protection and treatment of those that are returned as required by the returning state.⁸² This is a crucial part of Readmission Agreements that are negotiated between the host country and countries of origin. These agreements attempt to enforce the contents of the Chicago Convention, which requires countries of embarkation (unless transit countries) to accept back individuals refused entry elsewhere.⁸³ There is concern that these readmission agreements can become political and that punitive measures used to force through these agreements may affect the potential for an individual to be returned and reintegrated safely.⁸⁴
- If, for one of the reasons mentioned above, an individual is unable to be returned to their country of origin, then the host government will look for an alternative country to which individuals can be returned. These 'third countries' tend to be a safe country through which the asylum seeker has passed. There is much controversy over what represents a safe country.⁸⁵ Furthermore there have been a number of policy developments across the EU that attempt to facilitate the return of individuals that have passed through a fellow Member State on their way the UK. These two issues are dealt with in the following section. However, there is resistance in both instances to the use of 'third

⁷⁹ See **Black et al** (2006) *Return of forced migrants*

⁸⁰ **ICAR** (2006) *Briefing: Destitution amongst refugees and asylum seekers in the UK*

⁸¹ **Noll** (1999) *Rejected asylum seekers: the problem of return*

⁸² **House of Commons Home Affairs Committee** (July 2003) *Asylum removals: Fourth report of session 2002-03*

⁸³ *Ibid.*

⁸⁴ **ECRE** (2005) *The Way Forward: The Return of Asylum Seekers whose Applications have been Rejected in Europe*

⁸⁵ **Gil-Bazo** (2006) 'The Practice of Mediterranean States in the context of the European Union's Justice and Home Affairs External Dimension. The Safe Third Country Concept Revisited'

country' removal as third countries tend to be a small number of countries that are on route to Western Europe, particularly Mediterranean and North African countries. It is argued that the policy of returning people to third countries exacerbates the existing unequal burden of asylum applications with the addition of an unequal burden of asylum removals.⁸⁶

⁸⁶ Noll (1999) *Rejected asylum seekers: the problem of return*

Treatment of asylum seekers

Concerns have been raised that the drive to meet performance targets may be leading to unnecessary or poorly planned removals and that in some instances asylum seekers are subject to mistreatment during the removal process.⁸⁷ These concerns are illustrated in more detail below:

Excessive use of force

Research by the Medical Foundation into the treatment of asylum seekers during removal highlighted several key issues: inappropriate and unsafe methods of force were used by private contractors; force was used after the removal attempt had been terminated; the use of force was continued after an asylum seeker had been restrained; and there was improper use of handcuffs, causing unnecessary wrist and nerve injuries. Twelve out of fourteen asylum seekers examined had experienced excessive or gratuitous force during removal attempts. The Medical Foundation recommends that automatic medical examinations should take place on any individual who is subject to a failed removal attempt and that perpetrators should be properly investigated and prosecuted.⁸⁸

The Home Office has been criticised for its heavy handed techniques in the past, for example the death of Joy Gardner in 1993 who died from asphyxiation whilst being deported to Jamaica.⁸⁹ Since this incident, a whole raft of guidelines on the use of force during removal procedures have been put in place by the Home Office.⁹⁰ In spite of these measures, however, criticisms remain concerning the excessive use of force, with organisations claiming it is difficult to believe that proper risk assessments are always fully carried out.⁹¹ A recent report by HM Chief Inspector of Prisons highlighted the continued and excessive use of handcuffing, including during public ferry crossings across the Irish Sea to Dungavel IRC in Scotland.⁹²

It is alleged that the Home Office's deportation targets lead to the prioritising of family removals, particularly if those families are headed solely by women. Refugee organisations believe that, due to the pressures on immigration staff to meet removal quotas, women with young children are being unduly targeted for removal because it is assumed they will be easier and less disruptive to remove.⁹³

Dawn raids

The removal of asylum seekers from their homes in the early hours of the morning is a regular method used by the Home Office to ensure a higher rate of successful removals. Dawn raids have caused a great deal of controversy in recent months and pressure has been brought to bear on the Home Office to end the practice.⁹⁴ It is argued that asylum seekers, particularly

⁸⁷ **Joint Committee on Human Rights** (March 2007) *The treatment of asylum seekers, Tenth report of session 2006-7*

⁸⁸ **Granville-Chapman, C., Smith, E. and Moloney, N.** (2004) *Harm on removal: Excessive force used against failed asylum seekers*, The Medical Foundation for the Care of Victims of Torture

⁸⁹ **Fekete, L.** (2005) *The deportation machine: Europe, asylum and human rights*, Institute of Race Relations

⁹⁰ Refer to the section on **Use of force** on p. 12

⁹¹ **Joint Committee on Human Rights** (March 2007) *The treatment of asylum seekers, Tenth report of session 2006-7*

⁹² **HM Inspectorate of Prisons** (December 2006) *Report on an announced inspection of Dungavel House Immigration Removal Centre*

⁹³ **Fekete, L.** (2005) *The deportation machine: Europe, asylum and human rights*, Institute of Race Relations

⁹⁴ **Scottish Refugee Council** (February 2007) *Response to letter in Sunday Herald re dawn raids*

families with children, can become extremely distressed by the unannounced arrival of immigration officials to their homes whilst they are sleeping. Furthermore, early morning or weekend arrests can make it particularly difficult for asylum seekers to contact legal representatives.⁹⁵

In evidence provided to the Joint Committee on Human Rights (JCHR) recent enquiry into the treatment of asylum seekers, Her Majesty Chief Inspector of Prisons stated that the removal process should be managed with greater dignity and safety, by ensuring that asylum seekers are fully informed about what is happening to them at all times in the process.⁹⁶

Home Office guidance stipulates that pastoral visits should take place before the removal of families, so that procedures can be properly explained and to allow time for families to fully prepare themselves.⁹⁷ The Scottish Refugee Council claim that this does not happen in practice and where pastoral visits do take place they are carried out primarily as intelligence gathering visits to determine the most suitable time to carry out the removal, rather than to ensure children's needs are fully met.⁹⁸

Personal property

There are reports that the impromptu way in which asylum seekers can be taken to IRCs prior to removal does not allow sufficient time for asylum seekers to gather their personal belongings, including medication and childcare equipment, or sort out paperwork and personal affairs.⁹⁹ The Home Office, in evidence given to the JCHR, has recognised that there are problems in ensuring that those facing removal are given time to put their affairs in order and be reunited with their possessions.¹⁰⁰ This could be attributed to the fact that there are no Home Office guidelines stipulating that asylum seekers must be given enough time to wind up their affairs before being removed.¹⁰¹

Access to legal advice¹⁰²

Access to legal advice and representation becomes particularly acute for asylum seekers facing imminent removal, particularly if, as suggested above, they are arrested at times when legal representatives are less likely to be contactable. In a Home Affairs Committee report on asylum removals, the organisation Bail for Immigration Detainees identified that in some asylum cases notice of removal is not given to legal representatives. The Law Society called for a duty on all immigration officers to inform an asylum seeker facing removal about the availability of legal advice and their rights of appeal on human rights grounds.¹⁰³ Furthermore,

⁹⁵ Joint Committee on Human Rights (March 2007) *The treatment of asylum seekers, Tenth report of session 2006-7*

⁹⁶ *Ibid.*

⁹⁷ Home Office (March 2006) *Family removals policy*

⁹⁸ Joint Committee on Human Rights (March 2007) *The treatment of asylum seekers, Tenth report of session 2006-7*

⁹⁹ House of Commons Home Affairs Committee (July 2003) *Asylum removals, Fourth report of session 2002-03*

¹⁰⁰ Joint Committee on Human Rights (March 2007) *The treatment of asylum seekers, Tenth report of session 2006-7*

¹⁰¹ House of Commons Home Affairs Committee (July 2003) *Government response to the committee's fourth report: Asylum removals, Second special report of session 2002-03*

¹⁰² For further information on access to legal advice refer to the 1st IAC briefing on the asylum determination process.

¹⁰³ House of Commons Home Affairs Committee (July 2003) *Government response to the committee's fourth report: Asylum removals, Second special report of session 2002-03*

in evidence submitted to the JCHR enquiry on the treatment of asylum seekers, the Immigration Law Practitioners' Association (ILPA) stated that the Home Office had acted unlawfully in the past by failing to allow detainees enough time to mount challenges to prevent removal.¹⁰⁴

Community cohesion

The public attitudes of local communities towards asylum seekers facing removal can be both positive and negative in nature. Campaigns to keep families or individuals in the UK have been known to gain significant local press coverage and sometimes national press coverage, especially when political pressure is exerted in the form of an MP's support.¹⁰⁵ The National Coalition of Anti-Deportation Campaigns (NCADC) is the main organisation involved in campaigning for asylum seekers to stay in the UK and provides advice on how to run such campaigns.

Whilst localised support is prevalent, in a memorandum to the European Council's proposals for a common EU returns policy, the Commission for Racial Equality stated it was concerned that the current removal process may negatively impact on race equality and community relations, and may perpetuate or encourage stereotypes of ethnic minority persons as criminals. For example, the anti-social times that removals are carried out may criminalise asylum seekers, especially in cases where families are hurriedly removed in the middle of the night and with no notice to collect their personal belongings.¹⁰⁶

Furthermore, the Home Office is openly keen to avoid a situation in which neighbours and the wider community become aware that a family is being removed and may potentially disrupt the process. However it is not made clear whether the potential disruption would be by neighbours seeking to help the family remain in the UK or not.¹⁰⁷

Monitoring removed asylum seekers

It is noted by a number of organisations that there is no systematic monitoring by government agencies of individuals that are removed from the UK. Once people are removed, the government considers them no longer their responsibility and does not attempt to monitor their safety and security. At the European level, the EU expulsions agency has no mandate to returns in terms of compliance with EU human rights obligations.¹⁰⁸ However, without monitoring the safety and security of those that are removed it is difficult to evaluate whether the process of removal is humane and sustainable. Furthermore, it can be dangerous for campaigning groups to attempt to fill this monitoring gap because of the security situation or restrictions on civil society groups in some countries of origin. An attempt to monitor Turkish Kurds returned from Germany was made by *Pro Asyl* in 2002. In each of the 40 cases, it was found that all were subjected to arrest and detention with some tortured again before managing to return to Germany.¹⁰⁹ Despite agreements Germany may have had about the treatment of returnees to Turkey or elsewhere, the findings of this report would cast doubt on

¹⁰⁴ **Joint Committee on Human Rights** (March 2007) *The treatment of asylum seekers, Tenth report of session 2006-7*

¹⁰⁵ See for example: **BBC news** (4 November 2006) *Campaign to support asylum family*

¹⁰⁶ **House of Lords** (May 2006) *European Union Committee, 32nd report of session 2005-6, Illegal Migrants: proposals for a common EU returns policy*, HL Paper 166

¹⁰⁷ **Joint Committee on Human Rights** (March 2007) *The treatment of asylum seekers, Tenth report of session 2006-7*

¹⁰⁸ **Fekete, L.** (2005) *The deportation machine: Europe, asylum and human rights*, Institute of Race Relations

¹⁰⁹ **Schuster, L.** (2004) *The exclusion of asylum seekers in Europe*

the existing assurances about treatment given by particular countries of origin to countries of removal. There is also concern over the sustainability of voluntary return. IOM has no mechanisms to evaluate whether decisions to return are made voluntarily, under duress or under circumstances that are indirectly or directly coercive, or to assess that conditions in certain countries are safe for people to be returned.¹¹⁰

It would be desirable for assessing whether removal is humane and efficient for further studies to monitor the safety and security of those removed. However, given the increasing number of people removed from the UK it is unlikely that the government would be willing to allocate the extensive resources that would be necessary to monitor every person removed from the UK.

¹¹⁰ Fekete, L. (2005) *The deportation machine: Europe, asylum and human rights*, Institute of Race Relations

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