



ICAR

Navigation guide

Key issues: UK asylum law and
process

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Contents

<i>About the author</i>	3
<i>Acknowledgements</i>	3
<i>Introduction</i>	4
<i>Law and Process</i>	5
UK asylum law and policy	8
Decision making process	21
Appeals	30
Legal aid and funding	33
Interpretation and application of the Refugee Convention	34
The impact of human rights law	41
<i>Key issues</i>	44
The Relevance of the Refugee Convention Today	44
EU asylum policy and procedures	50
Defining refugees and forced migration	59
Reviewing the asylum system	66
Quality and consistency of decision-making	69
Legal representation	74
Alternatives to the process of asylum determination	79
Asylum and security	86

About the author

Kim has worked as a caseworker at a law firm in west London that specialises in immigration and asylum law. She has an MA in political science and refugee studies from York University, Toronto. She is currently working for ICAR as a researcher.

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Introduction

The aim of this guide is to provide the reader with a comprehensive overview of asylum law and process in the UK. It has been designed as an introduction to the topic and highlights the main perspectives on current debates. Readers looking for more detailed literature or advice will find contacts and suggestions on how to locate further information throughout the document. Individuals with specific legal enquiries should seek advice from a qualified immigration solicitor or caseworker.

Throughout the text every effort has been made to source information and assertions and to provide links to relevant websites. The guide has been broken down into key headings so that the information can be easily navigated. There are also internal links so that it is easy to move between overlapping topics.

Developments in asylum law are rapid and the field is constantly evolving. In between updates of this guide, current information can be obtained from the sources provided.

UK asylum law and process, relating to the determination of claims, rather than asylum support, is the main focus of the guide. However, international and European perspectives are also given on certain key issues where they are central to understanding developments in the domestic context.

Legal Advice

If you require legal advice on an immigration or asylum matter, please contact one of the organisations listed below or visit ICAR's [contacts for legal advice](#) webpage.

Community Legal Service <http://www.clsdirect.org.uk/index.jsp> provides a searchable directory of approved solicitors, advice agencies and information providers.

Immigration Advisory Service (IAS) <http://www.iasuk.org> specialises in immigration and asylum matters.

Refugee Legal Centre <http://www.refugee-legal-centre.org.uk> provides legal advice and representation for those seeking protection under international and national Human Rights Asylum law.

All URLs in this document were accessed on 20 June 2006.

Law and Process

International refugee law

Asylum law in the UK is based upon the [1951 Convention relating to the Status of Refugees \(the Refugee Convention\) and its subsequent 1967 Protocol](#).¹ The Convention was drafted in the aftermath of the Second World War by member states of the United Nations (UN) who were aware that previous refugee agreements did not address the needs and contemporary realities of refugees in the post-war period.²

The drafters of the Refugee Convention envisaged that the agreement would be used as a temporary way of providing for the large numbers of refugees in Europe as a result of the war. However, over time, it was recognised that there was a need for the same provisions to be applied to people who had become refugees after 1951 and who were not European nationals. The 1967 Protocol removed both the time and the geographical limitations written into the Convention.

Definition of a refugee

Article 1A (2) of the Refugee Convention defines a **refugee** as:

A person who has a well-founded fear of persecution for reasons of *race, religion, nationality, membership of a particular social group or political opinion*.
Someone who is outside the country of his/her nationality and is unable or, owing to such fear, is unwilling to avail himself/herself of the protection of that country; or who, not having a nationality and being outside the country of his/her former habitual residence is unable, or owing to such fear, is unwilling to return to it.

In addition, Article 1 regulates when a person ceases to be a refugee and excludes from refugee status persons who have committed crimes against peace, war crimes, crimes against humanity and serious non-political crimes committed outside the country of refuge.

The Refugee Convention provides protection on an individual basis, rather than whole populations who are need of protection because of generalised violence.

An **asylum seeker** is someone who has made a claim to be considered for refugee status to a state party to the Refugee Convention.

State obligations and refugee rights

There is no *explicit* right to be granted asylum in international law and it is important to note that the Refugee Convention does not actually mention the concept of asylum. Instead, the instrument focuses on the concept of 'non-refoulement'. Article 33 prohibits the return of individuals to territories where their life or freedom would be threatened for one of the five Convention reasons stated above. Under Article 14 of the

¹ <http://www.unhcr.org/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=3b66c2aa10>

² For more information on the history of the 'refugee regime' see: Reid, C. (2005) *International Law and Legal Instruments*. FMO Research guide <http://www.forcedmigration.org/guides/fmo038>

Universal Declaration of Human Rights individuals have a 'right to seek and enjoy asylum from persecution'.³ However, this instrument also does not go as far as obliging states to provide asylum.

The purpose of the Convention is to provide a legal definition of a refugee and there is an absence of procedural obligations on states. This means that it is left to the discretion of signatories if, and how, status determination procedures are designed and implemented. Accordingly, whether or not claimants are given the right to appeal a negative decision, for example, is not covered.

Those persons recognised as refugees are afforded certain rights by the Refugee Convention:

- Refugees should not be penalised for having entered into or being illegally in the country where they seek asylum, so long as they apply promptly for asylum.
- Refugees should not be expelled except in exceptional circumstances to protect national security and public order.
- Refugees are entitled to a Refugee Convention travel document.
- Refugees should not be discriminated against on the basis of race, religion or country of origin in access to, for example, welfare provision.

The Refugee Convention sets out the standards for the economic and social rights of refugees. Some of these rights are required to be at least equivalent to those accorded to other foreign nationals living legally in the country. Other rights must be at the same level as those granted to citizens. Refugees are obliged to conform to the laws and regulations of the host country, including measures taken to maintain public order.

Useful Resources

The Refugee Law Reader: Cases, Documents and Materials (2006)

<http://www.refugeelawreader.org/index.d2>

This is the third edition of an online model curriculum for the field of international refugee law, initiated and updated by the Hungarian Helsinki Committee.

University of Minnesota: Human rights library (undated). Study guide: The rights of refugees.

<http://wwwserver.law.wits.ac.za/humanrts/edumat/studyguides/refugees.htm>

Reid, C. (2005) *International Law and Legal Instruments*. FMO Research guide.

<http://www.forcedmigration.org/guides/fmo038>

Literature:

Anker, D., Fitzpatrick, J. and Shacknove, A. (1998) 'Crisis and Cure: A reply to Hathaway/Neve and Shuck', *Harvard Human Rights Journal* 11:295-309.

Chimni, B. (2000) *Immigration and Asylum Law: A Reader*, New Delhi: Sage.

Clayton, G. (2006) *Textbook on Immigration and Asylum Law*, Oxford: Oxford University Press. (2nd edition).

Dummett, A. and Nichol, A. (1990) *Subjects, Citizens, Aliens and Others: Nationality and Immigration Law*, London: Weidenfeld and Nicolson.

³ The Universal Declaration of Human Rights: <http://www.un.org/Overview/rights.html>

Feller, E., Türk, V, and Nicholson, F. (eds) (2003) *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*. Cambridge: Cambridge University Press.

Forced Migration Online – *Refugees and International Law Forum*
<http://refugeelaw.qeh.ox.ac.uk/>

Goodwin-Gill, G. (1995) 'The Right to Leave, the Right to Return and the Question of a Right to Remain', in V.Gowlland-Debbas (ed) *The Problem of Refugees in the Light of Contemporary International Law Issues*. Dordrecht: Kluwer Academic Publishers, 95-106

Goodwin-Gill, G. (1996) *The Refugee in International Law*, Oxford: Clarendon press.

Gorlick, B. (2000) Human Rights and Refugees: Enhancing Protection through International Human Rights Law. *New Issues in Refugee Research*, UNHCR: 30 <http://www.unhcr.org/cgi-bin/texis/vtx/research/openssl.pdf?tbl=RESEARCH&id=3ae6a0cf4>

Guild, E. (1996) *The Developing Immigration and Asylum policies of the European Union: Adopted Conventions, Resolutions, Recommendations, Decisions and Conclusions*. The Hague: Kluwer International.

Hathaway, J. (ed) (1997) *Reconceiving International Refugee Law*, Boston: Kluwer Law International.

Hathaway, J, and Neve, R.A. (1997) 'Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Orientated Protection' *Harvard Human Rights Journal* 10: 155-69, 173-87.

Hathaway, J. (1991) *The Law of Refugee Status*, Toronto: Butterworths.

Hathaway, J. (1990) 'A Reconsideration of the Underlying Premise of Refugee Law' *Harvard International Law Journal*, 31:129-147

Loescher, G. (1993) 'The Origins of the International Refugee Regime' *Beyond Charity: International Co-operation and the Global Refugee Crisis*. Oxford: Oxford University Press, 32-55

Nicholson, F. and Twomey, P. (1999) *Refugee Rights and Realities: Evolving International Concepts and Regimes*, Cambridge: Cambridge University Press

Tuitt, P. (1996) *False Images: Laws Construction of the Refugee*, London: Pluto

Steiner, N., Gibney, M. and Loescher, G. (eds) (2003) *Problems of Protection: the UNHCR, Refugees and Human Rights*, New York: Routledge

UK asylum law and policy

As stated in the previous section, there are no internationally agreed procedures or standards for deciding who falls within the definition of a refugee. Those states that have signed the Refugee Convention design their own systems and criteria in order to determine which persons will be accorded refugee status. The office of the United Nations High Commissioner for Refugees (UNHCR) has produced a [*Handbook on Procedures and Criteria for Determining Refugee Status*](#),⁴ which is used as a guide by some states. Nevertheless, status determination procedures vary dramatically between different countries of refuge.

The United Kingdom signed the Refugee Convention in 1954 and the Protocol in 1968 and has for some time applied the terms of both. However, it was not until the coming into force of the [*1993 Asylum and Immigration Appeals Act*](#)⁵ that the Convention was directly incorporated into domestic law. Until this point there was no specific asylum legislation and the asylum system had been governed by immigration laws. For example, asylum appeals previously came under the general provisions of the 1971 Immigration Act.

Since the 1993 Act, the asylum process has been modified by successive governments. In 1996 the Asylum and Immigration Act was passed by the Conservatives and the subsequent Labour government implemented three further Acts of Parliament: the [*Immigration and Asylum Act 1999*](#),⁶ the [*Nationality Immigration and Asylum Act 2002*](#),⁷ and the [*Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004*](#).⁸ In April 2006 a fourth piece of legislation, the [*Immigration Asylum and Nationality Act*](#)⁹, was given Royal Assent.

The development of a common European asylum system (CEAS) will have a significant impact on future asylum policy in the UK. There are two stages to this process, the first being the harmonisation of asylum policies in the member states and comprises four directives (on minimum standards for reception, establishing which country is responsible for examining an asylum claim, a common refugee definition, and procedures used for determining claims), and the second being the establishment of a single asylum system for the whole of the European Union. In 2002, the member states of the European Union agreed on two of the four directives (on deciding which country is responsible for deciding an asylum application and minimum standards for reception). On 30 April 2004, they agreed the directive on a common refugee definition and on the 1 December 2005 the directive on procedures for determining claims.

National governments are obliged to ensure that their policy and practice do not conflict with these directives. The remaining deadlines are for the Qualifications directive on the 10 October 2006 and 1 December 2007 for the Procedures directive. It is important to note that the UK government retains the right to opt out of any immigration, asylum, borders, visas or civil co-operation measures but once it has opted in, and the measure has been adopted, the UK is bound by it. Throughout the negotiations, the UK government sought to ensure that the directives' provisions did not oblige it to make changes to national policy measures, such as the removal of support from asylum seekers who did not apply in good time, the refusal of asylum based on country of origin only, and the reduction of entitlements for people granted subsidiary protection. This approach has been criticised by various refugee agencies, who are concerned that

⁴ UNHCR (1992, 1979) *Handbook on Procedures and Criteria for Determining Refugee Status*, Geneva: UNHCR. <http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=PUBL&id=3d58e13b4>

⁵ http://www.hms.gov.uk/acts/acts1993/Ukpga_19930023_en_1.htm

⁶ <http://www.uk-legislation.hms.gov.uk/acts/acts1999/19990033.htm>

⁷ <http://www.uk-legislation.hms.gov.uk/acts/acts2002/20020041.htm>

⁸ <http://www.legislation.hms.gov.uk/acts/acts2004/20040019.htm>

⁹ <http://www.opsi.gov.uk/ACTS/acts2006/20060013.htm>

minimum standards reflect the 'lowest common denominator' between member states.¹⁰ For further information refer to the section on EU asylum policy and procedures.

Useful Resources

General resources on asylum and immigration law in the UK:

Joint Council for the Welfare of Immigrants (JCWI) (2006) *Immigration, Nationality & Refugee Law Handbook 2006* <http://www.jcwi.org.uk/publications/jcwihandbook.html>

Clayton, G. (2006) *Textbook on Immigration and Asylum Law*, Oxford University Press. (2nd edition).

MacDonald, D. and Webber, F. (2005) *Macdonald's Immigration Law and Practice*, London: Butterworths

Phelan, M. and Gillespie, J. (2005) *Immigration Law Handbook*, Oxford University Press

Kennedy, H. (2004) *Blackstone's Guide to the Asylum and Immigration Act* London: Blackstone

Institute of Public Policy Research (IPPR) (2005) *Asylum in the UK, An IPPR fact file* http://www.ippr.org.uk/ecomms/files/asylum_factfile_feb05.pdf

Summary of UK legislation

[Asylum and Immigration Appeals Act 1993](#)¹¹

- Refugee Convention was incorporated into UK law.
- Appeal rights for failed asylum seekers were widened. More categories of applicants became eligible for an in-country right of appeal against a negative decision on an asylum application.
- Creation of a 'fast-track' procedure for dealing with applications that were judged to be 'without foundation'.
- Allowed detention of asylum seekers whilst their claim was being decided.
- Introduced fingerprinting of all asylum seekers.

[Asylum and Immigration Act 1996](#)¹²

- 'White list' of countries was introduced. These countries were deemed to be safe and their nationals at little risk of persecution.

¹⁰ See **Refugee Council** (2004) *Refugee Council briefing on the common European asylum system, March 2004*. London: Refugee Council. http://www.refugeecouncil.org.uk/downloads/briefings/intl/common_euro.pdf and **Refugee Council** (2004) *International Protection Project Update, May 2004*. London: Refugee Council. Available at http://www.refugeecouncil.org.uk/downloads/briefings/intl/ipp_update_may_2004.pdf and **European Council on Refugees and Exiles, Amnesty International and Human Rights Watch**, 'Refugee and human rights organisations across Europe express their deep concern at the expected agreement on asylum measures in breach of international law', News Release, Wednesday 28 April 2004. http://www.ecre.org/press/asylum_procedures.shtml

¹¹ http://www.legislation.hmsso.gov.uk/acts/acts1993/Ukpga_19930023_en_1.htm

¹² <http://www.legislation.hmsso.gov.uk/acts/acts1996/1996049.htm>

- 'Fast track' appeals process extended to include more groups of people. Cases could be 'certified' for a number of reasons.
- Introduction of the 'safe third country' concept.
- Entitlement to housing and welfare benefits was restricted to those making an application at the port of entry.

Immigration and Asylum Act 1999¹³

- Existing offences of entering the country by deception were extended. Asylum seekers were able to use the defence that they had good cause for entering the country illegally if they presented themselves to the authorities without delay.
- Penalties for carrying clandestine entrants in to the UK were introduced.
- Introduction of a general right of appeal if it was alleged that a public authority had breached the Human Rights Act when making a decision under the immigration acts.
- Applications could be certified as 'manifestly unfounded' and right of appeal to the Tribunal restricted.
- Persons who arrived in the UK via a 'safe third country' and who claimed that removal would breach their human rights could have their claim certified and the right of an in-country appeal removed.
- One-stop procedures were introduced.
- Introduction of the National Asylum Support Service (NASS) which co-ordinates the arrangements for supporting asylum seekers and dispersing them to different areas of the UK.

Useful resources

Audit Commission (1999) *Another Country: Implementing Dispersal under the Immigration and Asylum Act*, <http://www.asylumsupport.info/publications/auditcommission/another.htm>

Online guides to the Bill:

Refugee Council http://www.refugeecouncil.org.uk/infocentre/asylumlaw/99_act/99_act.htm

Asylum Aid <http://www.asylumaid.org.uk/AA%20pages/!%20&%20AA%20Act%201999.htm>

Nationality Immigration and Asylum Act 2002¹⁴

Many of the key reforms to the asylum system are laid out in Chapter 4 of the white paper, *Secure Borders, Safe Haven: Integration with Diversity in Modern Britain*.¹⁵ (Other chapters deal with broader issues, for example, citizenship, trafficking and managed migration.)

In the white paper, the government emphasised their intention to ensure that asylum seekers are tracked more effectively throughout the system and to increase the number of asylum applicants that are removed. They also highlighted a commitment to promote the successful integration of those persons recognised as

¹³ <http://www.legislation.hms.gov.uk/acts/acts1999/19990033.htm>

¹⁴ <http://www.uk-legislation.hms.gov.uk/acts/acts2002/20020041.htm>

¹⁵ **Home Office** (February 2002) *Secure Borders, Safe Haven: Integration with Diversity in Modern Britain*. Cm 5387. London: Home Office. <http://www.official-documents.co.uk/document/cm53/5387/cm5387.pdf>

refugees. The legislation was significantly amended during its passage through parliament, and the Act became law in November 2002.

The main changes to asylum law and process can be summarised as follows:

- Introduction of accommodation centres with educational and health services for asylum seekers.
- Introduction of a resettlement programme. (Refer to the [resettlement navigation guide](#)¹⁶ for more information).
- Introduction of regular reporting for all asylum seekers.
- Introduction of an 'asylum registration card' (ARC) containing the biometric data of the asylum applicant.
- Strengthening of the provisions in the 1999 Act preventing multiple appeals.
- End of the right to an in-country appeal if the asylum, or human rights claim, is certified as clearly unfounded.
- Introduction of statutory review, which replaced judicial review of the decision to refuse leave to appeal to the Immigration Appeal Tribunal.
- Introduction of a list of 'safe countries' and the presumption that asylum applicants from these countries will have their applications certified as 'clearly unfounded'. Certification means that the asylum applicant is denied an in-country right of appeal (i.e. they can appeal against refusal of their application, but only after having departed from the UK).
- The decision to review the status and granting of 'exceptional leave to remain' (ELR). Prior to this announcement, ELR had been granted on a discretionary basis to those with humanitarian or protection needs, but who did not qualify for refugee status under the limited provisions of the Refugee Convention. A general policy of granting ELR to applicants from certain countries has applied when the situation in a particular country meant that the return of asylum seekers was not possible. Routine granting on a country-by-country basis was stopped. [Since April 2003, ELR has been replaced by 'humanitarian protection' (HP) and 'discretionary leave' (DL). Humanitarian protection and discretionary leave will be granted for up to three years.]
- The introduction of new offences and powers in respect of assisting unlawful entry into the UK. This includes assisting unlawful immigration, assisting an asylum seeker's journey, and assisting entry to the UK in breach of deportation or exclusion orders. These offences carry a maximum sentence of 14 years.

Useful resources

Refugee Council, (December 2002) *The Nationality, Immigration and Asylum Act 2002: changes to the asylum system in the UK*,

http://www.refugeecouncil.org.uk/infocentre/nia_act2002/intro_ed1.htm

Joint Council for the Welfare of Immigration (JCWI) (2002) *Parliamentary Briefing, Nationality, Immigration and Asylum Bill*

<http://www.jcwi.org.uk/archives/ukpollcy/parlbrief.PDF>

Joint Committee on Human Rights (2002) *Nationality, Immigration and Asylum Bill: Further Report*

<http://www.publications.parliament.uk/pa/jt200102/jtselect/jtrights/176/176.pdf>

ICAR's Mapping the UK section on the proposed Bicester accommodation centre

<http://www.icar.org.uk/?lid=2537>

¹⁶ <http://www.icar.org.uk/?lid=2002>

[Asylum and immigration \(Treatment of Claimants, etc\) Act 2004](#)¹⁷

On 27 November 2003, the government introduced the Asylum and Immigration (Treatment of Claimants, etc) Bill after a short consultation process.

One of the most controversial aspects of the original draft of the Bill became known as the 'ouster clause'. This clause effectively ousted the right of judicial review by stating that no court would have any supervisory or other jurisdiction (whether statutory or inherent) in relation to the Asylum and Immigration Tribunal (AIT) and sparked a debate about whether or not such a provision was constitutional. The original proposal was amended before the Bill was passed to provide for a special form of review of cases by the High Court on the grounds that the AIT made an error of law.

Useful resources

The **Refugee Legal Centre** commissioned a legal opinion on the 'ouster clause':

<http://www.refugee-legal-centre.org.uk/fordhamjan04.htm>

Immigration Law Practitioners' Association's (ILPA) response on the 'ouster clause':

<http://www.statewatch.org/news/2004/feb/BIHR-ILPA.pdf>

Another controversial aspect of the Bill was the requirement that asylum seekers, who had been unsuccessful in their claim and are unable to return to their country of origin immediately, should perform community work in return for support. Refugee agencies criticising the Bill argued that this provision would be in contravention of Article 4 of European Convention on Human Rights which states that no one should be required to perform forced or compulsory labour. This provision was passed and is part of the Act.

Useful resources

The **Refugee Women's Resource Project at Asylum Aid** cover this issue in their briefing:

<http://www.asylumaid.org.uk/New%20RWRP/Campaigning%20and%20Lobbying/RWRP%20briefing%20re%20Asylum%20Bill%202003%20for%20House%20of%20Lords%20committee%2015th%20June%2004.doc>

The most relevant provisions of the Act are featured below:

Entering UK without a passport

A new offence of entering the UK without a passport or other valid documentation at an asylum interview was created by section 2 of the Act. Unless the person can show s/he has a reasonable excuse, they are liable to be tried and given a prison sentence of up to two years and/or fined. In response to a parliamentary question in December 2005, Immigration Minister, Tony McNulty estimated that there had been 350 convictions under this ruling between September 2004 and October 2005.¹⁸

¹⁷ <http://www.legislation.hms.gov.uk/acts/acts2004/20040019.htm>

¹⁸ <http://www.publications.parliament.uk/pa/cm200506/cmhansrd/cm051207/text/51207w23.htm>

Trafficking people for exploitation

A new offence of trafficking a person for non-sexual exploitation was created with a maximum penalty of 14 years and/or a fine. This is aimed at people who arrange the travel of people in to the UK in order to obtain forced or coerced labour and who arrange the removal of organs.

Claimant's credibility

This provision of the Bill states that when a deciding authority (an immigration officer or the immigration courts) is determining whether to believe a statement made by an asylum claimant, they are required to take into account any behaviour by the claimant that they believe is designed to obstruct the handling of the claim, conceal information, or to mislead. The deciding authority is also obliged to take into account any other information which they feel damages the claimant's credibility. The following types of behaviour are identified as likely to conceal or mislead:

- failure without reasonable explanation to produce a passport on request to an immigration officer or to the Secretary of State or the production of a document which is not a valid passport as if it were;
- the destruction, alteration or disposal, in each case without reasonable explanation, of a passport; the destruction, alteration or disposal, in each case without reasonable explanation, of a ticket or other document connected with travel;
- and failure without reasonable explanation to answer a question asked by a deciding authority.¹⁹

If a claimant does not make their asylum application in the first safe third country that they travel through, or if s/he does not claim asylum before being notified of an immigration decision or before being arrested under an immigration provision, then this will also be treated as behaviour that damages her/his credibility.

Failed asylum seekers: withdrawal of support

If the Home Secretary certifies that in his opinion an unsuccessful asylum seeker with family has failed, without 'reasonable excuse', to leave the UK voluntarily, then their asylum support will be stopped.

Accommodation for asylum seekers: local connection

All asylum seekers who are provided NASS housing automatically establish a connection with their dispersal area for the purposes of housing legislation.

Integration Loans

The right to backdated benefits for refugees was abolished and replaced with 'integration loans'.

Community activities

The Secretary of State has been given the power to make regulations providing for the continuation of the provision of accommodation for an unsuccessful asylum seeker, who cannot return home immediately, to be conditional upon her/his performance of or participation in community activities.

Information about passengers

Immigration officers were given the power to request copies of travel documents taken by carriers.

Appeals

Under the previous appeal system, persons who have been refused asylum can appeal first to an adjudicator and then (if leave is granted) to the Immigration Appeal Tribunal (IAT). The act replaced this with

¹⁹ <http://www.opsi.gov.uk/acts/acts2004/40019--a.htm#8>

a single tier body called the Asylum and Immigration Tribunal (AIT). In limited cases, the Tribunal's decision can be reviewed by the High Court on the grounds that the Tribunal made an error of law.

Electronic monitoring

Persons subject to immigration control can be required to cooperate with electronic monitoring.

Immigration services

The powers of the Immigration Services Commissioner were increased in order to regulate immigration advisors and investigate suspected offences by immigration advisors.

Useful resources

The House of Commons Library prepared a detailed [Research Paper](http://www.parliament.uk/commons/lib/research/rp2003/rp03-088.pdf) on the Asylum and Immigration Bill in December 2003 in preparation for the second reading of the Bill in the House of Commons. This is available at <http://www.parliament.uk/commons/lib/research/rp2003/rp03-088.pdf>.

The **House of Commons Home Affairs Committee** published its report on 16 December 2003, available at <http://www.publications.parliament.uk/pa/cm200304/cmselect/cmhaff/109/109.pdf>. The **government** published its response to the Committee's report on 23 February 2004, available at <http://www.official-documents.co.uk/document/cm61/6132/6132.pdf>.

The **Joint Committee on Human Rights** has published a number of reports on the Bill, the following are available online:

19 January 2004 <http://www.publications.parliament.uk/pa/jt200304/jtselect/jtrights/23/23.pdf>

2 February 2004 <http://www.publications.parliament.uk/pa/jt200304/jtselect/jtrights/35/35.pdf>

30 June 2004 <http://www.publications.parliament.uk/pa/jt200304/jtselect/jtrights/130/130.pdf>

The **Constitutional Affairs Select Committee** published a report in February 2004, available at <http://www.publications.parliament.uk/pa/cm200304/cmselect/cmconst/211/21102.htm>.

The **government** published its response to the Constitutional Affairs Select Committee in June 2004, available at <http://www.dca.gov.uk/majrep/asylum/asylum.htm>

Five-year strategy for immigration and asylum February 2005

A number of statements by leading Labour politicians were made in February 2005, culminating in the release by the then Home Secretary, Charles Clarke, of [*Controlling our borders: making migration work for Britain*](#)²⁰ which detailed the strategy in full. This policy document addressed broad issues including the international context, criteria for entering and remaining in the UK and government policy on removal of individuals not eligible to be in the UK. In 2005 the government also announced the New Asylum Model and released the Immigration Asylum and Nationality Bill as part of the five-year strategy. The Bill was passed in April 2006 and, along with the New Asylum model, is addressed below. For asylum seekers and refugees the main points of the initial five-year strategy announcement were:

²⁰ <http://www.archive2.official-documents.co.uk/document/cm64/6472/6472.pdf>

- There will be no quota system for admitting refugees to the UK
- The government will not withdraw from the 1951 Refugee Convention
- Refugees will initially be given temporary status for five years; they will only receive permanent status if they are still considered to be at risk at the end of this period. This policy change did not require new legislation, as it invokes what is known as a 'cessation clause' which is contained with the 1951 Refugee Convention.²¹ It was implemented in August 2005. For further information refer to the section on [cessation](#).
- In order to increase the number of removals, more failed asylum seekers will be detained and electronic tagging will be used. Greater efforts will be made to ensure that failed asylum applicants can be successfully removed to their countries of origin by entering into return arrangements with asylum-producing countries
- New visa requirements will be implemented if the government is concerned about the possibilities of immigration abuse by certain nationalities

The strategy has been controversial in two ways: the effect of five year reviews on refugee integration and the government objective of increasing the number of failed asylum seekers removed from the UK. More information on these issues can be obtained from the resources listed below.

Useful resources

Home Office, 7 Feb 2005, Press Release -- Five Year Strategy for Immigration and Asylum
http://press.homeoffice.gov.uk/press-releases/Controlling_Our_Borders_Making

ICAR's 2005 election bulletin no.6 <http://www.icar.org.uk/?lid=4964>

Refugee Council (2005) *Briefing: The government's five-year asylum and immigration strategy*, (London: Refugee Council), p3
<http://www.refugeecouncil.org.uk/downloads/briefings/ResponsetofiveyearstrategyFebruary2005.pdf>

Refugee Council (2005) *Briefing: Immigration, Asylum and Nationality Bill 2005: key issues and concerns*, (London: Refugee Council), p3 http://www.refugeecouncil.org.uk/downloads/briefings/asylum-Bill_Sept05.pdf

New Asylum Model (NAM)

As part of the five-year strategy detailed above, the government outlined a proposal to develop a New Asylum Model (NAM) that would focus on producing a faster and more streamlined claims process with an emphasis on removing failed applicants. Aspects of the NAM began to be implemented in May 2005; the Home Office was aiming to process all claims under the new model by September 2006, but this target has been extended to December 2006. The model has three distinct features:

²¹ Article 1(c) 5 of the 1951 Refugee Convention states that the Convention will cease to apply if a refugee "can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality".

- Segmentation of claims: Upon an initial screening interview, asylum applicants will be assigned to one of the asylum processes segments²² that will determine the future pathway of their claim. The segment is chosen on the basis of the characteristics of their asylum claim. The main factors that will be affected by the segment a claimant is assigned to include: speed of claim process; assistance in accessing legal advice; accommodation type; frequency of reporting to the Immigration Service.
- Fast-track processing: The Home Office states that this feature will allow swifter decision-making. The application process will be accelerated by removing the Statement of Evidence form from the procedure.²³ This scheme had previously been piloted in Harmondsworth detention centre and in the North West. The pilot was implemented in Yarl's Wood detention centre in May 2005 and for other non-detained asylum seekers in June 2005.
- Case ownership: Under the NAM a single case owner will have responsibility for a claimant throughout the asylum process from their application to the consequent granting of status of removal. From April 2006, the Home Office is aiming to establish teams of case owners in Solihull to process existing claims in the West Midlands and in Leeds to carry out the same function for Yorkshire and Humberside and hopes to establish teams in all major cities covered by dispersal. The government states that this will lead to cases being managed more effectively and in the shortest possible time.²⁴

Refugee organisations have expressed concerns in relation to the New Asylum Model. The first is that the implementation of segmentation will result in claims being pre-determined before they have been given substantive consideration. Another concern is that the fast-track process does not allow enough time for the claimant to seek legal advice and prepare their claim properly or for the decision-makers to consider the claim adequately.

Useful resources

Refugee Council (2006) Briefing: New Asylum Model

<http://www.refugeecouncil.org.uk/downloads/briefings/NewasylummodelMar06.pdf>

Home Office January 18 2006, Press Release

<http://press.homeoffice.gov.uk/press-releases/new-asylum-model-swifter-decisio>

Immigration Law Practitioners' Association response to the fast track procedure rules:

<http://www.ilpa.org.uk/submissions/DCAfasttrackrulesconsult.htm>

ICAR briefing on New Asylum Model

<http://www.icar.org.uk/?lid=6002>

²² These are detailed in **Refugee Council**, 2006 *Briefing: New Asylum Model*, (London: Refugee Council), p2

<http://www.refugeecouncil.org.uk/downloads/briefings/NewasylummodelMar06.pdf>

²³ **Refugee Council**, (2006) *Briefing: New Asylum Model*, (London: Refugee Council) See the section on *Decision making process* for more information.

²⁴ **Immigration and Nationality Directorate**, *The New Asylum Model: Swifter Decisions – Faster Removals*, press release January 2006.

<http://www.ind.homeoffice.gov.uk/aboutus/newsarchive/nam>

[Immigration, Asylum and Nationality Act 2006](#)²⁵

This Act received Royal Assent on 30th March 2006 and is another part of the government's ongoing five-year strategy for immigration and asylum. Much of the new Act does not require primary legislation with some proposals only requiring administrative changes, most notably the implementation of much of the NAM as described above. The main provisions of the Act are detailed below and have been taken from the explanatory notes which are available [here](#).²⁶

Appeals

Section 1 introduces a new right of appeal for people who are no longer recognised as refugees [as a result of the five year review] but who are permitted to stay in the UK on another basis. The right of appeal will be solely against the decision that the person in question no longer qualifies as a refugee. Section 2 introduces a right of appeal against removal directions for individuals who have had their refugee status revoked. This is in addition to the right of appeal at the revocation stage.

Employment

The employment clauses primarily focus on reinforcing existing government powers to penalise employers of illegal workers.

Information

The new Act introduces measures to check individuals' identity, which involves detaining travel documents for inspection and introducing tighter deadlines for the provision of fingerprints – three days for asylum seekers. Section 31 enables the collection of passenger lists and crew information on or before the arrival of a ship or aircraft into the United Kingdom. Section 31 also introduces a new power to request passenger lists or crew information from a ship or aircraft which is leaving or is expected to leave the United Kingdom.

Accommodation of asylum seekers

Section 43 of the Act allows local authorities to provide accommodation under Section 4 of the Immigration and Asylum Act 1999, which was previously only available in areas served by private accommodation providers.

Refugee integration loans

Section 45 amends the relevant provision in the Asylum & Immigration (Treatment of Claimants, etc.) Act 2004 and enables loans to be made to refugees who have been given limited leave to enter or remain as well as such other classes of migrants as the Secretary of State prescribes in the regulations.

Inspection of detention facilities

Section 46 regularises HM Chief Inspector of Prisons' existing voluntary oversight of immigration short-term holding facilities and escort arrangements by placing it on a statutory footing.

Certification on national security grounds

Section 55 allows the Secretary of State to issue a certificate that an appellant is not entitled to the protection of Article 33 (1) of the Refugee Convention because Article 1F applies or Article 33 (2) applies on national security grounds. It requires the Asylum and Immigration Tribunal (AIT) or the Special Immigration Appeals Commission (SIAC) to begin substantive consideration on the asylum appeal by considering the statements in the certificate. If SIAC or the AIT agrees with the statements in the certificate, then it must dismiss the appeal insofar as it relies on the Refugee Convention.

²⁵<http://www.opsi.gov.uk/ACTS/acts2006/20060013.htm>

²⁶ http://www.opsi.gov.uk/ACTS/en2006/ukpgaen_20060013_en.pdf

Deprivation of Citizenship

Section 56 enables the deprivation of British nationality on the basis that it is conducive to the public good to deprive a person of his or her British nationality. A deprivation order may not be made on this basis if it would make a person stateless.

Refugee and human rights organisations have raised a number of concerns in relation to the provisions contained within this new Act. To begin with it is felt that the section relating to the control of information will impact negatively on refugees who often have to use false travel documents or irregular means in order to leave their country of origin.²⁷ It is observed that the refugee integration loan, which is intended to replace backdated benefits payments that were withheld during the asylum process, will place an immediate debt-burden on refugees.²⁸

Section 55 raises concern as the power to exclude claimants from the protection offered by refugee law is already sanctioned by the 1951 Refugee Convention and, consequently, a number of diverse organisations (UNHCR, Association of Chief Police Officers, the parliamentary Joint Committee on Human Rights and the Refugee Council) have all questioned the purpose of incorporating an exclusion clause into national legislation.²⁹ The fear is that the operation of Section 55 may result in the UK government 'extending an overly broad application of Article 1F(c) with the result that certain persons, who do not fall within the scope of the exclusion clauses, are denied the benefit of international protection'.³⁰ Finally, some commentators have expressed concern that the Secretary of State is now able to deprive an individual of nationality on the basis that it is 'conducive to the public good' as this is an incredibly broad definition and there is no requirement of proof that the individual in question has engaged in terrorist acts or has been found guilty of a criminal act.³¹

For more information on responses to the provisions contained within the Act refer to the resources section below which contains links to commentaries on the Bill as it passed through the House of Commons and the House of Lords. Note that some of the provisions in the earlier versions of the Bill may have been amended before the Act received Royal Assent. For further information refer to the section on [exclusion clauses](#) and the [asylum and security](#) section.

²⁷ Liberty (2005) *Immigration, asylum and nationality: Liberty's response for the Second Reading in the House of Commons* <http://www.liberty-human-rights.org.uk/resources/policy-papers/2005/immig-asylum-nationality-2nd-reading-commons.PDF>

²⁸ Refugee Council (2006) Briefing: *Immigration, asylum and nationality Bill: key issue and concerns*, http://www.refugeecouncil.org.uk/downloads/briefings/asylum-Bill_Dec05.pdf

²⁹ See Hansard <http://www.publications.parliament.uk/pa/ld199900/ldhansrd/pdvn/lds06/text/60119-29.htm>

³⁰ http://www.unhcr.org.uk/legal/positions/UNHCR%20Comments/comments_dec2005clause52.htm

³¹ Blake, N. (26 April 2006) *Why is there no song and dance about this Act?* The Times <http://www.timesonline.co.uk/article/0,,200-2146936,00.html>

Useful resources

House of Commons Library (2005) Research report: *Immigration, Asylum and Nationality Bill*
<http://www.parliament.uk/commons/lib/research/rp2005/rp05-052.pdf>

Refugee Council (2006) Briefing: *Immigration, Asylum and Nationality Bill: key issue and concerns*
http://www.refugeecouncil.org.uk/downloads/briefings/asylum-Bill_Dec05.pdf

Immigration Law Practitioners' Association, Series of briefings on the *Immigration, Asylum and Nationality Bill* <http://www.ilpa.org.uk/briefings.html>

Immigration Law Practitioners' Association (2005) *Response to Immigration, Asylum and Nationality Bill 16th November 2005, Third Reading*
http://www.ilpa.org.uk/briefings/IAN_2005Brief3rdreading.doc

Liberty (2005) *Immigration, Asylum and Nationality Bill 2005: Liberty's response for the Second Reading in the House of Lords*
<http://www.liberty-human-rights.org.uk/resources/policy-papers/2005/ian-lords-2nd-reading.pdf>

Joint Council for the Welfare of Immigrants (2005) *Parliamentary briefing: House of Commons Second Reading of the Immigration, Asylum and Nationality Bill*
http://www.jcwi.org.uk/policy/ukpolicy/immBillbriefing_july05.pdf

There have also been responses to the counter terrorism clauses added by the Commons Standing Committee:

Inter-Agency Partnership (2006) *Parliamentary briefing: Immigration, Asylum and Nationality Bill Counter Terror Clauses*
http://www.refugeecouncil.org.uk/downloads/parliamentary_briefings/IAN_Bill-Counter_Terror.pdf

Liberty (2006) *Immigration, Asylum and Nationality Bill 2005: Liberty's response Report stage in the House of Lords Counter Terrorism Clauses*
<http://www.liberty-human-rights.org.uk/resources/policy-papers/2006/ian-Bill-report-stage-lords-counter-terror-cla.PDF>

See also the transcript of the House of Lords debate on the clauses
<http://www.publications.parliament.uk/pa/ld199900/ldhansrd/pdvn/lds06/text/60119-29.htm>

Carrier's liability

Carrier's liability legislation has important implications for potential asylum seekers as individuals who are unable to obtain the appropriate visa to enter the UK are likely to be refused passage by the relevant transport companies. The Immigration (Carriers' Liability) Act 1987 enables the government to fine any ship or airline company for every passenger it brings to Britain without proper travel documents.

In 1993 the Asylum and Immigration Appeals Act was introduced. Major provisions in this Act included an extension of the Carriers' Liability Act so that airline companies had to demand transit visas (which was to ensure that transit passengers did not disembark in the UK and claim asylum).

The 1999 Act extended the 'carrier's liability' legislation to cover all road vehicles, air transport, shipping and international railway services. This means that for each passenger brought to the UK without valid travel documentation, the carrier is liable to pay a fine even if the passenger was hidden and the carrier did not know they were on board.

Observers have noted that the combination of visa requirements for nationals from countries producing large numbers of asylum seekers and the introduction of documentation checks by carriers [as a result of the legislation] has meant that it is incredibly difficult for individuals fleeing persecution to seek asylum in the UK without using illegal means [such as false documentation or smuggling] as a route into the country.³² Additionally, fining rail operators and freight companies also penalises asylum seekers for using illegal modes of entry regardless of whether or not they are fleeing persecution.

Useful resources

Amnesty International (1997) *Carrier No Flights to Safety: Carrier Sanctions; Airline Employees and the Rights of Refugees* <http://web.amnesty.org/library/Index/ENGACTION340211997?open&of=ENG-398>

Morrison, J. *The Cost of Survival: The Trafficking of Refugees to the UK*. London: The Refugee Council, 1998.

Morrison, J. (October 2002) *Human Smuggling and Trafficking*, FMO Research Guide <http://www.forcedmigration.org/guides/fmo011/>

Morrison, J. and Crosland, B. *The Trafficking and Smuggling of Refugees: the End Game in European Asylum Policy?* UNHCR Working Paper 39, 2001

The Air Carrier Liability Regulations (2004) <http://www.opsi.gov.uk/si/si2004/20041418.htm>

³² **Morrison, J.** (1998) *The Cost of Survival: The Trafficking of Refugees to the UK*. London: The Refugee Council.

Decision making process

In a formal sense, the Home Secretary (or Secretary of State for the Home Department) is responsible for the determination of asylum claims. However, it is the Asylum Directorate, part of the [Immigration and Nationality Directorate](#)³³ at the Home Office, which has the practical task of actually administering the asylum process. Their main offices are based at Lunar House in Croydon, (they also have offices in Liverpool, Leeds, Glasgow and Birmingham).

Application for asylum

When a person lodges an application for asylum under the Refugee Convention they are described as an **asylum seeker**. In the UK, a person is not officially described as a refugee until they have been awarded refugee status as a result of the determination of their case. However, technically speaking, the state does not make someone a refugee, rather it recognises them to be one (by declaring that their circumstances meet the criteria of Article 1(A) of the Refugee Convention). An asylum application can either be made at the 'port of entry' or 'in country'.

Contacts and advice about making an application for asylum

Refugee Outreach Advice Partnership advice for asylum seekers is available at http://www.asylumaid.org.uk/ROAP/roap%20information_leaflets.htm (translated leaflets also available).

Refugee Council produces guides to the asylum process in the UK.
<http://www.refugeecouncil.org.uk/publications/pub002.htm>.

A **Home Office** guide to asylum procedures in the UK has also been produced.
<http://www.ind.homeoffice.gov.uk/applying/asylumapplications/asylumapplicationabriefguide>

Community Legal Service provides a searchable directory of approved solicitors, advice agencies and information providers.
<http://www.clsdirect.org.uk/index.jsp>

Port application

If a person makes a claim for asylum at an airport, seaport, or trainport (such as the Waterloo International Terminal) then they will usually be given an **asylum screening interview** by an immigration officer shortly after arrival or asked to return at a later date. The purpose of this interview is to establish the identity and nationality of the asylum seeker, their travel route to the UK, the documentation used to travel to the UK and to take the fingerprints and photographs of the principal applicant and his/her dependants. All of this information is then sent to the Home Office.³⁴

In-country application

If a person enters the country legally (i.e. by being granted leave on another basis, for example as a visitor or a student) or illegally (by evading immigration control on arrival, for example being concealed in the back of a lorry) and then makes an application for asylum then they are making their claim '**in country**'.

³³<http://www.ind.homeoffice.gov.uk>

³⁴**Home Office**, Screening Best Practice for Operational Staff (At Ports)
<http://www.jcwi.org.uk/archives/ukpollcy/screeningguide.pdf>

Applications must be submitted in person at the Asylum Screening Unit (ASU) of the Home Office in Croydon, or Liverpool. In-country applicants are also given a screening interview by the Home Office. They will be photographed and fingerprinted.

Documentation

Under section 2 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 an asylum applicant is liable to prosecution if they do not present an 'immigration document' at their interview and are not able to provide a reasonable excuse for not having the document. For further details refer to the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 in the section on [UK asylum law and policy](#).

Application registration card

Unless the immigration authorities doubt the applicant's identity, both in-country and port applicants will usually be given an identity document – an asylum registration card (ARC), after their screening interview. The ARC is the size of a credit card and contains important information about applicants such as their name, date of birth and nationality. There is also a picture of the applicant and their fingerprints are stored on the card. Fingerprints are checked against existing Home Office records and EURODAC.

For more information on EU initiatives, refer to the key issues section on [EU asylum policy and procedures](#).

Temporary admission

If the asylum application is made either at the port or in-country and the applicant is not being detained, then they will be given an IS96 paper which grants them '**temporary admission**' (TA) into the UK. TA does not mean that a person has been given 'leave to enter' the UK (i.e. they have not been granted permission to stay in the UK, either on a temporary or permanent basis); it simply allows them to remain in the country whilst their asylum application is being determined. Temporary admission is usually subject to certain conditions, such as residing at a particular address and the requirement to report to a designated immigration reporting centre, or police station at specified intervals (usually weekly or monthly).

Segmentation

As a result of the implementation of certain aspects of the New Asylum Model, which is due to be fully implemented by September 2006, asylum claims are now allocated to a particular segment once they have been screened. There are different procedures for each segment. For further information refer to the section on [UK asylum law and policy](#).

Applicants who are detained will not be given a statement of evidence form (SEF) or an ARC. Their claim will be decided on a 'SEF-less' substantive interview. Applicants may also be detained at the end of the asylum process when directions for removal have been set.

The following segments and procedures are in existence:

Detained fast track processes at Harmondsworth and Yarl's Wood

Some applicants will be detained at one of these institutions while their claim is fast-tracked. Usually the Home Office will decide that an applicant's case can be decided quickly on the basis of their nationality. They are entitled to an in-country right of appeal, although this is also fast-tracked. There is a long list of countries [more than 50] whose nationals are likely to be fast-tracked [some of these countries are not entitled to appeal a negative decision inside the UK.] Certain categories of applicants are exempt from the fast-track procedure, such as unaccompanied minors.

In general, asylum applicants detained at Harmondsworth or Yarl's Wood are interviewed on the afternoon of the first day and then given a decision on the second day. Any appeal must then be lodged within two

working days of the decision.

Potential non-suspensive appeals (detained fast-track at Oakington)

Applicants who are nationals of one of the countries designated as 'safe' under the Nationality Immigration and Asylum Act 2002 are likely to be detained at Oakington and will not have the right to appeal a negative decision on their case from within the UK if it is certified as 'clearly unfounded'. It is up to the applicant to rebut the presumption that their case is 'clearly unfounded'. If a case is not certified then the applicant will have the right of appeal and should be released. Such cases are known as 'non-suspensive appeals' (or NSA) cases. There are currently 17 designated NSA countries: Albania, Bulgaria, Jamaica, Macedonia, Moldova, Romania, Serbia and Montenegro (previously the Federal Republic of Yugoslavia), Brazil, Ecuador, Bolivia, South Africa, Ukraine, Sri Lanka, India, Mongolia, Ghana (male applicants only) and Nigeria (male applicants only).

In general, asylum applicants detained at Oakington are interviewed on the third day after their arrival. If the claim is not certified as 'clearly unfounded' then a decision will be given on the sixth day. If a claim is certified a decision and removal directions will be given on the tenth day after a senior caseworker has reviewed the case.

Late and opportunistic

If the Home Office decides that a claim is late or opportunistic then the applicant can be detained at Harmondsworth or Yarl's Wood on the basis that the case can be decided quickly. Examples of late and opportunistic claims are where an asylum claim is made at the end of an individual's leave to remain in the country or after an application for leave has been refused.

At the **North-West Project** asylum applicants who made their claim in the Liverpool and Manchester areas are put through an induction process and their claims are decided under accelerated procedures. There is also a **Dover pilot** which covers applications made at the port of Dover or at the Dover Enforcement Unit. Applicants are also put through an induction process and their claims fall under the accelerated process.

Those cases that do not fall under one of the segments detailed below are not unlikely to be detained, (although individuals who are identified as cause for concern by the Home Office may still face detention). Applicants who do not fall under one of the segments are likely to be given a '**statement of evidence form**' (SEF) to take away with them. On this form the applicant is required to write down their reasons for claiming asylum. A more detailed account may also be provided on an accompanying statement. The SEF has to be returned within 10 working days (28 days for unaccompanied minors) and is usually used as the basis for a full (substantive) asylum interview which will be conducted at the immigration office at the port of entry or at the Home Office (in Croydon, Liverpool or Leeds). If the SEF is not returned within the 10 days then the claim is likely to be refused on non-compliance grounds.

Third country cases

Applicants identified as 'third country cases' are likely to be detained and, where possible, removed to the appropriate country. The Asylum and Immigration Act 1996 introduced the concept of a '**safe third country**' into British law. In 1990, European Union (EU) countries signed the Dublin Convention, which came into force in 1997. This Convention provides an agreed framework to determine which member state is responsible for consideration of asylum claims made in the EU by non- EU nationals. It states that asylum seekers should have their applications considered in the first EU country they reach.

In February 2003, a regulation was issued by the EU which establishes the criteria and mechanisms for determining the member state responsible for examining an asylum application lodged in one of the member states by a third-country national. This regulation is known as the Dublin II Regulation and determines the state responsible for processing an asylum application. For further information refer to the section on [EU](#)

[asylum policy and procedures.](#)

As a result of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, a new third country regime came into force in October 2004. Under this regime the Home Office does not have to determine the substance of a claim if they are removing an individual to an EU member state (including the ten accession countries) or Norway and Iceland. In such situations there is no in-country right of appeal and these countries are deemed safe under the Refugee Convention and European Convention on Human Rights. The Home Office is also able to remove applicants to other third countries that are identified as safe in relation to the Refugee Convention although this is open to challenge by Judicial Review.

Procedures

Asylum interviews

The purpose of the asylum interview is to establish whether or not an applicant is at risk of persecution for one of the five Convention reasons and to assess their credibility. The interviewing officer will ask a range of questions relating to the applicant's history and reasons for flight. It is only in exceptional circumstances that representatives are funded by the Legal Services Commission to attend interviews. For further information refer to the section on [Legal aid](#).

Applicants who are not entitled to have a funded representative at their interview can request to have the interview taped. Interpreters are provided for individuals by the Home Office. At the end of the interview applicants will be provided with a copy of the notes taken by the interviewing officer. This interview record will form part of the evidence for the application and any subsequent appeals.

Induction

An asylum seeker who requires NASS support may be sign-posted to an induction centre [this is distinct from the induction procedures which are part of the North West Project and Dover pilot]. An induction centre is different from a detention centre and is designed to house asylum seekers until a decision on their NASS application can be made. Asylum seekers who are not in need of NASS accommodation or are not eligible for NASS support will be given a day-long induction. At induction centres applicants will be provided with information on asylum procedures and on their rights and responsibilities. They will also be given a health check and assistance with their NASS application.

The one-stop procedure

Since October 2000, asylum applicants are required to submit any other grounds for permission to remain in the UK at the same time as submitting their asylum application. This is part of the '**one-stop procedure**' and ensures that any human rights grounds are considered alongside a claim for asylum.

Applying for asylum from outside the UK

There is no formal channel for applying for asylum from outside the UK, since provision is not made for this in the Immigration Rules. However, the British authorities have the discretion to consider applications made in a third country (i.e. not the applicant's country of origin or the UK) in cases where the person clearly demonstrates that their circumstances meet the Refugee Convention definition; they have close ties with the UK, and the UK is the most appropriate country of long term refuge. Such cases are referred to the Home Office from overseas diplomatic posts but are very exceptional as individuals are more likely to be encouraged to approach the United Nations High Commissioner for Refugees (UNHCR). There are separate procedures for persons already recognised as refugees outside the UK who apply to transfer their refugee status to, or resettle in, the UK.

Support and entitlements

Asylum seekers are not entitled to work [unless special permission is obtained from the Home Office], or

claim mainstream benefits and they do not fall under homeless or housing legislation. Asylum applicants are able to apply for support from the National Asylum support Service (NASS) but may be refused if they did not claim asylum as soon as 'reasonably practicable' after their arrival [unless their human rights would be breached as a result of withholding support]. For further information on NASS support, refer to [Refugee Council's NASS information page](#)³⁵ and ICAR's information on [Section 55](#).³⁶

Resettlement

Persons who have been recognised as refugees by, and given the protection of, UNHCR may apply for resettlement in the UK on an exceptional basis. Such people are called '**mandate refugees**' and are usually nominated for resettlement by UNHCR and referred to the UK authorities by the British Red Cross, although applications may also be made at a British diplomatic post abroad. The application will be considered in the light of the person's circumstances in their country of refuge, and on the basis of an assessment as to whether the UK is the most appropriate country for resettlement. Applicants must have close ties with the UK (either close family settled in the country, or history - such as periods of time spent previously in the UK). For further information see the Asylum Policy Instruction on [mandate refugees](#)³⁷.

Refugees with serious medical conditions can also apply to come to the UK under the '**ten or more plan**', a scheme established by the UNHCR in 1973 to resettle disabled refugees in need of medical attention which is unavailable in their initial country of refuge. The aim of the programme is for a host country to accept ten or more refugees, plus their families, each year. Applications are assessed by UNHCR in Geneva and referred to the UK authorities by the British Red Cross. Caseworkers in the UK assess applications in terms of the severity of the person's disability, their circumstances in the present country of refuge, and an assessment of whether the UK is the most appropriate country for resettlement. For further information see the Asylum Policy Instruction on [the ten or more plan](#)³⁸.

Refugees who have been granted asylum by another country can apply to have their **refugee status transferred to the UK**. This is a discretionary measure and such applications will usually be considered on a case-by-case basis. Others may be considered in accordance with the UK's obligations under the European Agreement on the Transfer of Responsibility for Refugees (EATRR). For further information see the Asylum Policy Instruction on [transfer of refugee status](#)³⁹.

The UK quota resettlement programme (known as the **Gateway Programme**) was established to allow the UK, through UNHCR, to accept an annual quota of refugees from outside the UK for resettlement each year. The programme is for people who have fled to a third country and have been accepted by UNHCR as refugees.

The limit on the number of people accepted can vary each year and will be set by ministers in advance. The initial target was to resettle 500 people every year⁴⁰; however this target has not been achieved due to lack of sign up by local authorities. Between March 2004 and May 2005, 202 refugees arrived in the United Kingdom from Liberia, Sudan, Democratic Republic of the Congo and Myanmar.⁴¹ 121 of these were resettled in Sheffield and 81 in Bolton.⁴² Hull City Council is the latest local authority to sign up to the

³⁵ <http://www.refugeecouncil.org.uk/infocentre/entit/sentit001.htm>

³⁶ <http://www.icar.org.uk/?lid=5765>

³⁷ <http://www.ind.homeoffice.gov.uk/6353/6356/6368/apimandatererefugees.pdf>

³⁸ <http://www.ind.homeoffice.gov.uk/6353/6356/6368/apitenormore.pdf>

³⁹ <http://www.ind.homeoffice.gov.uk/6353/6356/6368/apitransferofrefugee.pdf>

⁴⁰ UNHCR(2004) 'Easy Guide on refugee resettlement programmes 2003/04'

http://www.unhcr.org/uk/resettlement/resettlement_pdfs/resettlement_programs03-04.pdf

⁴¹ <http://www.unhcr.org/cgi-bin/texis/vtx/news/opendoc.htm?tbl=NEWS&id=428c9ffe2>

⁴² <http://www.ind.homeoffice.gov.uk/lawandpolicy/refugeeintegration/resettlement>

programme and in March 2006, 12 families from the Democratic of the Congo, who had been living in refugee camps in Zambia were resettled in the city.⁴³

Applications are referred to the Home Office casework team by UNHCR. All applicants referred to the UK are interviewed in their current country of asylum by Home Office staff. They also undergo health and security screening before a decision is made. Caseworkers must be satisfied that the applicant needs resettlement because their life, liberty, safety, health, or other fundamental human rights are at risk in the country where they have sought refuge, or that resettlement will provide the applicant with a durable solution if their situation in the country where they have sought refuge is not secure in the long term, even if they are not at immediate risk [these are UNHCR's criteria]. For further information see the Asylum Policy Instruction on [Resettlement](#).⁴⁴

Caseworkers are also required to take into account whether the scheme is able to meet the resettlement needs of the applicant and will be in their best interests; whether resettlement of the applicant and their dependants in the UK would not be conducive to the public good, and to consider the health of the applicant and what sort of impact refusal may have on any dependants. For example, resettlement will not be offered to applicants, or dependants, with HIV/AIDS, Multi-Drug-Resistant-TB, or established renal failure. Successful applicants will normally be granted indefinite leave to enter the UK, and will qualify for refugee status on their arrival in the UK. For more information, refer to ICAR's navigation guide to [resettlement programmes in the UK](#).⁴⁵

Prior to the 'Gateway programme' there were several governmental programmes in the UK that assisted groups of refugees from particular countries on an ad hoc basis. Examples of this include the Chileans in the 1970s, the Vietnamese in the 1980s and the Bosnians in the 1990s. In these cases, the government accepted significant numbers of refugees for resettlement in the UK. The difference between these resettlement programmes and the temporary protection given to Kosovars in 1999 should be noted as the latter group were not awarded refugee status and only offered protection for a limited amount of time. For more information on the Kosovar arrivals, refer to the navigation guide to [Kosovar asylum seekers and refugees in the UK](#).⁴⁶

Initial decisions

Asylum claims are considered by caseworkers or immigration officers trained in asylum law. A decision is made by assessing the contents of the Statement of Evidence Form (SEF), the interview and any other documents provided by the applicant. This information is assessed in light of country reports and other documentation compiled by the [Country of Origin Information Service](#)⁴⁷ (COI Service) in the [Research, Development and Statistics](#)⁴⁸ (RDS) section of the Home Office.

The Country Specific Asylum Policy Team (CSAPT) of the Home Office Asylum and Appeals Policy Directorate produces [Operational Guidance Notes](#)⁴⁹ (OGNs). These are briefer summaries of the general, political and human rights situation of a particular country. They aim to provide guidance on whether the main types of claim are likely to justify the grant of asylum, Humanitarian Protection or Discretionary Leave.

⁴³ http://www.refugeecouncil.org.uk/news/2006/mar06/curr0306_2.htm

⁴⁴ <http://www.ind.homeoffice.gov.uk/documents/asylumpolicyinstructions/apis/gatewayprotectionprogramme.pdf?view=Binary>

⁴⁵ <http://www.icar.org.uk/?lid=2002>

⁴⁶ <http://www.icar.org.uk/?lid=2023>

⁴⁷ http://www.homeoffice.gov.uk/rds/country_reports.html

⁴⁸ <http://www.homeoffice.gov.uk/rds/index.html>

⁴⁹ <http://www.ind.homeoffice.gov.uk/documents/countryspecificpolicy>

Under the Nationality, Immigration and Asylum Act 2002 an independent Advisory Panel on Country Information (APCI) was established with a remit 'to consider and make recommendations to the Secretary of State about the content of country information'. [APCI](http://www.apci.org.uk)⁵⁰ is composed of individuals and organisations expert in country information and/or refugee issues.

Useful resources

Advisory Panel on Country Information

<http://www.apci.org.uk>

Immigration Advisory Service - Home Office Country Information Analysis

http://www.iasuk.org/C2B/document_tree/ViewADocument.asp?ID=259&CatID=60

Several alternative country of origin information databases have been created:

UNHCR country of origin database

<http://www.unhcr.org/cgi-bin/texis/vtx/template?page=research&src=static/coi.html>

HJT Country Information Database (subscription only)

<http://www.hjt-research.com/home.shtml>

Refugee Legal Centre CD Rom subscription service (subscription only)

<http://www.refugee-legal-centre.org.uk/External%20Information%20Services.htm>

Credibility

Under section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 decision-makers are required to take into account certain circumstances when deciding upon the credibility of an applicant. The circumstances include:

- Failure to claim before being notified of an immigration decision
- Concealing information, providing misleading information or causing delay (including failure to produce a valid travel document)
- Failure to claim asylum in a safe country
- Failure to claim before arrest

Outcomes

There are three possible outcomes of an initial claim for asylum: the applicant will be recognised as a refugee and given five years limited leave to remain, be granted an alternative form of protection or their claim will be refused.

Refugee status

Refugee status brings with it full rights to live, work and claim benefits in the UK, an entitlement to grants and domestic fees for students, and a right to family reunion. Until August 2005 individuals recognised as refugees were also awarded indefinite leave to remain in the UK. It is now the case that grants of refugee status are for five years only and subject to 'review' at the expiry of or during those five years where there is a 'significant' and non-temporary change in the country of origin making return possible. The burden of showing that a person is no longer a refugee is on the Home Office.

⁵⁰ <http://www.apci.org.uk>

For further information, refer to the Asylum Policy Instructions on [Refugee Leave](#)⁵¹ and [Cessation, Cancellation and Revocation of Refugee Status](#)⁵². For further information refer to the section on [UK asylum law and policy](#).

If it is decided that a person is no longer a refugee then they may still qualify for humanitarian protection (HP) or discretionary leave (DL) and, if they do, the time spent as a refugee should count in equal measure towards the time a person needs to spend with HP or DL in order to apply for indefinite leave to remain in the country.

No reasons are given by the Home Office when refugee status is granted. However, when asylum is refused a 'reasons for refusal letter' is issued. Until 1 April 2003, when the Home Office considered that the applicant's circumstances did not merit a grant of asylum under the Refugee Convention, but that the individual should be given leave to remain in the UK on humanitarian grounds or compassionate grounds, then '**exceptional leave to remain**' (ELR) was granted outside the immigration rules. This applied when removal has deemed to breach the Human Rights Act 1998 or the UK's obligations under the 1984 UN Convention Against Torture [which the UK ratified in 1988].

The Home Office introduced two new forms of limited leave that replace ELR. The new forms of leave to remain are called '**humanitarian protection**' (HP) and '**discretionary leave**' (DL). It has been made clear that these statuses will not be used as liberally as ELR was, and will be used with discretion for those in need of international protection for reasons that do not fall within the terms of the Refugee Convention, or those with other compelling compassionate circumstances. According to the Home Office, their introduction 'is in line with the Home Secretary's decision to restrict grants of leave to unsuccessful asylum seekers who are recognised to be in need of international protection or to have other compelling reasons for not being removed.'⁵³

Humanitarian Protection

Humanitarian protection (HP) granted before August 2005 was for up to three years and after this date is for five years. It is granted to people who have been refused refugee status, but cannot be returned to their country of origin as they face a serious risk to life or person for one or more of the following reasons: the death penalty, unlawful killing, torture, inhuman or degrading treatment or punishment [returning people to face such treatment is contrary to the UK's obligations under Article 3 of the European Convention on Human Rights].

Serious criminals, including war criminals, terrorists or others who pose a threat to national security and anyone who is considered to be of bad character, conduct or associations are excluded from these provisions.

At the end of the period of HP granted, the case will be reviewed in essentially the same way as refugee status. Once an individual has completed five years with HP then they can apply for indefinite leave to remain in the UK. For further details, see the Asylum Policy Instruction on [Humanitarian Protection](#).⁵⁴

Discretionary Leave

Discretionary leave (DL) is granted outside the immigration rules in very limited circumstances to people who have been refused refugee status but who do not fulfill the criteria for HP. DL may be granted when the applicant:

⁵¹ <http://www.ind.homeoffice.gov.uk/6353/6356/6368/apirefugeeleave.pdf>

⁵² <http://www.ind.homeoffice.gov.uk/6353/6356/6368/apicessationcancellation.pdf>

⁵³ Asylum Policy Unit Notice 01/2003, 'Humanitarian protection and discretionary leave', 1 April 2003.

⁵⁴ <http://www.ind.homeoffice.gov.uk/6353/6356/6368/apihumanitarianprotection.pdf>

- has an Article 8 claim under the European Convention on Human Rights;
- has an Article 3 claim under the European Convention on Human Rights only on medical grounds or severe humanitarian cases;
- is an unaccompanied asylum-seeking child for whom adequate reception arrangements in their country are not available;
- would qualify for asylum or humanitarian protection but has been excluded; or
- is able to demonstrate particularly compelling reasons why removal would not be appropriate.

DL is granted for up to three years (unaccompanied asylum-seeking children are normally granted DL for three years or until their 18th birthday, whichever is earlier) and will be reviewed at the end of that period. At that point it can be extended for a further three years. After six years of DL, an application can be made for ILR. For further details, see the Asylum Policy Instruction on [Discretionary Leave](#).⁵⁵

Entitlements

Recognised refugees are entitled to family reunion once granted their status whereas individuals with discretionary leave or humanitarian protection are able to apply for family reunion, but their family members are only allowed to come to the UK once they have been awarded indefinite leave to remain. Individuals with all three statuses are allowed to work and have full access to health care and public funds, which means that they can apply for mainstream benefits and come under housing, homelessness and community care legislation. Refugees are entitled to a Refugee Convention travel document which is accepted by more countries than the 'certificate of identity' issued to individuals with discretionary leave or humanitarian protection.

Amnesty for families

In October 2003, David Blunkett announced a discretionary one-off exercise to grant indefinite leave to remain to families who had sought asylum in the UK before 2 October 2000, and had at least one dependant child who had been with them in the UK since before that date. Families were eligible for the concession where the application had not yet been decided, it had been refused and was subject to an appeal hearing, or had been refused and there was no further avenue of appeal but the applicant had not been removed. The Home Office stated that they will be going through their records and contacting families that are eligible for the amnesty. People who have made repeated asylum applications or who have been convicted of a criminal offence are unlikely to qualify.⁵⁶

⁵⁵ <http://www.ind.homeoffice.gov.uk/6353/6356/6368/apidiscretionaryleave.pdf>

⁵⁶ For further details, see Asylum Policy Unit Notice 4/2003, 'One-off Exercise to Allow Families Who Have Been in the UK For Three or More Years to Stay.' <http://www.homeoffice.gov.uk/documents/foi-5406-family-ilr-exe-annexa?view=Binary>

Appeals

As a result of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 the [Asylum and Immigration Tribunal](#)⁵⁷ (AIT) replaced the Immigration Appellate Authority (IAA) in April 2005. The AIT hears appeals against decisions made by the Home Office on asylum, immigration and nationality matters. The IAA had a two-tier structure which comprised Immigration Adjudicators and the Immigration Appeal Tribunal. Appellants refused by an adjudicator had the possibility of lodging a further appeal with the Tribunal. In contrast, the AIT is a single-tier body. In the appeals process, the person bringing an appeal is known as the 'appellant' and the person challenging the appeal is known as the 'respondent'.

With some exceptions applicants can appeal the decisions to refuse them refugee status, even if they are awarded an alternative form of status [humanitarian protection or discretionary leave].

Appeal rights

The right to appeal negative asylum decisions has been increasingly restricted. As outlined in the previous section there are certain categories of asylum applicants that are unable to pursue an appeal within the UK or who fall within the expedited appeal process. These categories of applicants are as follows:

- individuals detained under the fast track process at Harmondsworth or Yarl's Wood;
- individuals with cases certified as clearly unfounded and detained at Oakington;
- individuals identified as third country cases;
- individuals with an earlier right of appeal.

Refer to the section on [initial decisions](#) for more information.

Under Section 96 of the 2002 Act, (amended by Section 30 of 2004 Act), the refusal of an asylum or human rights claim cannot be appealed if the Secretary of State certifies the claim by asserting that the matters that have been raised by the applicant should have been raised in an earlier appeal or in response to a one stop notice.

The one-stop procedure

The one-stop procedure came into effect on 2 October 2000 under the 1999 Act and was subsequently modified under the 2002 Act. It was intended to ensure that people applying to enter or remain in the UK would be able to make only one application detailing all their reasons for seeking permission to enter or remain in the UK, receive one decision taking into account everything relevant to their case, and lodge only one appeal, if refused.

When an appeal against refusal of an asylum claim is lodged, the appellant is also required to respond to a 'one-stop notice' and complete a 'statement of additional grounds' form outlining any additional reasons they have for wanting to stay in the UK, other than those they have already disclosed in their initial application. This includes human rights grounds: reasons why refusal to grant them entry to the UK would contravene the UK's obligations under the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (usually referred to as the European Convention on Human Rights or ECHR) and the Human Rights Act 1998, and any other compassionate circumstances. All these issues will then be considered at the appeal hearing.

Security risk

Under Section 97 of the 2002 Act an appeal to the AIT against a negative asylum/human rights decision will not be allowed if the person's exclusion from the UK is in the interests of national security and if the decision

⁵⁷ <http://www.ait.gov.uk>

was made on the basis of information that cannot be disclosed for reasons of national security. In these cases, there is instead a right of appeal to the Special Immigration Appeals Commission (SIAC). At SIAC hearings, appellants are entitled to two legal representatives: a special advocate appointed by the government who is allowed to view the 'sensitive material' in closed session and make representations on behalf of the appellant; and another representative that represents the appellant in the open sessions.

Useful resource

House of Commons Constitutional Affairs Committee (2005) *The Operation of the Special Immigration Appeals Committee (SIAC)* <http://www.parliament.uk/documents/upload/CACSIACEvidence.pdf>

For more information refer to the section on [Asylum and Security](#).

The structure of appeals

An individual has received a decision to refuse their asylum application has ten days after the notice decision is served to lodge an appeal and five days if they are detained [but not under the fast-track procedures]. For information on the timetables for fast-track cases refer to the section on [initial decisions](#).

Asylum and Immigration Tribunal

AIT appeals are heard by one or more immigration judges and are sometimes accompanied by non-legal members of the tribunal. Immigration judges and non-legal members are appointed by the Lord Chancellor and form an independent judicial body. Appeals are heard in a number of locations across the country.

The first hearing is called a **Case Management Review (CMR)** the main purpose of which is to ensure that the appeal is ready to go ahead. The key issues to be determined by the appeal may also be identified at this stage.

At a full hearing the following people normally attend: the person making the appeal (the appellant), their legal representative and a representative from the Home Office (a Home Office Presenting Officer). Witnesses may also attend the hearing and a court-appointed interpreter will be provided for the appellant if needed. The immigration judge (or panel) will decide whether the appeal against the original decision of the Home Office should be allowed or dismissed. This will be provided in writing and is called a 'determination'. Once the AIT has made its decision and issued a determination, either side may apply for a **reconsideration** on the grounds that the AIT made an error of law. Reconsiderations are first considered by a senior immigration judge at the AIT and if successful, will result in an order for the AIT to reconsider the original determination and hear the case again. If a reconsideration is refused then there is a right to request that a High Court Judge considers the case on the papers. Reconsiderations cannot be sought if the AIT sat as a panel of three or more legally qualified members when it heard the original appeal and any appeal would instead be directed to the Court of Appeal on a point of law.

Court of Appeal

If there is a negative outcome as a result of a reconsideration hearing then it is possible to apply for permission to appeal to the Court of Appeal.

House of Lords

A further appeal against the decision of the Court of Appeal can be brought, with permission, to the House of Lords, the highest court in the UK. Cases that do not succeed before the House of Lords may be brought before The European Court of Human Rights in Strasbourg.

Judicial review

As long as they have exhausted all of their statutory rights of appeal, asylum seekers are also entitled to apply to the Administrative Court for permission to move a judicial review of any decision taken during the asylum process. A judicial review looks at whether the decision has been made fairly and properly rather than examining the facts of the claim. The test for a judicial review is whether or not the decision was 'Wednesbury unreasonable'. This means that the decision may be successfully challenged if it is considered so unreasonable that no 'reasonable public body' could have made such a decision. This is a very narrow test and limits the courts' power to supervise the executive. Examples of instances where an applicant may apply for permission to move a judicial review are: cases certified by the Home Office as clearly unfounded so that there is no in-country right of appeal (in this case it is the decision to certify that is being judicially reviewed) and cases that are certified on the grounds that there was an earlier right of appeal [again, it is the certificate that is being judicially reviewed]. The Home Office is also entitled to apply for permission to move a judicial review.

Useful resources

Asylum and Immigration Tribunal (Procedure) Rules 2005

<http://www.opsi.gov.uk/si/si2005/20050230.htm>

The Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005

<http://www.opsi.gov.uk/si/si2005/20050560.htm>

Legal aid and funding

Publicly-funded legal advice and representation is available for asylum cases, as it is for other areas of the law. In England and Wales the legal aid fund is called the [Community Legal Service Fund](#)⁵⁸ and is administered by the [Legal Services Commission](#) (LSC).⁵⁹

Free assistance is available throughout the asylum process, for asylum seekers who either have no income, or a very low income. The LSC will only fund advisers that they have a contract with to provide specialist immigration advice. There are different levels of legal aid available. 'Legal help' covers initial advice and applications to the Home Office, 'Controlled Legal Representation' covers appeals and 'Legal Representation' is for cases before the High Court, Court of Appeal and House of Lords.

In an attempt to reduce the amount of public money spent on legal aid, the [Department for Constitutional Affairs](#)⁶⁰ introduced changes to the funding system for legal aid in April 2004. The changes include prescribed limits to the number of hours of advice and representation that every client is entitled to receive. Advisers are only able to give up to five hours of initial advice to asylum applicants [14 hours if they are in detention]. Legal representatives can apply to the Legal Services Commission to extend these limits in certain circumstances. Funding for an appeal to the Asylum and Immigration Tribunal (AIT) will only be granted to advisers if they can demonstrate to the LSC that the prospects of success are moderate or better and that the likely benefits of the proceedings justifies the cost involved. Applications for judicial review before the High Court and appeals to the Court of Appeal and House of Lords may also be funded by the LSC under the 'legal representation' scheme. However, the merits tests in these cases are far more stringent than for AIT appeals and appellants may be required to make a monthly financial contribution. For more information, refer to the key issues section on [Legal representation](#).

Regulation

The Immigration and Asylum Act 1999 established an independent public body, the [Office of Immigration Services Commissioner \(OISC\)](#)⁶¹, to regulate immigration advisers and to promote good practice. Immigration advisers do not have to be trained solicitors, although many are. Since 1 April 2005 the LSC has required that all advisers are accredited through the LSC/Law Society accreditation scheme if they wish to provide legally aided immigration advice. Three levels of caseworker have been implemented: Level 1 – Accredited; 2 – Senior; 3 – Advanced. There is also a supervisor standard. The level of advice that an adviser can give is determined by the level of accreditation they have achieved.

⁵⁸ <http://www.clsdirect.org.uk/legalhelp/clscharges.jsp?lang=en>

⁵⁹ <http://www.legalservices.gov.uk>

⁶⁰ <http://www.dca.gov.uk>

⁶¹ <http://www.oisc.gov.uk>

Interpretation and application of the Refugee Convention

When the Home Office is processing a claim or a court is deciding an appeal it is necessary to consider whether or not the individual's circumstances meet the definition set out in the Refugee Convention. The Office of the United Nations High Commissioner for Refugees (UNHCR) has produced a [Handbook on Procedures and Criteria for Determining Refugee Status](#)⁶² which explains the various components of the refugee definition set out in the 1951 Convention and the 1967 Protocol. The interpretation set out in the Handbook is not binding but is generally accepted by the Home Office. The UK courts have repeatedly affirmed the principles of the Handbook and the Home Office gives copies to all its caseworkers. There are also a number of key textbooks that give guidance on interpreting the Convention. The key texts on international refugee law, *The Law of Refugee Status* by James Hathaway (published by Butterworths in 1991) and *The Refugee in International Law* by Guy Goodwin-Gill (second edition published by Oxford University Press in 1996), are accepted to provide authoritative interpretations of the Refugee Convention and have been extensively cited by the higher courts in the UK.

In the section on [UK asylum law and policy](#) it was noted that the Refugee Convention was first incorporated in to domestic legislation in 1993 and since then several other major Acts relating to asylum have been passed. These Acts are supplemented by the [Immigration Rules](#)⁶³ which explain the procedures and list the factors that the Home Office will take in to account when making decisions on asylum claims. There are also [Asylum Policy Instructions](#)⁶⁴ which are published on the Home Office website and provide more information on how decisions are taken and procedures operate.

The system of judicial precedent means that decisions of the higher courts [House of Lords, Court of Appeal and High Court] are binding on all lower courts in the UK. Thus, the decisions on specific asylum cases that have been brought to appeal contribute to a body of case law which establishes standards by which future cases are assessed. In addition to the decisions of the higher courts, some determinations of the Asylum and Immigration Tribunal are '[starred](#)'⁶⁵ which means that the decisions on the points of law that the decision has been starred for must be followed by other tribunals.

Some determinations are designated as '[country guidelines](#)'⁶⁶ and these are cases that are seen to indicate the Tribunal's present view on constantly recurring general matters of fact in relation to a particular country of origin. If a set of facts arising in the particular case before the Tribunal has previously been addressed in a country guideline case the Tribunal expects the appellant to argue why the outcome of the country guideline case in question should not be followed.

The key factors which must be considered when an asylum claim is being assessed are explained below. Although in practice it is not always possible to separate out all the elements of a claim in this manner, these are some of the main issues considered by decision makers.

Well-founded fear

It is up to the Immigration and Nationality Directorate (IND) of the Home Office to decide whether or not an asylum seeker has a well-founded fear of persecution. This decision is based upon the combination of subjective and objective evidence. During the asylum interview, evidence is obtained from the applicant

⁶²UNHCR (1992, 1979) *Handbook on Procedures and Criteria for Determining Refugee Status*

<http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=PUBL&id=3d58e13b4>

⁶³ <http://www.ind.homeoffice.gov.uk/lawandpolicy/immigrationrules>

⁶⁴ <http://www.ind.homeoffice.gov.uk/lawandpolicy/policyinstructions/api>

⁶⁵ http://www.ait.gov.uk/practice_directions/documents/list_of_starred_determinations_last_updated_08_03_06.pdf

⁶⁶ http://www.ait.gov.uk/practice_directions/documents/cg_list/cg_list_last_updated_03_04_06.pdf

about their personal situation. This is then assessed along with information from the Statement of Evidence Form (SEF), [if there is one], any further materials presented by the applicant and in light of country reports and other documentation compiled by the [Country of Origin Information Service](#)⁶⁷ (COI Service) in the [Research, Development and Statistics](#)⁶⁸ (RDS) section of the Home Office. In Tribunal hearings expert evidence and reports by organisations such as Amnesty, Human Rights Watch and also the US State Department are used to determine whether or not an individual is at risk of persecution. Credibility is an extremely important part of the decision-making process and the Home Office will look at the consistency and plausibility of the applicant's account in deciding whether it is believable.

The applicant needs to demonstrate a well-founded fear that is current. As Lord Slynn stated in [Adan v Secretary of State for the Home Department](#):⁶⁹ 'That well-founded fear must, as I read it, exist at the time his claim for refugee status is to be determined; it is not sufficient as a matter of ordinary meaning of the words of the article that he had such a fear when he left his country but no longer has it'.⁷⁰

Nevertheless, this precedent does not rule out the possibility of an historic fear being used as evidence which points towards a present fear of persecution.

A *refugee sur place* is someone who has entered the country for reasons other than claiming asylum but who subsequently claims asylum because of a change in the situation in their country of origin and/or their personal circumstances which cause them to fear persecution on return to their home country. The term can also include someone who, by virtue of having claimed asylum in another country, would be subject to persecution in their own country upon return.

Persecution

There is no internationally accepted definition of persecution beyond that provided by Article 33(1) of the Convention that gives the very general definition of a threat to life or freedom. The Convention has been interpreted to mean that there must be a threat to the person individually for one of the five reasons laid out in Article 1: race, religion, nationality, membership of a particular social group, or political opinion. People who fear return to a generally unstable or dangerous situation, such as a civil war [where the danger is a generalised one, rather than due to their individual circumstances], are unlikely to qualify for protection under the terms of the Convention unless they can show that it is an extreme case.

The applicant must demonstrate the severity of the threat they face to show that it meets the threshold for treatment amounting to persecution, and they must show that there is not sufficient protection available to them. Professor Guy S. Goodwin-Gill⁷¹ observes that '[w]here the state is either unable or unwilling to satisfy the standard of due diligence in the provision of protection, the circumstances may equally found an international claim.' In the case of *Gashi and Nikshiqi v Secretary of State for the Home Department* (HX 75677-95 and HX/75478/95 [13695]) the IAT approved a definition of persecution as the sustained or systematic violation of human rights demonstrative of a failure of state protection (unreported, 13 February 1997).

Hathaway has set out a framework for what is termed a human rights-based approach to persecution which has been broadly adopted by UNHCR and by the Tribunal in the case of *Gashi* and the House of Lords in the case of *Ullah*. Drawing from a range of international agreements Hathaway identifies and defines three categories of rights:

⁶⁷ http://www.homeoffice.gov.uk/rds/country_reports.html

⁶⁸ <http://www.homeoffice.gov.uk/rds/index.html>

⁶⁹ <http://www.parliament.the-stationery-office.co.uk/pa/ld199798/ldjudgmt/jd980402/adan01.htm>

⁷⁰ Regina v. Secretary of State for the Home Department, Ex parte Adan [1998] 2 All ER 453 at 454

<http://www.parliament.the-stationery-office.co.uk/pa/ld199798/ldjudgmt/jd980402/adan01.htm>

⁷¹ Goodwin-Gill, G. (1996) *The Refugee in International Law*, second edition p.73

Level 1 rights: **Freedom from arbitrary deprivation of life; protection against torture or cruel, inhuman or degrading punishment or treatment; freedom from slavery; freedom of thought, conscience and religion.** These rights should always be observed and protected by the state, even in times of emergency or crisis, and failure to protect them amounts to persecution.

Level 2 rights: **Freedom from arbitrary arrest or detention; equal protection of the law; fair criminal proceedings; family privacy; freedom of internal movement; freedom of opinion, expression, assembly and association; rights to vote; access to public employment.** States are only able to override these rights at times of emergency or crisis and if they are not observed in any other situation then persecution occurs.

Level 3 rights: **Right to work; right to essential food, clothing and housing; health care; basic education; cultural expression.** If a state ignores these social and economic rights altogether or only upholds them in a discriminatory manner then the result may be persecution.

Level 4 rights. **Private property, protection from unemployment.** These are known as core entitlements and failure to observe these rights will not usually amount to persecution.⁷²

The general approach to identifying persecution was set out in a case called *Ravichandran (1996 Imm AR97, CA)*, in which it was stated that persecution had to be viewed 'in the round' with all of the circumstances of the case taken in to consideration, including the reasons motivating the treatment under scrutiny. In this case the appellant was unsuccessful because the rounding-up of individuals by the authorities had taken place after terrorist attacks had occurred.

Standard of proof

Unlike criminal proceedings where the burden of proof is on the state, asylum cases require the applicant to prove their eligibility for refugee status. However, the standard of proof is not as high as it is in normal civil proceedings. Instead of demonstrating that it is 'more likely than not' that the individual would be persecuted if sent back to their country, it must only be shown that there is a 'reasonable likelihood' of such danger. '*The requirement that an applicant's fear should be well-founded meant that there had to be demonstrated a reasonable likelihood that he would be persecuted for a Convention reason if returned to his own country... "a reasonable chance", "substantial grounds for thinking", "a serious possibility"*'. This standard of proof was decided by the House of Lords in the case of *Sivakumaran (1988 Imm AR 147)*.⁷³ Decision makers still regularly refer to this case which focused on the return of six Tamils to Sri Lanka after being refused asylum.

Assessment of evidence

The case of *Karanakaran (2000 Imm AR 271)* deals with the way in which evidence is assessed. As a result of this judgement decision-makers are required to provide a full reasoning for how they came to a decision in a case and are not able to exclude any evidence from its consideration when assessing the possibility of future risk unless they are able to justify that there is no real doubt that the evidence is false. As a result, decision makers must show which aspects of the claim they accept as being true, which they do not, and which are still in doubt about. They must also provide reasons for their conclusions.

⁷² Hathaway, J. (1991) *The law of refugee status*. Toronto: Butterworths.

⁷³ <http://www.refugeelawreader.org/files/pdf/112.pdf>

Sufficiency of protection

[*Horvath v Secretary of State for the Home Department \(2000 INLR 15\)*](#)⁷⁴ deals with the issue of state involvement and sufficiency of protection. The basic premise emerging from this case is that it is necessary to identify a breakdown in the relationship between the citizen and the government because the citizens can no longer rely on the state for protection, [this may be because the state is unable or unwilling to provide protection or that it is actually engaged in the persecution of the individual]. The House of Lords ruled that state protection was sufficient if a criminal law that made attacks punishable by a sentence commensurate with the crime was in force in the state.

Agents of persecution

The UK [along with a majority of the signatory states], subscribes to the 'protection theory' when interpreting the Convention. This approach recognises persecution by non-state agents such as the LTTE [Tamil Tigers], in Sri Lanka. This is by way of contrast to state agents who are people acting in an official capacity on behalf of the state such as civil servants or members of the security services, police or armed forces. Of key importance is the ability, or willingness, of the state to protect individuals against persecution. This approach has important implications for refugees living in countries such as Somalia, where the state has completely broken down and can offer no protection against persecution to its nationals. The protection theory lies in contrast to the 'accountability theory' [that has been used by countries such as France and Germany], which limits the classes of case in which a claimant could obtain refugee status to situations where the persecution alleged could be attributed to the state. However, as a result of the 'Qualification directive' states EU states have now had to recognise non-state persecution. For further information refer to the section on [EU policy](#).

The distinction between the two approaches was borne out in the case [*Adan v Secretary of State for the Home Department*](#) (1998 2 WLR 702)⁷⁵. In this case a Somali national made an application for asylum in the UK after being refused refugee status by the German government. The Home Office refused the application because the individual had passed through a safe country prior to making their claim in the UK and could therefore be returned to Germany. The House of Lords ruled against the Home Office decision on the grounds that the German interpretation of the Convention [which at that time only recognised the state as an agent of persecution], would probably result in the applicant being returned from Germany to Somalia where there was a 'reasonable likelihood' that they would face persecution. The Home Office was prevented from returning the applicant to Germany. Under the EU Qualification Directive Germany is now obliged to recognise non-state agents. For more details refer to the information on a Common European asylum system in the [EU policy](#) section.

Reasons for fear of persecution

Refugees must show that the persecution that they fear is for one of the five reasons listed in the Refugee Convention definition: race, religion, nationality, political opinion, or membership of a particular social group. These reasons for persecution often overlap and someone may be targeted by the authorities, or some other party, not only because they are of a particular ethnicity but because of their political opinions as well.

Both internationally and nationally the least well defined is 'membership of a particular social group'. In the UK, the category has been extended to include women as a social group for the purposes of the Convention. The case of [*Shah & Islam*](#) (1999 INLR 144)⁷⁶ which reached the House of Lords, demonstrated that the courts were willing to accept Pakistani women as a social group. Crucial to this decision was the identification of the women being subject to persecution in a gender-based discriminatory way.

⁷⁴ <http://www.publications.parliament.uk/pa/ld199900/ldjudgmt/jd000706/horv-1.htm>

⁷⁵ <http://www.parliament.the-stationery-office.co.uk/pa/ld199798/ldjudgmt/jd980402/adan01.htm>

⁷⁶ <http://www.publications.parliament.uk/pa/ld199899/ldjudgmt/jd990325/islam01.htm>

In November 2000, the Immigration Appellate Authority produced [asylum gender guidelines](#)⁷⁷ to assist, [what were then], adjudicators in the assessment of asylum cases. These guidelines were largely based on the Refugee Women's Legal Group (RWLG) [gender guidelines](#)⁷⁸ for the determination of asylum claims in the UK which were published in 1998 and approved by the House of Lords in the case of [Shah & Islam](#) (1999INLR 144).⁷⁹ For more information, refer to the key issues section on [Social groups](#).

- Refer to the section on [gender guidelines](#)⁸⁰ in the navigation guide on Women refugees and asylum seekers in the UK for more information on the development of gender guidelines.

Prosecution versus persecution

A clear distinction is made between prosecution and persecution, [although the two may be related]. It is not enough for an asylum seeker to only demonstrate that they fear prosecution upon return to their country. This was shown in the case *O v IAT and Secretary of State for the Home Department (1995 Imm AR 494)*. However, prosecution may amount to persecution in certain situations. Examples included instances where the punishment is excessive, where the law is applied in a discriminatory manner or where there is a lack of due process. Refer to the [navigation guide on lesbian, gay, bisexual and transgender refugees and asylum seekers](#)⁸¹ for more information.

Internal flight alternative

When assessing an asylum claim, the Home Office may refuse the claim on the basis that although the applicant may face persecution in a particular part of their country of origin, it is however possible for them to live in safety in another part of the country. However, this provision is not included in the Refugee Convention.

Exclusion clauses

Certain categories of people are excluded from the protection that is offered by the Refugee Convention. The exclusion clauses are contained within Article 1F of the Convention and exclude an individual if there are serious reasons for believing that:

- a. he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- b. he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
- c. he has been guilty of acts contrary to the purposes and principles of the United Nations.

The operation of exclusion clauses is the most serious sanction of international refugee law as it overrides the basic right of *non-refoulement* to a country of persecution. UNHCR has frequently cautioned against the hasty use of exclusion clauses. During UNHCR's Global Consultations process, a holistic approach to the application of exclusion clauses was emphasised and experts highlighted the need to consider the inclusion aspects of the Convention before a claimant is excluded under Article 1F. One of the reasons for this approach is that Article 1F cases are notoriously complex and it is only after a full examination of the facts that all of the relevant issues may emerge.

An internationally agreed definition of terrorism is still under debate. However, acts commonly considered to be terrorist in nature are likely to fall within the exclusion clauses even though Article 1F should not be interpreted as simply an anti-terrorism provision. It is also possible that in some cases, Article 1F may not

⁷⁷ Immigration Appellate Authority (November 2000) *Asylum gender guidelines*
<http://www.asylumsupport.info/publications/iaa/gender.pdf>

⁷⁸ Refugee Women's Legal Group (July 1998) *Gender guidelines for the interpretation of asylum claims*.
<http://www.amre.fsnet.co.uk/rwlg/genderguidelines.pdf>

⁷⁹ <http://www.publications.parliament.uk/pa/ld199899/ldjudgmt/jd990325/islam01.htm>

⁸⁰ <http://www.icar.org.uk/?lid=6324#4>

⁸¹ <http://www.icar.org.uk/?lid=2006>

need to be considered, as the fear of legitimate prosecution [rather than persecution] automatically excludes an applicant from the Convention. Article 1F (b) is the exclusion clause which has traditionally been of most relevance in exclusion cases on the basis of terrorism. Issues surrounding the operation of the exclusion clauses were first brought to international attention as a result of the Great Lakes Crisis in 1994. This crisis prompted the fear that individuals who were guilty of genocide were being offered refuge under the Convention by the international community. Refer to the section on [Asylum and Security](#) for more information.

Under Article 33 of the Convention it is possible for states to expel a refugee when 'there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country'. This provision means that refugees can be exceptionally returned to their country of origin when there is an established threat to the national security of the host country and/or when the proven criminal nature and record of the individual constitute a danger to the community. UNHCR advises that the standard of proof in these cases is high and that the provision should be applied in exceptional circumstances.

Section 55 of the Nationality, Immigration and Asylum Act 2006 gives the Secretary of State the power to issue a certificate that an appellant is not entitled to the protection of Article 33 (1) of the Refugee Convention because Article 1F applies or Article 33 (2) applies on national security grounds. Refer to the section on the Immigration, Asylum and Nationality Act 2006 in the section on [UK Asylum Law and Policy](#).

Useful resources

Zard, M. (2002) Exclusion, terrorism and the Refugee Convention, *Forced Migration Review*, 13:32-34
<http://www.fmreview.org/FMRpdfs/FMR13/fmr13.11.pdf>

UNHCR (30 May 2001) 'Lisbon Expert Roundtable, Global Consultations on International Protection: Summary Conclusions – Exclusion from Refugee Status 3-4 May 2001' (EC/GC/01/2Track/1).
<http://www.unhcr.org/cgi-bin/texis/vtx/home/openssl.pdf?tbl=PROTECTION&page=PROTECT&id=3b38938a4>

UNHCR (4 September 2003) 'Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees' (HCR/GIP/03/05).
<http://www.unhcr.org/cgi-bin/texis/vtx/publ/openssl.pdf?tbl=PUBL&id=3f7d48514>

Cessation

The cessation clauses are contained in the six sub-clauses of Article 1C and determine the circumstances under which refugee status may be lawfully withdrawn or 'ceased'. Refugee status is meant to cease when there is clearly no longer any need for international protection. An example of this is when the refugee obtains a new nationality and enjoys the protection of his or her new state of citizenship, or when the situation in country of origin has stabilised.

Until August 2005 individuals recognised as refugees were also awarded indefinite leave to remain in the UK. It is now the case that grants of refugee status are for five years only and subject to 'review' at the expiry of or during those five years where there is a 'significant' and non-temporary change in the country of origin making return possible. Refer to the section on the five year strategy in the section on [UK Asylum Law and Policy](#).

Useful Resources

UNHCR (10 February 2003) 'Guidelines on International Protection: Cessation of Refugee Status Under Article 1C(5) and (6) of the 1951 Convention Relating to the Status of Refugees (the "ceased circumstances" clauses)'. HCR/GIP/03/03.

<http://www.unhcr.org/cgi-bin/txis/vtx/publ/opendoc.pdf?tbl=PUBL&id=3e637a202>

Fitzpatrick, J. and Jeffrey and Susan Brotman (undated) 'Current Issues in Cessation of Protection Under Article 1C of the 1951 Refugee Convention and Article 1.4 of the 1969 OAU Convention'. Background paper prepared for the UNHCR Global Consultations on International Protection, 2001

[http://www.unhcr.org/cgi-](http://www.unhcr.org/cgi-bin/txis/vtx/home/opendoc.pdf?tbl=PROTECTION&page=PROTECT&id=3b3889c28)

[bin/txis/vtx/home/opendoc.pdf?tbl=PROTECTION&page=PROTECT&id=3b3889c28](http://www.unhcr.org/cgi-bin/txis/vtx/home/opendoc.pdf?tbl=PROTECTION&page=PROTECT&id=3b3889c28)

Bonoan, R. (24 April 2001) 'When is International Protection No Longer Necessary? The 'Ceased Circumstances' Provisions of the Cessation Clauses: Principles and UNHCR Practice, 1973-1999.' Background paper prepared for the UNHCR Global Consultations on International Protection, 2001.

[http://www.unhcr.org/cgi-](http://www.unhcr.org/cgi-bin/txis/vtx/home/opendoc.pdf?tbl=PROTECTION&page=PROTECT&id=3bfe1cd84)

[bin/txis/vtx/home/opendoc.pdf?tbl=PROTECTION&page=PROTECT&id=3bfe1cd84](http://www.unhcr.org/cgi-bin/txis/vtx/home/opendoc.pdf?tbl=PROTECTION&page=PROTECT&id=3bfe1cd84)

The impact of human rights law

In 1998 the [Human Rights Act](#)⁸² was passed in the UK. This piece of legislation, which came into force in October 2000, incorporates the European Convention on Human Rights (ECHR) into UK law. Although the ECHR does not specifically address the rights of asylum seekers or refugees, the basic human rights enshrined in the law, as a result of the 1998 Act, do have an important impact upon asylum seekers. Immigration rules require immigration officers and all of the staff at the IND to ensure that their decisions comply with the Human Rights Act.

Of particular relevance are Articles 3 and 8 of the ECHR. Article 3 prohibits an individual from being returned to a country where they will be subjected to torture or inhuman or degrading treatment or punishment. As has already been stated, asylum seekers have to demonstrate that they risk harm as a result of one of the five Convention reasons. However, the purpose of Article 3 is to protect individuals from harm, regardless of why they are being harmed. An example of this is the danger faced in civil war situations. Article 3 is an absolute right and cannot be derogated from.

A number of cases have centred on the question of whether or not the return of an individual, to a country where they will not be able to access the medical treatment that their condition requires, amounts to a breach of Article 3. On May 2005, in the case of [N v Secretary State for the Home Department](#) (2005 UKHL 31)⁸³, the House of Lords ruled that a breach would only occur in exceptional circumstances such as the need to prevent suffering while the individual is dying.

Article 8 prevents unjustifiable interference in an individual's right to respect for private and family life. It is therefore possible for asylum seekers who have established a family in the UK or have developed significant social networks to argue that removing them from the UK would be a breach of their rights under Article 8. The UK courts have interpreted the concept of 'private life' to include the applicant's mental health and a consideration of any decline likely to be caused by the difference between the treatment they receive in the UK and that available in their country of origin. However, in contrast to Article 3, Article 8 is not absolute, but is subject to a proportionate approach. For example, the state can argue that the need for firm immigration control outweighs the needs of a family to stay together.

Asylum seekers may also seek protection in the UK on the grounds that their rights under other articles of the ECHR would be breached by their removal. This includes: the right to life (Article 2); the right to liberty and security (Article 5); the right to a fair trial (Article 6) and the right to marry and found a family (Article 12). Article 14 provides a right not to be discriminated against in the enjoyment of other ECHR rights.

An important development in the field of human rights and asylum law is the case of *Ullah & Do* which was initially heard by the Court of Appeal in 2002. The main focus of the judgement is whether or not an alleged breach of Article 9 of the ECHR – the right to freedom of thought, conscience and religion – inhibits the removal of asylum seekers from the UK. Lord Phillips determined that the drafters of the ECHR did not intend to restrict the right of governments to maintain immigration controls, except where the circumstances were so severe that a breach of Article 3 would occur.

[Ullah & Do](#) (2004 UKHL 26)⁸⁴ was heard again in the House of Lords in June 2004 and although unanimously upholding the Court of Appeal's decision that, on the facts presented, in these cases removing the applicants to their home countries of Pakistan and Vietnam would not be in breach of the Human Rights Act 1998, the Lords were not convinced that the European Court of Human Rights (ECtHR) had ruled out

⁸² <http://www.opsi.gov.uk/acts/acts1998/19980042.htm>

⁸³ <http://www.publications.parliament.uk/pa/ld200405/ldjudgmt/jd050505/home-1.htm>

⁸⁴ <http://www.parliament.the-stationery-office.co.uk/pa/ld200304/ldjudgmt/jd040617/ullah-1.htm>

the possibility of an asylum seeker relying on Article 9 alone and were consequently not prepared to take this course of action themselves.

The consequence of the *Ullah & Do* judgement is that when returning an individual to another country results in exposing that individual to a risk of harm that is not severe enough to amount to a breach of Article 3 it is still possible for removal to breach the individual's rights under another article of the ECHR. However, the circumstances in which non-Article 3 rights will be breached are exceptional and 'a **high threshold test** will always have to be satisfied. It will be necessary to establish at least a **real risk of a flagrant violation** of the very essence of the right before other articles could become engaged'.⁸⁵

Applicants only have to show that a '**flagrant breach**' of rights occurs if they are relying on non-Article 3 rights and it is a 'foreign case' (this is where an applicant is making a claim as a result of harm feared overseas). An example would be an Article 8 case based on the denial of the rights of gay men and lesbians in the relevant country of origin. Refer to the [navigation guide on lesbian, gay, bisexual and transgender refugees and asylum seekers](#)⁸⁶ for more information.

A domestic case is one relating to harm occurring in the UK and is decided according to different thresholds. The case of *Razgar* (2004 UKHL 27)⁸⁷ went a long way towards clarifying which types of cases can be classified as foreign and therefore subject to the high threshold of a 'flagrant breach'.

Useful resources

Clayton, G. (2006) *Textbook on Immigration and Asylum Law*, Oxford: Oxford University Press (2nd edition).

The Department of Constitutional Affairs Human Rights Unit

<http://www.dca.gov.uk/hract/hramenu.htm>

The role of this unit is to ensure the successful implementation of the Human Rights Act 1998.

European Convention on Human Rights

<http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/EnglishAnglais.pdf>

Home Office guidance for caseworkers on using the ECHR in decision-making

<http://www.ind.homeoffice.gov.uk/6353/6356/6368/apiechr.pdf>

Joint Council for the Welfare of Immigrants (2006) *Immigration, Nationality and Refugee Law Handbook*. London: JCWI.

The European Court of Human Rights

The European Court of Human Rights (ECHR) was set up in 1959, subsequent to the ratification of the European Convention on Human Rights, and is based in Strasbourg. Judges sit in an individual capacity and do not represent any particular state. Either contracting states, or individual applicants, are able to bring complaints to the court. Individuals are only able to bring a complaint if they have personally and directly been the victim of a breach of one or more of the Convention rights by one of the contracting states. Also, it is only when domestic remedies have been exhausted that an individual can approach the court. If the findings are against a state, then that state is obliged to change its law in accordance with the rights of the Convention.

⁸⁵ <http://www.parliament.the-stationery-office.co.uk/pa/ld200304/ldjudgmt/jd040617/ullah-1.htm>

⁸⁶ <http://www.icar.org.uk/?lid=2006>

⁸⁷ <http://www.publications.parliament.uk/pa/ld200304/ldjudgmt/jd040617/razgar-1.htm>

Some of the court's earlier jurisprudence provided states with important interpretations of Article 3 of the Convention. In the case of *Soering vs United Kingdom* (1989)⁸⁸ it was found that it would be a breach of Article 3 to extradite the applicant to the United States where he faced the death penalty. This is because of the long wait on death row and the age and mental state of the applicant.

Another example of where the UK courts have been overruled by Strasbourg is in the case of *T.I. vs the United Kingdom* (2000). This case involved the expulsion of an asylum seeker from the UK to Germany. The ECHR ruled that the provisions of the Dublin Convention did not mean that the UK was free from the responsibility of ensuring that an individual would not be exposed to degrading treatment as a result of their expulsion from the country.

Although the application of Article 3 may prevent an applicant from being removed from the UK, protection under the European Convention on Human Rights does not bring with it an automatic right to a particular legal status and does not impose particular duties on the state, as is the case for those persons granted protection under the Refugee Convention. However, in the UK, persons awarded protection under the ECHR are usually granted either humanitarian protection or discretionary leave. Refer to the paragraph on [Humanitarian Protection](#) in the decision making process section for more information on this issue.

The case of *Ramzy v Netherlands*, which is currently before the European Court of Human Rights, is dealing with the scope of Article 3.⁸⁹ The applicant claims that he will be exposed to a real risk of torture or ill-treatment if returned to Algeria. However, the Dutch government has issued an exclusion order against the applicant on the basis that he was posing a threat to national security and they began removal proceedings against him. Removal has been stayed until a ruling on the case is made; a ruling that will have a great impact on the application of Article 3 within the EU and the prohibition of transfer to States where there is a substantial risk of torture or ill-treatment.

Useful Resources

European Convention on Human Rights

<http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/EnglishAnglais.pdf>

ECHR caselaw

http://www.justis.com/database/human_rights.html

Justice – section on asylum

<http://www.justice.org.uk/ourwork/asylum/index.html>

⁸⁸ <http://www.refugeelawreader.org/files/pdf/229.pdf>

⁸⁹ For further information on this case see: <http://www.interights.org/doc/Ramzy%20final%20brief%2022%20Nov.doc>
<http://www.echr.coe.int/Eng/Press/2005/Oct/ApplicationlodgedRamzyvNetherlands.htm>

Key issues

Useful resources

Selected bibliographic references and links are provided within and at the end of each section. There is a very large academic bibliography on this subject and this guide does not attempt to reproduce it. For further references users should start by consulting:

European Journal of Migration and Law

<http://www.kluweronline.com/issn/1388-364X/current>

Forced Migration Review

<http://www.fmreview.org>

International Journal of Refugee Law

<http://www3.oup.co.uk/jnls/list/reflaw>

Journal for International Migration and Integration

<http://jimi.metropolis.net/main.html>

Journal of Ethnic and Migration Studies

<http://www.cemes.org/jems.htm>

Journal of Refugee Studies

<http://jrs.oxfordjournals.org/archive>

Refugee Survey Quarterly

<http://www3.oup.co.uk/refqtl/contents>

The Relevance of the Refugee Convention Today

The Refugee Convention was originally drafted as a temporary way of dealing with the large number of displaced persons in Europe after the Second World War. Contemporary academics and lawyers have argued that the Convention is very much a product of its time and that it was written with the figure of the single, dissident male from Eastern Europe in mind.

In contrast to other regional agreements, such as the [Organisation of African Unity Convention](#)⁹⁰ and the [Cartagena Declaration on Refugees](#)⁹¹, it was not created to offer protection to large groups of people fleeing civil war and regional conflict from all parts of the world.

Although there have been some attempts by the UK and other countries to offer protection to people fleeing civil war, the determination systems in Western Europe, North America and Australasia are designed to scrutinise the eligibility of each individual application for asylum.

⁹⁰ http://www.africa-union.org/Official_documents/Treaties_%20Conventions_%20Protocols/Refugee_Convention.pdf

⁹¹ <http://www.refugeelawreader.org/files/pdf/46.pdf>

Many Western governments have expressed concerns that their determination processes cannot cope with the large increase in the number of applications for asylum over the last decade and that the right to seek asylum is being abused by 'economic migrants'. The overwhelming response has been to try and deter asylum seekers from reaching their borders.

In June 2000 the then Home Secretary, Jack Straw, delivered a speech in Lisbon expressing his concerns on this issue.⁹² These concerns were echoed by David Blunkett whilst he was in office. The current Home Secretary and Minister for Immigration have not questioned the efficacy of the convention, and in a pre-election speech in April 2005, Tony Blair observed that withdrawal from the Convention was not viable⁹³.

UNHCR's global consultations

UNHCR (The Office of the United Nations High Commissioner for Refugees) responded to calls for a rethinking of the 1951 Convention and the right to seek asylum by launching the '*Global Consultations on International Protection*' in March 2001. There were three different stages, or tracks, to the consultation process.

The first track was designed to give states party to the Refugee Convention a chance to reaffirm their commitment to its underlying principles. A ministerial meeting involving 156 states took place in December 2001 in Geneva and resulted in a [unanimous declaration](#)⁹⁴ to this effect.

The second track involved expert consultations on 'contentious areas' such as 'membership of a particular social group', state obligations under Article 31 of the Refugee Convention (concerning non-penalisation of illegal entry) and the role of UNHCR to supervise the implementation of the Convention (Article 35). These subjects were discussed by governmental and non-governmental experts in a series of roundtables hosted by research institutions. UNHCR has published a [book](#)⁹⁵ providing an overview of the issues discussed at these roundtables and details of the conclusions that they came to.

The discussions that took place were used to update and revise the original background papers and the results were published by Cambridge University Press in June 2003 in a book entitled *Refugee Protection in International Law*. This book examines the key issues that challenge the Convention today such as *non-refoulement*; illegal entry; membership of a particular social group; gender-related persecution; internal protection/relocation/flight alternative; exclusion; cessation; family unity and supervisory responsibility.

Subjects under discussion in the third track were protection policy issues that are not covered by the Refugee Convention. Examples include protection in cases of mass influx, fair and efficient status determination procedures and the protection of refugee women and children. These discussions took place within the framework of the [Executive Committee of UNHCR](#)⁹⁶.

The final Global Consultations meeting was held in May 2002. The UNHCR then published a document entitled [Agenda for Protection](#)⁹⁷, which was the first comprehensive framework for refugee policy since the Geneva Convention of 1951.

⁹² See for an example of media reporting of this, A. Travis (8 June 2000) 'Straw aims to rewrite treaty on refugees' *The Guardian*, <http://www.guardian.co.uk/guardianpolitics/story/0,,329498,00.html>

⁹³ For Blair's speech see:

http://www.labour.org.uk/index.php?id=news2005&ux_news%5Bid%5D=tbasylum&cHash=b8e9302a7b

⁹⁴ <http://www.unhcr.org/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=3c2306cc4>

⁹⁵ <http://www.unhcr.org/cgi-bin/texis/vtx/protect?id=41a1b51c6>

⁹⁶ <http://www.unhcr.org/cgi-bin/texis/vtx/home?page=exec>

⁹⁷ <http://www.unhcr.org/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=3e637b194>

The framework set out clear objectives grouped according to six main goals:

1. Strengthening the implementation of the 1951 Convention and 1967 Protocol;
2. Protecting refugees within broader migration movements. This refers to the use of smugglers by refugees in order to reach a country of asylum and the danger this may put them in;
3. Sharing of burdens and responsibilities more equitably and building of capacities to receive and protect refugees;
4. Addressing security-related concerns more effectively. This goal aims to secure the safety of refugees, particularly groups such as women who may be vulnerable to sexual exploitation or children who may be recruited into armed groups or national armed forces;
5. Redoubling the search for durable solutions. Particular attention is given to integrating voluntary repatriation, resettlement and local integration as a single approach whenever possible, such that return as an overarching solution is achieved with enduring effect;
6. Meeting the protection needs of refugee women and refugee children.

Useful resources

UNHCR, Global Consultations, <http://www.unhcr.org/cgi-bin/teXis/vtx/protect?id=3b7cea1b4>

UNHCR (October 2003) Agenda for Protection, <http://www.unhcr.org/cgi-bin/teXis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=3e637b194>

A number of activities designed to support the goals outlined above are detailed in the 'Agenda for Protection' document and include measures for preventing sexual and gender-based violence, improving the protection of women and children, maintaining the civilian character of refugee camps, clarifying responsibility for refugee protection during rescue at sea operations, and strengthening asylum systems and procedures.

Delegates from the 61 governments that make up the UNHCR Executive Committee endorsed the Agenda for Protection in October 2002. UNHCR has circulated a memorandum to their field offices asking them to prioritise the actions that are of most importance to their situation, and have asked both governments and NGOs to do the same.

Convention Plus

In October 2002 the then United Nations High Commissioner for Refugees, Rudd Lubbers, called for the development of new 'tools' to manage global refugee flows and coined the term 'Convention Plus'. The organisation felt that the Convention needed to be developed in order to deal more effectively with contemporary refugee flows. The aims of Convention Plus are to 'improve refugee protection worldwide and to facilitate the resolution of refugee problems through multilateral special agreements. This will be achieved through a process of discussion and negotiation with States and other partners of UNHCR'⁹⁸. UNHCR have emphasised that the 1951 Convention and its 1967 Protocol remain the cornerstone of the international protection regime but that it is necessary to supplement these legal instruments by pursuing **generic multilateral agreements** in three priority areas:

1. the strategic use of **resettlement** as a tool of protection, a durable solution and a tangible form of burden-sharing;

⁹⁸ <http://www.unhcr.org/cgi-bin/teXis/vtx/protect?id=406d21802>

2. more effective **targeting of development assistance** to support durable solutions for refugees, whether in countries of asylum or upon return home; and
3. clarification of the responsibilities of States in the event of **secondary movements** of refugees and asylum-seekers, that is, when refugees and asylum-seekers move, in an irregular manner, from an initial country of refuge to another country.

Resettlement is one of three durable solutions for refugees (along with voluntary repatriation and local integration) and is also seen by UNHCR as an instrument of responsibility-sharing and burden-sharing.

Useful Resources

ICAR (2005) *Navigation Guide on Resettlement Programmes in the UK*

<http://www.icar.org.uk/?lid=2002>

UNHCR (May 2003) *Framework for durable solutions for refugees and persons of concern*

<http://www.unhcr.org/cgi-bin/texis/vtx/partners/opendoc.pdf?tbl=PARTNERS&id=3f1408764>

UNHCR (2006) *The State of the World's Refugees 2006 – Chapter 6 – Rethinking Durable Solutions: Resettlement*

<http://www.unhcr.org/cgi-bin/texis/vtx/publ/opendoc.htm?tbl=PUBL&id=4444d3cb11>

UNHCR (September 2004) *Multilateral Framework of Understandings on Resettlement*

<http://www.unhcr.org/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=414aa7e54>

The targeted development assistance strand of Convention Plus looks at two contexts: states of origin, and host states of asylum within regions of origin. Different models have been developed in the attempt to facilitate the targeting of development assistance more effectively. *Repatriation, Reintegration, Rehabilitation and Reconstruction*, (known as the 4Rs), look at improving the sustainability of repatriation to states of origin by 'fostering the capacities and institutional partnerships necessary to ensure the smooth transition from emergency relief to long-term development'.⁹⁹

The concept of Development Assistance for Refugees (DAR) refers to situations where host countries are in need of additional development assistance in order to improve the quality of life and self-reliance of refugees pending a durable solution whereas Development through Local Integration (DLI) relates to situations where the host state requires support in order to facilitate the gradual integration of refugees.

In May 2005 a [statement of good practice](#)¹⁰⁰ was released in connection with the targeting of development assistance and in February 2006 a [joint statement](#)¹⁰¹ was released by the two chairs of the targeting development assistance strand of Convention Plus.

It has been observed that DAR and DLI have proven more controversial than the 4Rs and have created obstacles to international cooperation because states of first asylum have been reluctant to accept solutions emphasising local integration and self-sufficiency¹⁰², arguably because hosting countries are inclined to see

⁹⁹ <http://www.unhcr.org/cgi-bin/texis/vtx/publ/opendoc.htm?tbl=PUBL&id=4444d3ca37>

¹⁰⁰ <http://www.unhcr.org/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=426cf2c02>

¹⁰¹ <http://www.unhcr.org/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=437d9f152>

¹⁰² **Betts, A.** (September 2004), *International Cooperation and the Targeting of Development Assistance for Refugee Solutions: Lessons From the 1980s*

<http://www.unhcr.org/cgi-bin/texis/vtx/research/opendoc.pdf?tbl=RESEARCH&id=415d0d982>

'return' as the most desirable solution. For further information refer to [Chapter Six - Rethinking durable solutions: Targeting development assistance](#)¹⁰³ of UNHCR's State of the World's Refugees 2006 report.

Irregular secondary movements can often signify gaps in protection for refugees and asylum-seekers. Multilateral cooperative frameworks aim to strengthen the capacity of states to protect refugees and asylum-seekers and to improve domestic asylum systems, particularly in developing countries, where the majority of refugees and asylum-seekers are found. There is also an attempt to clarify the responsibilities of States in the event of refugees and asylum-seekers moving in an irregular manner from an initial country of refuge to another country. In November 2005 the chairs of the relevant core group published a [joint statement](#)¹⁰⁴ on the issues of irregular secondary movements. For further information refer to [Chapter Six - Rethinking durable solutions: Secondary movement](#)¹⁰⁵ of UNHCR's State of the World's Refugees 2006 report.

The process of developing generic multilateral agreements is led by 'five facilitating states': Canada, Denmark, Japan and South Africa and Switzerland. The shared understandings and commitments achieved as a result of the generic multi-lateral agreements will be incorporated into **situation-specific multilateral agreements** which will respond to particular refugee situations.

Refugee rights groups have expressed reservations regarding the reforms proposed in 'Convention Plus'. They welcome the emphasis on durable solutions to the increase in refugee flows, but remain concerned that the governments of refugee-receiving countries may be tempted to use the consultations on 'Convention Plus' as a forum for reducing the direct responsibility of nation states for maintaining the right of asylum. Amnesty International is concerned that the process could be used as a tool to undermine principled management of refugee problems and to circumvent international obligations.¹⁰⁶ For commentary and analysis of the Convention plus process refer to the resources featured below.

Useful resources

Amnesty International (March 2003) *Amnesty International's observations to UNHCR's Consultation on Convention Plus*

<http://www.web.amnesty.org/library/Index/ENGIOR420012003?open&of=ENG-393>

Betts, A. (September 2004) *International Cooperation and the Targeting of Development Assistance for Refugee Solutions: Lessons from the 1980s*, Geneva: UNHCR

<http://www.unhcr.org/cgi-bin/texis/vtx/research/opendoc.pdf?tbl=RESEARCH&id=415d0d982>

Durieux, J. (2005) The Role of International Law: Convention Plus, *Refugee Survey Quarterly*, Volume 24, Number 4, pp. 89-92(4)

International Council of Voluntary Agencies (June 2006) *Agenda Item 7(i) Targeting Development Assistance, including International Cooperation for Finding Durable Solutions For Protracted Refugee Situations*

<http://www.icva.ch/cgi-bin/browse.pl?doc=doc00001797>

Lippman B. (2004) 'The 4Rs: The Way Ahead?' *Forced Migration Review*, Issue 21, pp. 9-11

¹⁰³ <http://www.unhcr.org/cgi-bin/texis/vtx/publ/opendoc.htm?tbl=PUBL&id=4444d3ca37>

¹⁰⁴ <http://www.unhcr.org/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=4371c1242>

¹⁰⁵ <http://www.unhcr.org/cgi-bin/texis/vtx/publ/opendoc.htm?tbl=PUBL&id=4444d3cb2>

¹⁰⁶ <http://www.web.amnesty.org/library/Index/ENGIOR420012003?open&of=ENG-393>

Refugee Council has carried out work relating to Global Consultations. For further information contact Gemma Juma, International Protection Manager, gemma.juma@refugeecouncil.org.uk

UNHCR (January 2003) *'Convention Plus': questions and answers*, Geneva: UNHCR
<http://www.unhcr.org/cgi-bin/teXis/vtx/protect/openssl.pdf?tbl=PROTECTION&id=3e4b7c4b4>

UNHCR, *Convention Plus at a Glance*, Geneva: UNHCR
<http://www.unhcr.org/cgi-bin/teXis/vtx/protect/openssl.pdf?tbl=PROTECTION&id=403b30684>

UNHCR webpage on Convention Plus
<http://www.unhcr.org/cgi-bin/teXis/vtx/protect?id=406d21802>

A full list of the subjects in each track and a schedule of when they were discussed are available at UNHCR's Global Consultations website:
<http://www.unhcr.org/cgi-bin/teXis/vtx/global-consultations>

EU asylum policy and procedures

In recent years there have been important developments taking place at a European level with regards to the development of asylum (and immigration) law and policy. Attempts to create a unified immigration and asylum policy in the EU began in the mid-1980s and the harmonisation of policy has progressed most when the focus has been on measures that are aimed at restricting the access of asylum seekers to the EU. Until the Amsterdam Treaty in 1999, joint action in this field was slow and facilitated mainly through inter-governmental agreements.

During this early period the **Schengen Agreements** and the **Dublin Convention** were the main binding instruments. The first Schengen agreement between the five original group members was signed on 14 June 1985. A further convention was drafted and signed on 19 June 1990. When it came into effect in 1995, it abolished the internal borders of the signatory states and created a single external border where immigration checks for the Schengen area are carried out in accordance with a single set of rules. The UK did not sign up to the Schengen agreements but is able to partake in some or all of the provisions.

In 1990, EU countries signed the **Dublin Convention**, but it did not come into force until 1997. This Convention provided an agreed framework to determine which member state is responsible for consideration of asylum claims made in the EU by non-EU nationals. The thrust of this convention is that asylum seekers should have their applications considered in the first EU country they reach.

The 1992 Maastricht Treaty, which led to the creation of the EU and the three-pillar structure, institutionalised cooperation on 'Justice and Home Affairs' (JHA) under Title VI, (also known as the 'third pillar'). Asylum was identified as one of the nine areas of 'common interest'. Decision-making under the third pillar is 'inter-governmental' and largely relies on unanimity which is in contrast to the 'community method' used within the first pillar. The community method involves EU institutions acting independently of the Member States.

Apart from the Schengen agreements and the Dublin Convention only non-binding instruments or recommendations were issued during this initial stage of EU asylum law-making.

Useful resources

Europa – Towards a Common European Asylum System

http://europa.eu.int/comm/justice_home/doc_centre/asylum/wai/doc_asylum_intro_en.htm

A glossary of EU terminology:

http://europa.eu.int/scadplus/glossary/index_en.htm

ECRE documents on EU asylum developments:

http://www.ecre.org/policy/eu_developments.shtml.

Refugee Council documents and commentary relating to European issues:

http://www.refugeecouncil.org.uk/infocentre/int_eur/euro001.htm International Protection Project updates can be obtained from Gemma Juma, International Protection Manager, gemma.juma@refugeecouncil.org.uk

The Refugee Law Reader: Cases, Documents and Materials (2006)

<http://www.refugeelawreader.org/index.d2>

This is the third edition of an online model curriculum for the field of international refugee law, initiated and updated by the Hungarian Helsinki Committee.

UNHCR has produced tool boxes on EU asylum matters

<http://www.unhcr.org/cgi-bin/txis/vtx/publ/opensoc.htm?tbl=PUBL&id=41b6d8694>

Treaty of Amsterdam

In 1997 the **Treaty of Amsterdam** (TOA) was agreed upon by the EU. This treaty, which came into force in 1999, states that the purpose of the EU is to 'maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration, and the prevention and combating of crime'. Asylum and immigration policy was moved from the third pillar of the EU, (inter-governmental cooperation) to the first pillar, the European Communities (EC). This allowed for the use of binding EC instruments, such as directives or regulations, in the area of asylum. EU member states were required by the treaty to reach an agreement on a number of minimum standards within five years of the entry into force of the TOA (which meant before 1 May 2004). The council was required to adopt measures that addressed the following issues:

- the responsibility of states for assessing asylum claims
- minimum standards on the reception of asylum seekers
- minimum standards on the qualification of third country nationals as refugees and beneficiaries of subsidiary protection
- minimum standards on procedures for granting and withdrawing refugee status
- minimum standards for giving temporary protection.

Useful resources

Amsterdam Treaty: A comprehensive guide

<http://europa.eu.int/scadplus/leg/en/lvb/a11000.htm>

ILPA/MPG (August 2000) *The Amsterdam Proposals, the proposed directives on immigration and asylum*

<http://www.migpolgroup.com/documents/2546.html>

Tampere

After the Amsterdam Treaty came into force in May 1999, a Special Council meeting was convened in Tampere, Finland, in October of the same year in order to agree the principles that would inform the drafting and adoption of secondary legislation. The European Council affirmed its political commitment to the asylum harmonisation process in the EU and the [presidency conclusions](#)¹⁰⁷ of the meeting committed states to the following:

- a 'full and inclusive' approach to the interpretation of the 1951 Convention which would ensure that the right to seek asylum would be respected and that nobody would be returned to persecution;

¹⁰⁷ http://europa.eu.int/council/off/conclu/oct99/oct99_en.htm

- partnerships with refugees' countries of origin which address human rights and development issues in these countries;
- a more vigorous approach to integration which would grant refugees rights and obligations comparable to EU citizens;
- the development of a common asylum procedure.

Once these parameters had been agreed upon, the EU then began to negotiate a number of legislative instruments that set out minimum standards on asylum policies and procedures. In Seville in June 2002, it was observed that the programme agreed upon in Tampere needed to be speeded up. The [presidency conclusions](#)¹⁰⁸ of the Seville meeting are available on the ECRE website as are a comprehensive listing of [links](#)¹⁰⁹ to web pages that deal with various aspects of the Seville meeting and its conclusions.

The foundations of a Common European Asylum System (CEAS) are the following four legal instruments:

- **minimum standards for the reception of asylum seekers** ([Reception Directive](#))¹¹⁰: The Reception Directive was adopted in January 2003 and member states were given until February 2005 to ensure that their domestic legislation was compliant. The directive sets out minimum standards for the reception of asylum seekers while their claim is being decided in the host country. Areas covered by the directive include access to work, housing, education, healthcare, freedom of movement and the reception of unaccompanied children. Some states, including the UK, were keen to ensure that standards of reception were uniform throughout the EU, so that asylum applicants would be discouraged from moving on to countries where standards were perceived to be higher.
- **the establishment of which country is responsible for examining an asylum claim** ([Dublin II Regulation](#))¹¹¹: The Dublin II Regulation came into force in September 2003 and replaces the original Dublin Convention that was not EU law. This instrument is used to determine which state is responsible for determining an asylum application. The main principle is that whichever country allows an asylum seeker to enter the EU (whether legally or illegally) is responsible for deciding their claim. However, other factors are also looked at such as, the presence of family members in another Member State (particularly in the case of unaccompanied minors) and prior issuance of a visa or residence permit or prior illegal entry to another Member State. These criteria are considered in a hierarchical order.
- **a common definition of who is a refugee or otherwise requires international protection and the rights and benefits which attach to each status** ([Qualification Directive](#))¹¹²: The Qualification Directive was adopted on 29 April 2004 and contains a clear set of criteria for qualifying either for refugee or subsidiary protection status, and sets out what rights are attached to each status. The directive also recognises persecution by non-state agents and allows for the recognition of refugees on the basis that they fear persecution due to their gender or sexual orientation. National governments are obliged to ensure that their policy and practice do not conflict with the Qualification directive by 10 October 2006. The Home Office is currently carrying out a [consultation](#)¹¹³ on the implementation of the directive.

¹⁰⁸ <http://www.ecre.org/seville/sevconc.pdf>

¹⁰⁹ <http://www.ecre.org/seville>

¹¹⁰ http://www.ecre.org/eu_developments/reception/reccdirfinal.pdf

¹¹¹ http://www.ecre.org/eu_developments/responsibility/dublinreg.pdf

¹¹² <http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML>

¹¹³ <http://www.homeoffice.gov.uk/documents/cons-2006-asylum-qual-directive>

- **minimum standards on the procedures for making decisions on asylum claims** ([Procedures Directive](#))¹¹⁴: As the Procedures Directive was not adopted by the 1 May 2004 deadline a 'general approach' was agreed politically on 29 April 2004. On 1 December 2005 the directive was adopted and this sets minimum standards on issues such as the interviewing procedure, access to legal representation, the use of detention, subsequent applications, accelerated/manifestly unfounded procedures and effective remedy (appeals). The directive identifies the circumstances in which the concept of a 'safe third country' can be applied and seeks to harmonise the concept of a safe third country across the EU. A proposed list of safe countries of origin has been put together under the provisions of the Procedures Directive. The list currently includes Benin, Botswana, Cap Verde, Ghana, Senegal, Mali and Mauritius. However, the process of agreeing upon the countries to be included has proved controversial and no final agreement has been reached by the Commission. National governments are obliged to ensure that their policy and practice do not conflict with the Procedures Directive by 1 December 2006, (the deadline is 1 Dec 2008 for Article 15 of the directive which looks at legal assistance). The European Parliament has challenged the legality of some of the Procedures Directive's provisions before the European Court of Justice and is calling for its annulment.

Useful resources

Amnesty International (January 2004) Comments on Articles 28 and 28 A of the Commission's Amended Proposal for a Council Directive on Minimum Standards for Granting and Withdrawing Refugee Status before the Informal Justice and Home Affairs Council 22-23 January 2003

<http://web.amnesty.org/library/Index/ENGIOR610012004?open&of=ENG-375>

Costello, C. (July 2004) Immigration Law Practitioners' Association (ILPA) Analysis and Critique of Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status (30 April 2004)

<http://www.ilpa.org.uk/submissions/AsylumProceduresDirective.pdf>

ECRE (March 2005) Comments on the amended proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status, as agreed by the Council on 19 December 2004.

<http://www.ecre.org/ECRE%20PD%20comments.pdf>

ECRE (October 2004) Information Note on the Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification of third country nationals and stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

<http://www.ecre.org/statements/qualpro.pdf>

ECRE (Feb 2006)

The EC Directive on the Reception of Asylum Seekers: Are asylum seekers in Europe receiving material support and access to employment in accordance with European legislation?

http://www.ecre.org/positions/Reception%20Report_FINAL_Feb06.doc

ECRE (March 2006) Report on the application of the Dublin II Regulation in Europe

<http://www.ecre.org/positions/ECRE%20Dublin%20Report%2007.03.06%20-%20final.pdf>

Noll, G. (June 2005) *Evidentiary assessment and the EU qualification directive*, New Issues in Refugee Research, Working Paper no. 117, UNHCR – Evaluation and Policy Analysis Unit

<http://www.unhcr.org/cgi-bin/texis/vtx/research/openssl.pdf?tbl=RESEARCH&id=42bbcb092>

¹¹⁴ <http://www.statewatch.org/news/2005/dec/asylum-procedures-directive-OJ.pdf>

Refugee Council (March 2004) Briefing on the common European asylum system
http://www.refugeecouncil.org.uk/downloads/briefings/intl/common_euro.pdf

UNHCR (February 2005) UNHCR Provisional Comments on the Proposal for a Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status
<http://www.unhcr.org/cgi-bin/txis/vtx/news/opendoc.pdf?tbl=RSDLEGAL&id=42492b302>

Since May 2004 the European Commission has had the exclusive right to initiate immigration and asylum legislation. This replaces the inter-governmental procedure for decision-making that was previously in place.

Hague Programme

In late 2004 the [Hague programme](#)¹¹⁵ was launched by the EU. This programme reaffirms the original Amsterdam Treaty goal of achieving a fully-fledged Common European Asylum System (CEAS) by 2010 and marks the second phase of the process of harmonising asylum policies and procedures in the EU. The programme is focussing on issues such as the development of a joint approach to country of origin information, achieving a single EU procedure for determining claims and addressing particular pressures on asylum systems and reception capacities resulting from factors such as geographic location.

The Hague Programme has also focused on the external dimension of EU asylum policy and has looked at the possibility of 'Regional Protection Programmes' which would aim to strengthen the protection capacity of the refugee-producing countries. Studies on the merits, appropriateness and feasibility of the joint processing of asylum applications within and outside EU territory have also been requested under the Hague Programme.

On 10 May 2005 the European Commission launched a five year [action plan](#)¹¹⁶ for the area of Freedom, Justice and Security, (formerly Justice and Home Affairs). This action plan takes the overall priorities identified in the Hague Programme and aims to convert them in to concrete actions.

As part of the Hague Programme a [proposal](#)¹¹⁷ for a directive on 'common standards and procedures in Members States for returning illegally staying third country nationals' was presented by the Commission in September 2005. The House of Lords Select Committee on the EU has launched an inquiry into this proposal and a [call for evidence](#)¹¹⁸ has been made. Amnesty international and the Refugee Council have drafted a [submission](#)¹¹⁹ on the proposal for the Committee.

In February 2006 the Commission produced a [communication](#)¹²⁰ which sets out the practical ways in which the Member States can support the realisation of the goals set at Tampere and in the Hague Programme.

¹¹⁵ http://ec.europa.eu/justice_home/news/information_dossiers/the_hague_priorities/index_en.htm

¹¹⁶ http://ec.europa.eu/justice_home/news/information_dossiers/the_hague_priorities/doc/com_2005_184_en.pdf

¹¹⁷ http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/com/2005/com2005_0391en01.pdf

¹¹⁸ <http://www.parliament.uk/documents/upload/CfeSubFnationals.pdf>

¹¹⁹ http://www.refugeecouncil.org.uk/downloads/policy_briefings/EU_Returns_dec05.pdf

¹²⁰ http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0067en01.pdf

Useful resources

EurActiv is monitoring policy development under the Hague programme:

<http://www.euractiv.com/en/justice/hague-programme-jha-programme-2005-10/article-130657>

ECRE (June 2004) *Broken promises, forgotten principles. An ECRE evaluation of EU minimum standards for refugee protection Tampere 1999 – Brussels 2004*

http://www.ecre.org/positions/Tampere_June_04.shtml This is an assessment of first phase (99-04) so should really be in previous section

Other **ECRE** documents on common standards on asylum procedures:

http://www.ecre.org/eu_developments/procedures/index.shtml

Refugee Council (20 June 2004) 'New asylum laws dangerous for refugees'

<http://www.refugeecouncil.org.uk/news/2004/june04/relea169.htm>

Refugee Council (May 2004) 'International Protection Project Update.'

http://www.refugeecouncil.org.uk/downloads/briefings/intl/ipp_update_may_2004.pdf

UNHCR (February 2006) Observations on the Communication from the Commission to the Council and the European Parliament on Strengthened Practical Cooperation – *New Structures, New Approaches: Improving the Quality of Decision Making in the Common European Asylum System*

<http://www.unhcr.org/cgi-bin/tehis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=445f0abe2>

Both UNHCR and Statewatch have websites monitoring EU developments:

UNHCR: <http://www.unhcr.org/cgi-bin/tehis/vtx/protect?id=43672f0a2>

Statewatch: <http://www.statewatch.org/asylum/obserasylum.htm>

UNHCR's role in EU developments

The Hague Programme identifies two ways in which UNHCR will be involved in EU asylum developments. The first is through the development of EU-Regional Protection Programmes in partnership with refugee-producing countries. The second is by assisting with a study on the merits, appropriateness and feasibility of joint processing of asylum applications outside EU territory.

In 2003 UNHCR published a working paper entitled '[UNHCR's three-pronged proposal](#)'.¹²¹ The 'EU prong section' of the paper proposed that all asylum seekers arriving in the EU would be transferred immediately to processing centres unless they were medically unfit or unaccompanied children. These centres would be located within and close to the current borders of the EU. This proposal was revised later that year.¹²²

For more information refer to ICAR's navigation guide on [Regional Protection Zones and Transit Processing Centres](#)¹²³.

¹²¹ http://www.ecre.org/eu_developments/debates/unhcr3prong.DOC

¹²² <http://www.forcedmigration.org/events/prague2004/stuurwold-paper.pdf>

¹²³ <http://www.icar.org.uk/?lid=7>

Useful resources

Amnesty International (September 2005) *EU regional protection programs: Enhancing protection in the region or barring access to the EU territory?*

http://www.amnesty-eu.org/static/documents/2005/05_09_22_protection_programs_EPC.pdf

European Commission (September 2005) *Communication from the Commission to the Council and the European Parliament on regional protection programmes*

http://www.statewatch.org/news/2005/sep/COM_2005_0388.pdf

UNHCR has produced a number of observations on communications from the European Commission:

<http://www.unhcr.org/cgi-bin/txis/vtx/doclist?page=protect&id=436730642>

EURODAC

The harmonisation of security-oriented control measures has also seen progress; an example of this being the regulation in 2000 establishing **EURODAC**, which is the first European Automated Fingerprint Identification System (AFIS). Under the new system, which was launched on 15 January 2003, all asylum seekers aged 14 or older are fingerprinted. The system registers and compares the fingerprints of asylum seekers and certain categories of illegal immigrants arriving in the 25 member states of the European Union and in third countries bound by the EURODAC regulation (Norway and Iceland). The aim of the database is to prevent multiple asylum applications, and to assist in determining which country is responsible for considering an application for asylum according to the mechanism and criteria established by the Dublin II Regulation. For more information refer to the section on [third country cases](#) in the appeals process section.

If EURODAC reveals that a set of fingerprints have already been recorded by a participating country, then the asylum seeker may be sent back to the country where his or her fingerprints were originally recorded.

EU officials have emphasised that the procedure for taking fingerprints is in accordance with the safeguards laid down in the European Convention on Human Rights and in the United Nations Convention on the Rights of the Child. Fingerprints will be stored in EURODAC for up to ten years and the data should be erased as soon as an individual obtains settled status in one of the member states. Access to this system is restricted to the sole purposes stated in the EURODAC regulation.

Useful resources

European Council regulation concerning the establishment of Eurodac (11 December 2000)

http://www.europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=en&numdoc=32000R2725&model=guichett

Europa website on EURODAC:

http://ec.europa.eu/justice_home/fsj/asylum/identification/fsj_asylum_identification_en.htm

UK perspective

The UK government has sought to influence the direction of EU policy on asylum and immigration matters. In his 'Lisbon speech' to the European Conference on Asylum in 2000 Jack Straw, the then Home Secretary, called for a common asylum procedure.

David Blunkett, his successor as Home Secretary, echoed this commitment in the white paper [Secure Borders, Safe Haven: Integration with Diversity in Modern Britain](#)¹²⁴ (February 2002), speaking of the need 'to work internationally for a global system that delivers protection to those who need it' (section 4.3). In sections 4.4-4.6, he provided more detail about how the UK wishes to work with European partners to agree on common standards and procedures and especially to prevent secondary movements of asylum seekers throughout the EU – what he terms 'asylum shopping'.

In June 2002, David Blunkett published the UK proposals for a common asylum and migration policy. This document was released a short time before the European Council meeting in Seville when EU policy towards asylum and migration was discussed. The Home Secretary observed that progress towards a unified EU policy had been slow and that he was keen to help set the agenda. Some of the key issues he identified were the fight against illegal migration, the need to strengthen EU borders and the need to develop a common EU definition of a refugee.

In March 2003, David Blunkett announced a proposal to manage asylum flows by creating zones of protection and processing centres. This proposal was discussed at the Thessaloniki summit in June 2003, however Germany, Sweden, France and Greece all objected to the idea of processing centres on humanitarian or legal grounds. The UK proposal of providing potential asylum seekers with a safe haven near to their country of origin was not given official EU backing and it was left up to individual countries to offer their support to the work of UNHCR.

For more information refer to ICAR's Navigation Guide on [Regional Protection Zones and Transit Processing Centres](#)¹²⁵.

Useful resources

Ardittis, S., Lewis, R. and Manchip C. (2005) *From Rome to the Hague, European Union policy-making on asylum*, London: IPPR.

<http://www.ippr.org.uk/ecomms/files/migration6eu.pdf>

Costello, C. (2005) *The Asylum Procedures Directive and the Proliferation of Safe Country Practices: Deterrence, Deflection and the Dismantling of International Protection?* *European Journal of Migration and Law*, Volume 7, Number 1 pp. 35-70

ECRE (2006) *The Way Forward. Europe's Role in the Global Refugee Protection System: An Agenda for Change* <http://www.ecre.org/positions/agendapaper.pdf>

ECRE (September 2005) *The Way Forward. Towards fair and efficient asylum systems in Europe* <http://www.ecre.org/positions/WFsystemssum.pdf>

ECRE has also produced papers on

Protection in regions of origin: <http://www.ecre.org/positions/regionssum.pdf>

Resettlement: <http://www.ecre.org/positions/resettlementsum.pdf>

Integration: <http://www.ecre.org/positions/integsum.pdf>

Return: <http://www.ecre.org/positions/returnsum.pdf>

ECRE has drafted a memo to the Austrian presidency which provides a commentary concerning current issues on EU asylum law and policy.

¹²⁴ <http://www.archive2.official-documents.co.uk/document/cm53/5387/cm5387.pdf>

¹²⁵ <http://www.icar.org.uk/?lid=7>

<http://www.ecre.org/positions/memoaustrianpresidency.doc>

Forced Migration Review (May 2005) *Asylum in Europe*
<http://www.forcedmigration.org/browse/thematic/asylum.htm>

Geddes, A. Getting the best out of both worlds? Britain, the EU and migration policy. *International affairs* (London) 81(4) 2005 July, 723-740
<http://www.blackwell-synergy.com/doi/pdf/10.1111/j.1468-2346.2005.00481.x?cookieSet=1>

Gil-Bazo, M. (undated) The European Union's external dimension of asylum and migration policies from an international refugee and human rights perspective:
<http://www.fmreview.org/pdf/gilbazo.pdf>

House of Lords (2004) *European Union report*
<http://www.publications.parliament.uk/pa/ld200304/ldselect/ldecom/74/7402.htm>

Lambert, H. (2006) The EU Asylum Qualification Directive, Its Impact on the Jurisprudence of the United Kingdom and International Law, *International and Comparative Law Quarterly* 55(1): 161-192

Oxfam (2005) *Foreign Territory The internationalisation of EU Asylum Policy*
http://oxfamgb.org/ukpp/resources/downloads/foreign_territory_english.pdf

Rodier, C. (June 2006) 'Analysis of the external dimension of the EU's asylum and immigration policies' – summary and recommendations for the European Parliament, European Parliament, Brussels.
<http://www.statewatch.org/news/2006/jul/eu-res-study-ext-imm.pdf>

National governments are obliged to ensure that their policy and practice does not conflict with these directives, although the UK government retains the right to opt out of any measures affecting control of its external borders. Throughout the negotiations, the UK government sought to ensure that the directives' provisions did not oblige it to make changes to national policy measures, such as the removal of support from asylum seekers who did not apply in good time, the refusal of asylum based on country of origin only, and the reduction of entitlements for people granted subsidiary protection. This approach has been criticised by various refugee agencies, who are concerned that minimum standards reflect the 'lowest common denominator' between member states.¹²⁶

¹²⁶ See **Refugee Council** (2004) *Refugee Council briefing on the common European asylum system, March 2004*. London: Refugee Council. http://www.refugeecouncil.org.uk/downloads/briefings/intl/common_euro.pdf and **Refugee Council** (2004) *International Protection Project Update, May 2004*. London: Refugee Council. Available at http://www.refugeecouncil.org.uk/downloads/briefings/intl/ipp_update_may_2004.pdf and European Council on Refugees and Exiles, Amnesty International and Human Rights Watch, 'Refugee and human rights organisations across Europe express their deep concern at the expected agreement on asylum measures in breach of international law', News Release, Wednesday 28 April 2004. http://www.ecre.org/press/asylum_procedures.shtml.

Defining refugees and forced migration

For the purposes of UK asylum law and process, a person is recognised as a refugee as a result of the determination process which includes the initial decision and any subsequent appeal(s). However, it is important to note that the definition of a refugee is not static and evolves over time through policy and caselaw. For further information refer to the section on the [interpretation of the Convention](#).

Within both the international policy field and the academic area of refugee studies, there has been a growing recognition that other types of forced migrants, who do not fall within the terms of the various refugee definitions, are also in need of assistance and protection.

Causes of forced migration

Refugee studies was established as a separate academic discipline to critically assess the activities of state, international and non-governmental agencies in providing protection and assistance to refugees, and improve the understanding of the experiences of displaced people. However, it became clear that the term 'refugee' was primarily a legal one and was limited in its analytical scope. Thus, the broader term of 'forced migration' came into use to cover both refugees and other people in refugee-like situations. The concept of forced migration, therefore, is a complex one that comprises a number of phenomena and often overlaps with other forms of migration. The definition adopted by the International Association for the Study of Forced Migration (IASFM) is:

'a general term that refers to the movements of refugees and internally displaced people (those displaced by conflicts) as well as people displaced by natural or environmental disasters, chemical or nuclear disasters, famine, or development projects.'

Below are the three principal categories of forced migration, which have some distinct characteristics but are not always mutually exclusive.

Conflict – People displaced by conflict may be fleeing from international wars, domestic civil wars or generalised state violence or persecution toward a portion of the population. It is in response to this type of forced migration and related protection needs that international refugee law has primarily been developed.

Development – This involves the displacement of individuals as a result of political and economic decisions about national development that frequently include large infrastructure projects such as dams, road building and urban redevelopment that result in displacement and involuntary resettlement. More people are forced to leave their homes in this fashion than by conflict or environmental processes combined; the World Bank estimates that nine to ten million people are displaced each year in developing countries by water and transport projects alone.¹²⁷ Further displacement occurs each year as a result of state involuntary resettlement policies and programme which are not related to specific development projects. These include *transmigrasi* in Indonesia, rural resettlement in Ethiopia, and (most recently) Robert Mugabe's Operation *Murambatsvina* in Zimbabwe.

The environment – This includes those displaced by natural disasters, impacts of climate change and man-made environmental catastrophes, the Tsunami in 2004 being a recent catastrophic example. There is some overlap with development displacement here as some projects aiming to aid development can also exacerbate environmental change.

¹²⁷ McDowell, C. (June 2005) 'Global displacement: the state and the refugee' *Open Democracy*
<http://www.opendemocracy.net/content/articles/PDF/2624.pdf?redirect2=/debates/article-6-28-2624.jsp>

One qualification to add to this understanding of forced migration is that its distinction from 'voluntary' migration is rarely clear cut; an individual's decision to leave their home country is usually prompted by a mixture of compulsion and choice. It is difficult for an observer to identify a point at which the element of choice in the individual's decision is so reduced that their actions can be described as 'forced'. It is also difficult to identify whether the factor that finally triggers migration is poverty, persecution or lack of opportunity. The reality is often a combination of factors of differing degree and urgency.

Useful resources

Brettel, C. and Hollifield, J. (2000) *Migration Theory: Talking Across the Disciplines*. London: Routledge.

Castles, S. (2003) 'Towards a sociology of forced migration and social transformation' *Sociology*, Vol. 37, No. 1, pp. 13-34.

Forced Migration Online - <http://www.forcedmigration.org>

Richmond, A. (1994) *Global Apartheid*. Oxford: Oxford University Press.

Robinson, V. and Seagrott, J. (July 2002) *Understanding the Decision Making of Asylum Seekers*. Home Office Research Study 243, London: Home Office.
<http://www.homeoffice.gov.uk/rds/pdfs2/hors243.pdf>

Stein, B. (1981) 'The Refugee Experience: Defining the Parameters of a Field of Study'. *International Migration Review*, Vol. 15, No. 1, pp. 320-30.

Van Hear, N. (1998) *New Diasporas*. London UCL Press

Legal and academic definitions of a refugee

The international legal definition of a refugee is set out in Article 1(A)1 of the 1951 Geneva Convention. Its drafters were responding to a particular problem of people displaced by the Second World War, but it was quickly adapted to act as a legal framework for ensuring protection for all those suffering persecution for reasons of race, religion, nationality, social group or political opinion.

Each national asylum system and resettlement programme interprets the above definition of a refugee when determining the status of individuals seeking asylum or in refugee camps. Consequently there are inconsistencies across, though also sometimes within, the different systems used to determine the status of a forced migrant.

In legal terminology, a refugee is clearly more narrowly defined than in academic work researching the myriad causes of displacement. Consequently, there is a wide-ranging debate within academia over the concept of a refugee and several academics have argued that governments need to adopt a more inclusive definition of those to whom they provide protection.

Other social groups

There is particular interest in expanding the notion of a 'social group' to incorporate people who would not be afforded protection under a more restrictive interpretation of the Convention. Examples include people suffering persecution because of their gender or sexuality. Some NGOs are campaigning for the recognition of forms of persecution that are gender-specific including, for example, sexual violence, female genital mutilation, forced abortion and sterilisation, and denial of access to contraception.

- For more information, refer to paragraph on reasons for fear of persecution in the [interpretation of the convention](#) section.
- For more information on gender and sexuality, refer to the [navigation guide on lesbian, gay, bisexual and transgender refugees](#)¹²⁸.
- For more information on gender, refer to the [navigation guide on women refugees and asylum seekers in the UK](#)¹²⁹.

Useful resources

Aleinikoff, A. (2001) *'Membership in a Particular Social Group: Analysis and Proposed Conclusions'*. Background paper for roundtable discussion.

<http://www.unhcr.org/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=3b83b1c54>

Asylum Aid (February 2003) *Women Asylum Seekers in the UK: A Gender Perspective - Some Facts and Figures*. London: Asylum Aid.

http://www.asylumaid.org.uk/New_RWRP/RWRP_Publications/RWRP_Women_asylum_seekers_Feb_03.doc

Haines, R. (10 August 2001) *'Gender related persecution'*. Background paper for roundtable.

<http://www.unhcr.org/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=3b93912e4>

Hathaway, J. and Foster, M. (2001) *'Internal Protection/Relocation/Flight Alternative as an Aspect of Refugee Status Determination'*, Background paper for roundtable

<http://www.unhcr.org/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=3b83c1374>

Immigration Appellate Authority (November 2000) *Asylum Gender Guidelines*

http://www.ait.gov.uk/practice_directions/documents/gender_guidelines.pdf

McGhee, D. (2001) 'Persecution and social group status: homosexual refugees in the 1990s' *Journal of Refugee Studies*, March 2001, Vol. 14, No.1, pp.20-42.

Ramirez, J. (1994) 'The Canadian guidelines on women refugee claimants fearing gender-related persecution' *Refuge*, 1994, Vol. 14, No. 77, pp. 3-7.

Tuitt, P. (1996) *False Images, The Law's Construction of the Refugee*. London: Pluto Press.

UNHCR (undated) *UNHCR Policy on Refugee Women*.

<http://www.unhcr.org/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=3ba6186810>

UNHCR (1997) *UNHCR policy on harmful traditional practices*. Inter-Office Memorandum No. 83/97. Field Office Memorandum No. 90/97.

UNHCR (February 1999) *Position paper. Relocating internally as a reasonable alternative to seeking asylum*

<http://www.unhcr.org/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=3b83c6e64>

The San Remo expert roundtable (6-8 September 2001) at **UNHCR's Global Consultations** addressed a number of gender-related issues. Useful online materials include:

¹²⁸ <http://www.icar.org.uk/?lid=2006>

¹²⁹ <http://www.icar.org.uk/?lid=6283>

Summary conclusions – gender-related persecution

<http://www.unhcr.org/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=3baf2ef5d>

Summary conclusions - membership of a particular social group

<http://www.unhcr.org/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=3baf2fb88>

Other forced migrants

Of the three primary causes of forced migration outlined above, the legal definition of a refugee correlates most closely to conflict-induced displacement. Some academics have also challenged the notion that to receive the protection afforded to a legal refugee, someone must be fleeing individualised persecution. They argue that those fleeing environmental degradation, the impacts of climate change and natural or man-made disasters can also be defined as refugees. This concept of the 'environmental refugee' is controversial, and much has been written about the use of the term. Those who argue that the refugee regime should encompass persons who are displaced by damage to the environment have identified a responsibility that is incurred by the international community when people are forced to flee the negative fallout of human intervention in the environment.

A similar argument could be made for people displaced by developmental projects yet they are also highly unlikely to receive refugee status. Most forced migrants from this category remain within the border of their home state and are therefore considered the responsibility of that government. State compensation for people who lose their homes to this type of project is often inadequate, despite guidelines for resettling affected populations drafted by some donors including the World Bank. Comparable to the argument for environmental refugees invoking the obligations of the international community, it has been suggested that displacement caused by large-scale development programmes financed by Western states or international organisations like the World Bank should generate a similar response.

Useful resources

Environmental

Black, R. (March 2001) *'Environmental refugees: myth or reality?'* UNHCR Working Paper No. 34.

<http://www.unhcr.org/cgi-bin/texis/vtx/research/opendoc.pdf?tbl=RESEARCH&id=3ae6a0d00>

Black, R. (1998) *Refugees, environment and development*, London: Longman.

Chatty, D. and Colchester, M. (eds.) (2002) *Conservation and Mobile Indigenous Peoples: Displacement, Forced Settlement, and Conservation*, Oxford: Bergahn

EI-Hinnawi, E. (1985) *Environmental Refugees*, Geneva: United Nations Environment Programme

Forced Migration Review (July 2005) 'Tsunami: learning from the humanitarian response', special issue, vol. 24, July 2005

<http://fmo.qeh.ox.ac.uk/fmo/index.asp>

Kibreab, G. (1997) 'Environmental causes and impact of refugee movements: a critique of the current debate'. *Disasters*, March 1997, Vol.21, No.1, pp.20-38

Kourula, P. (1997) *Broadening the edges: refugee definition and international protection revisited*. Leiden: Martinus Nijhoff Publishers.

McGregor, J. (1993) 'Refugees and the Environment' In Richard Black and Vaughan Robinson (eds.) *Geography and Refugees: Patterns of Process and Change*. London: Belhaven Press.

Development

Courtland Robinson, W. (2003) *Risks and Rights: The causes, consequences, and challenges of development-induced displacement*, Washington, D.C.: The Brookings Institute and SAIS Project on Internal Displacement

Forced Migration Review 'Dilemmas of development-induced displacement', special issue, vol. 12, January 2002

Garikipati, S. 'Consulting the Development-Displaced Regarding their Resettlement: Is there a Way?' *Journal of Refugee Studies* 2005 18: p340-361

McDowell, C. (ed.) (1996) *Understanding impoverishment: the consequences of development-induced displacement*, Oxford: Berghahn Books

Refuge 'Development-induced displacement', special issue, vol. 16(3), August 1997

Stanley, J. (2004) *Development-induced displacement and resettlement*, Forced Migration Online <http://www.forcedmigration.org/guides/fmo022>

World Bank Environment Department (WBED) (1996) *Resettlement and Development: The Bankwide Review of Projects Involving Involuntary Resettlement, 1986-1993* Environment Department Paper No. 032, Resettlement Series. Washington, D.C.: World Bank.

Asylum-migration nexus

Recent academic research suggests that it has also become increasingly difficult to make a clear distinction between forced migrants and other forms of migrants. There are several ways in which categories of migrants overlap, conceptualised as the asylum-migration nexus. Firstly, a single country can produce a number of different types of migrants. A country such as Nigeria, for example, is the country of origin for asylum seekers, refugees, economic migrants, students and irregular migrants.

Secondly, the routes and mechanisms used along a migration journey are also blurred. On the one hand, those seeking international protection are often necessarily drawn to irregular or illegal channels to facilitate their migration to a country of asylum. On the other hand, individuals not in need of protection may use asylum systems as an alternative method of immigration. Additionally, all types of migrants use similar social networks to facilitate migration.

Finally, there is a temporal element to the asylum-migration nexus. Individuals who flee their country of origin and initially find protection may not find a durable solution in the first country of asylum which can result in secondary migration for employment and their identification as an economic migrant. Conversely, individuals who have previously been admitted to a country as a worker, may claim asylum at the end of their contract due to a changing situation in the country of origin.

It is difficult to make clear distinctions between political and economic motivations for migration as individuals are often responding to a complex range of underlying factors.

Useful resources

UNHCR (2005) *Internally Displaced Persons – questions and answers*
<http://www.unhcr.org/cgi-bin/txis/vtx/basics/opendoc.pdf?tbl=BASICS&id=405ef8c64>

Borjas, G. and Crisp, J. (2005) *Poverty, International Migration and Asylum*, Palgrave Macmillan

Castles, S. and Loughna, S. (2002) 'Trends in Asylum Migration to Industrialised Countries: 1990-2001', paper presented at United Nations University-World Institute for Development Economic Research (UNU-WIDER) Conference on Poverty, International Migration and Asylum Helsinki, 27-28 September
<http://www.wider.unu.edu/conference/conference-2002-3/conference%20papers/Loughna.pdf>

Papadopoulou, A. (2005) 'Exploring the asylum-migration nexus: a case study of transit migrants in Europe' *Global Migration Perspectives Series*, No. 23
<http://www.gcim.org/gmp/Global%20Migration%20Perspectives%20No%2023.pdf>

UNHCR (2006) *The state of the world's refugees: human displacement in the new millennium*, Oxford University Press
<http://www.unhcr.org/cgi-bin/txis/vtx/publ/opendoc.htm?tbl=PUBL&id=444d3bf4>

Van Hear, N. (2004) *'I went as far as my money would take me': conflict, forced migration and class* COMPAS Working Paper - WP-04-06
<http://www.compas.ox.ac.uk/publications/wp-04-06.shtml>

The migration-asylum nexus: the Somali and Tamil diaspora, a research project of the [Centre on Migration, Policy and Society \(Compas\)](#), Oxford University
<http://www.compas.ox.ac.uk/research/Forced%20Migration.shtml>
<http://www.compas.ox.ac.uk/index.html>

Internally displaced persons

In order to qualify as a refugee under the Refugee Convention, a person must be outside the country of his/her nationality. However, UNHCR estimates that there are 25 million internally displaced persons (IDPs)¹³⁰ in the world (this is in contrast to 9.2 million refugees).¹³¹ These individuals do not qualify for refugee status because they have not crossed an international border. Over the last thirty years the UN agency has expanded its activities to include the provision of humanitarian assistance to IDPs and 'returnees' (refugees who have returned to their country of origin). These activities can be controversial as the agency can only operate with the consent of the state concerned. Recently UNHCR has taken official responsibility for IDPs by assuming the 'protection cluster lead' within the inter-agency response to persons who have been internally displaced due to conflict-related reasons.

Useful resources

Forced Migration Review (October 2005) *Protecting and Assisting the Internally Displaced: The Way Forward*
<http://www.fmreview.org/FMRpdfs/FMR24/IDP%20Supplement/full.pdf>

¹³⁰ <http://www.unhcr.org/cgi-bin/txis/vtx/protect?id=3b84c7e23>

¹³¹ <http://www.unhcr.org/cgi-bin/txis/vtx/basics/opendoc.htm?tbl=BASICS&id=3b028097c#Refugees>

Human Rights Watch web pages on IDPs
<http://www.hrw.org/campaigns/refugees/section-3-3.htm>

Internal Displacement Monitoring Centre
<http://www.internal-displacement.org/>

Lee, L. (1996) 'Internally displaced persons and refugees: toward a legal synthesis?' *Journal of Refugee Studies*, Vol.9, No.1, pp.27-42.

Phuong, C. (2004) *The International Protection of Internally Displaced Persons*, Cambridge University Press

Refugee Survey Quarterly (2005) 'Internally Displaced People', special issue, vol. 24 (3)
<http://www.ingentaconnect.com/content/oup/refqtl/2005/00000024/00000003>

UNHCR (2000) "'A predisposition to act" HCR and International Displaced Persons' *Refugee*, No. 5, 2000, no. 13.
<http://www.una.org.ge/refuge/052000/3.html>

UNHCR web pages on IDPs
<http://www.unhcr.org/cgi-bin/txis/vtx/protect?id=3b84c7e23>

Reviewing the asylum system

In February 2003, the House of Commons [Home Affairs Committee](#)¹³² launched an enquiry into asylum applications. The committee took oral evidence on nine occasions between May and October 2003 (from the Minister of State for Citizenship, Immigration and Counter-Terrorism, Home Office officials, representatives of legal, human rights and refugee advocacy organisations and from a number of individuals who had personal, professional or research-based knowledge of asylum issues in the UK). The committee also received 84 memoranda from legal, welfare and refugee organisations, government departments and individuals who work with asylum seekers. They also inspected border controls and reception facilities for asylum seekers in Dover, and visited the Immigration and Nationality Directorate Asylum Screening Unit and the National Asylum Support Service in Croydon. The key questions which formed the basis of the committee's enquiry were the following:

- What are the reasons for the rise in asylum applications to the UK over the last ten years?
- How adequately and fairly are asylum applications managed today? How did the backlog of asylum determinations arise? Is it being dealt with satisfactorily?
- How adequately is support provided to asylum seekers by the National Asylum Support Service?
- How appropriately is detention used in respect of asylum applicants?
- What will be the effects on the management of asylum applications of changes made in the Nationality, Immigration and Asylum Act 2002 and the prime minister's pledge to halve the number of asylum seekers by September 2003?
- What is the possible impact of any proposed change to the treaties covering asylum and refugees to which the UK is committed?

The committee's [report](#)¹³³ was published in January 2004. This outlined findings from the enquiry and presented a total of 76 conclusions and recommendations. The committee:

- noted evidence that conflict, rather than poverty, is the defining characteristic of asylum seekers' home countries and noted an overlap between the categories of economic migrants and refugees;
- acknowledged the difficulty the asylum system had had in coping with the twenty-fold increase in the number of asylum applications lodged in the UK over the past 15 years, whilst recognising the recent progress in the processing of asylum claims;
- recognised that it is increasingly difficult to get into the UK to make an asylum claim and that the asylum seekers who manage to do so are not representative of the world's wider refugee population;
- found grounds for concern about the poor quality of much initial decision-making on asylum claims; and
- found the National Asylum Support Service (NASS) to be under-resourced, to have too few trained staff, and insufficient local knowledge.

The committee's recommendations included:

- adopting a flexible approach to the citing of induction and accommodation centres, including the use of dispersed accommodation;
- updating the 1951 Convention on the basis of international consensus, whilst emphasising that the UK should not withdraw from either this or the European Convention on Human Rights;
- 'front-loading' more resources to achieve fair and sustainable application decisions at the initial stage;

¹³² http://www.parliament.uk/parliamentary_committees/home_affairs_committee.cfm

¹³³ <http://www.parliament.the-stationery-office.co.uk/pa/cm200304/cmselect/cmhaff/218/21802.htm>

- creating alternative legitimate means by which refugees can gain access to the UK, as well as assisting refugees closer to their country of origin, and taking action to tackle the causes of forced migration;
- conducting an independent review of the operation of section 55 of the Nationality, Immigration and Asylum Act 2002, which prevents any support being given to asylum seekers unless they have made a claim immediately on arrival in the country;
- taking tougher action against employers who employ illegal immigrants and clarifying the government's policy on economic migration.

Useful resources

A list of the people who gave oral evidence to the committee:

<http://www.parliament.the-stationery-office.co.uk/pa/cm200304/cmselect/cmhaff/218/21819.htm>

The minutes of these oral evidence sessions:

<http://www.parliament.the-stationery-office.co.uk/pa/cm200304/cmselect/cmhaff/218/21802.htm>

A list of the written evidence submitted and printed by the committee and the written evidence content:

<http://www.parliament.the-stationery-office.co.uk/pa/cm200304/cmselect/cmhaff/218/21820.htm>

<http://www.parliament.the-stationery-office.co.uk/pa/cm200304/cmselect/cmhaff/218/218we01.htm>

A list of the unprinted written evidence that was submitted:

<http://www.parliament.the-stationery-office.co.uk/pa/cm200304/cmselect/cmhaff/218/21821.htm>

The full report produced by the committee and a pdf version of Volume 1.

<http://www.parliament.the-stationery-office.co.uk/pa/cm200304/cmselect/cmhaff/218/21802.htm>

<http://www.publications.parliament.uk/pa/cm200304/cmselect/cmhaff/218/218.pdf>

The government's response to the report, published in March 2004:

<http://www.archive2.official-documents.co.uk/document/cm61/6166/6166.pdf>

On November 9th 2005, the Home Affairs Committee announced that it would hold an [inquiry into immigration control](#)¹³⁴ with the following terms of reference: policy and practice of immigration control, examining the entry clearance (visa) system, the granting or refusing of further leave in the UK and the enforcement of immigration control. The purpose of the inquiry is to assess the efficacy of the current immigration system and accordingly inform the implementation of new government policies. The inquiry is still in progress.

Advocacy groups have expressed concern over many of the issues being discussed by the committee with reference to current UK government immigration control measures. The Refugee Council and Oxfam have argued that refugees and asylum seekers are inadequately distinguished from other migrants seeking to enter the UK, such that broad immigration controls will keep out people seeking protection under the terms of the 1951 Convention. The following key measures are highlighted in a [joint submission](#):¹³⁵

- Visa restrictions – national groups requiring visas were extended from 19 in 1991 to 108 in February 2005. Many such additions, they claim, were in response to high number of asylum applications from particular countries. This permits no legal way for asylum seekers to enter the UK to apply for refugee status without the appropriate travel documents required by the UK's

¹³⁴ http://www.parliament.uk/parliamentary_committees/home_affairs_committee/hacpn051109.cfm

¹³⁵ http://www.refugeecouncil.org.uk/downloads/policy_briefings/immigration_controls-Nov_05.pdf

immigration rules. This suggests that the government does not adequately recognise that even without such documents, asylum seekers would be entering the UK legally under international law.

- Juxtaposed controls – measures have been implemented to extend the UK's borders extra-territorially with immigration controls at ports and stations within the European Economic area. In addition, Airline Liaison Officers (ALOs) have been stationed in airports worldwide, and Immigration Liaison Officers (ILOs) outside the UK that operate pre-clearance procedures such that potential migrants are intercepted before entering UK soil. It is uncertain what training these officers are given, what activities they undertake, or to what extent they adhere to their obligations under international refugee and human rights law. However, the presence of officers in refugees' countries of origin and transit suggests that those affected by their activities will include asylum seekers fleeing from persecution who have to travel irregularly.
- Carriers sanctions and new detection technology – In October 2003, the government announced its intention to expand the use of carrier sanctions and to provide new security and searching technology to sea carriers to detect people hiding in vehicles. Such measures illustrate the transfer of immigration control from the state to private companies that are not bound by the 1951 Convention and are subject to minimal scrutiny and accountability.

Further, the Refugee Council and Oxfam argue that there is no evidence to support the government's claims that asylum seekers that are kept outside the borders of the UK are unfounded claimants seeking to abuse the system.

Useful resources

Bail for Immigration Detainees (BID) submission to the Home Affairs Committee Inquiry into Immigration Control

http://www.biduk.org/pdf/detention_policy/HAC_inquiry_2005_BID_response.pdf

Home Affairs Committee – Immigration Control:

http://www.parliament.uk/parliamentary_committees/home_affairs_committee/hac2005_06ic.cfm

Joint Council for the Welfare of Immigrants (JCWI) submission:

<http://www.jcwi.org.uk/policy/ukpolicy/HAC%20Immigration%20control%20Inquiry%20JCWI%20submission.pdf>

Joint Refugee Council and Oxfam GB response to the Home Affairs Committee Inquiry into Immigration Control

http://www.refugeecouncil.org.uk/downloads/policy_briefings/immigration_controls-Nov_05.pdf

Justice submission: <http://www.justice.org.uk/images/pdfs/asylumremovals.pdf>

Quality and consistency of decision-making

There has been much criticism of the initial decision-making process in the UK by refugee agencies, legal practitioners, academics and politicians. Some of the key factors are discussed in the following sections.

Training and practice

Concerns have been raised by various refugee agencies that the training given to Home Office immigration and nationality directorate (IND) caseworkers making the initial decisions on cases is not thorough enough to ensure quality decision-making and that some of the practices of the Home Office prevent a proper assessment of cases before them. An investigation by the Medical Foundation for the Care of Victims of Torture into the decision-making process by the Home Office came to the following conclusions:¹³⁶

- there were often inconsistencies between the country of origin reports and the reasons for refusal given on a case;
- caseworkers lacked an understanding of the Refugee Convention;
- standard paragraphs are used in the refusal letters and individual cases were rarely assessed;
- there was a selective application of law and policy;
- there was a failure to use expert medical reports to corroborate testimony;
- caseworkers lacked good interviewing skills.

The report by the Medical Foundation also criticises the way in which credibility is determined. Inferences drawn from the course and conduct of the applicant's journey to the UK and application for asylum were deemed to be inconsistent and speculative, to have assumed knowledge that the applicant may not possess, and to be inconsistent with the guidelines that caseworkers are meant to follow. The report also identified a failure to seek further information and use minor or irrelevant inconsistencies to justify the rejection of whole claims.

Refugee agencies have highlighted the barriers that individuals face when trying to communicate their reasons for applying for asylum. They have argued that if linguistic and cultural differences are not approached with sensitivity then vital information about an individual's case can be overlooked or misunderstood. There is also concern that people who are fleeing persecution may be suffering from trauma, confusion, exhaustion or stress and that when faced with an interview upon arrival, they are not able to present the facts of their case in a coherent manner. Concerns have been raised that the training given to immigration officers and caseworkers is not sufficient to enable them to effectively overcome these barriers.

A [report](#)¹³⁷ issued by the National Audit Office (June 2004) made the following recommendations to the Home Office with regard to decision-making:

- the Home Office should provide more training to caseworkers at the induction stage; provide more specialist training once they have experience; and update their knowledge and skills. Particular issues to cover in more depth could include: the preparation of refusal letters; understanding of human rights issues; the handling of certain types of cases, for example involving minors or victims of rape; and recent developments in the law on asylum.

¹³⁶ Smith, E. (2004) *Right first time?* London: The Medical Foundation for the Care of Victims of Torture.

¹³⁷ National Audit Office (June 2004) *Improving the speed and quality of asylum decisions*. London: Audit Office. Available at http://www.nao.org.uk/publications/nao_reports/03-04/0304535.pdf

- the Home Office should build up the expertise of caseworkers by encouraging some to specialise more in dealing with applications from particular countries, regions of the world or types of cases – particularly categories involving a significant number of cases.
- the Home Office should strengthen its quality assurance arrangements by analysing the reasons why decisions are overturned by caseworkers; investigating the reasons for any differences between the appeals allowed rates for applicants from different countries; and introducing supervisory review prior to initial decisions being dispatched for those types of application most frequently overturned at appeal.

The [Independent Race Monitor](#)¹³⁸ provides independent oversight of the use of powers immigration staff hold to discriminate on grounds of nationality, ethnic or national origin. Mary Coussey is required to report her findings to parliament on an annual basis. The [most recent report](#)¹³⁹ was published in July 2005 and makes the following points:

- revised guidance for caseworkers on decision making is needed to improve the quality of initial decisions;
- there is a need for an independent element in initial decision making; monitoring for disparities in initial decision rates; and examination of the reasons for high allowed appeals for certain nationalities;
- training in avoiding unconscious bias and in cross-cultural communication should be expanded. Training in decision-making is on too narrow a basis, creating a risk that caseworkers' decisions could become standardised and simplistic;
- the government has an important role in encouraging a more objective and well informed discussion on immigration. Negative public discussion on immigration and asylum can affect decision-makers and makes caution and suspicion more likely.

A number of relevant recommendations were made in a recent [report](#)¹⁴⁰ by South London Citizens on IND service provision at Lunar House in Croydon:

- casework should become a specialism, with appropriate training and remuneration;
- UNHCR guidelines for case-workers should be implemented by March 2006;
- the Canadian system provides a high quality benchmark;
- service provision and working conditions of staff should be examined in a broader context and;
- implementation of national policies on immigration and asylum should be reviewed through a citizen's enquiry.

In 2004, UNHCR was invited to assist the Home Office in improving the overall quality of initial decision making, through auditing the Home Office's procedures and providing recommendations. The [Quality Initiative Project](#)¹⁴¹ is an ongoing, long-term process, which UNHCR hopes will have a positive influence on asylum procedures and first instance decision-making in the UK.¹⁴²

¹³⁸ http://www.ind.homeoffice.gov.uk/aboutus/reports/independant_race_mon

¹³⁹ Mary Coussey (July 2005) *Annual Report 2004/5 of the Independent Race Monitor*
<http://www.ind.homeoffice.gov.uk/6353/aboutus/independantracemonitor.pdf>

¹⁴⁰ South London Citizens (2005) 'A humane service for global citizens', *Report on the Enquiry into the service provision by the Immigration and Nationality Directorate at Lunar House*.
http://www.londoncitizens.org.uk/files/Lunar%20House%20Final_Small.pdf

¹⁴¹ http://www.unhcr.org.uk/legal/help.html#quality_initiative_project

¹⁴² http://www.unhcr.org.uk/press/press_releases2005/documents/QIKeyObservationsandRecommendations.ReportII.FINAL_000.pdf

Country information

The quality of country information held by the government is also of concern to many NGOs. The government was asked to consider the creation of an independent country of origin documentation centre during debates on the Nationality, Immigration and Asylum Bill 2002. [Its opinion](#)¹⁴³ on this was most clearly expressed by Lord Filkin, the minister responsible for the bill in the House of Lords on 10 July 2002. The act did not set up an independent country of origin documentation centre, but provided for an [advisory panel on country information \(ACPI\)](#)¹⁴⁴. ACPI was established to revise and make recommendations to the Home Secretary on the content of Home Office produced country of origin information.

There is an ongoing debate about establishment of an independent documentation centre for the provision of country of origin information. Many NGO observers feel that such a centre would increase the actual (and perceived) objectivity of the country information made available to decision-makers. They have also argued that there would be fewer disputes at the appeal stage about the reliability and accuracy of information between the appellant and the respondent.

Advocates and academics have suggested that the UK should learn from the Canadian model of using an independent board to determine asylum applications. The mission of [the Immigration and Refugee Board of Canada](#) (IRB),¹⁴⁵ an independent tribunal established by the Parliament of Canada, is 'on behalf of Canadians, to make well-reasoned decisions on immigration and refugee matters, efficiently, fairly, and in accordance with the law.' A paper detailing how this would work has been made by Guy Goodwin-Gill, professor of international refugee law.¹⁴⁶

Despite criticisms of the current provisions for obtaining country information, observers have also acknowledged that the establishment of an independent documentation centre would be challenging because the centre would need sufficient resources to produce good quality products. If the government was to provide this funding, then the centre would be open to criticisms of bias.

The Research, Development and Statistics Directorate (a section of the Home Office) has produced a major piece of research on the use of Country Information Policy Unit (CIPU) products. The report suggests ways in which better quality information can be obtained and highlights the main ways in which the CIPU reports can be more effectively used by immigration officers and caseworkers in the decision-making process.¹⁴⁷ The Immigration Advisory Service has also produced several reports that question the reliability and accuracy of the country information produced by the Home Office.¹⁴⁸ A [report](#) issued by the National Audit Office (June 2004)¹⁴⁹ recommends that the Home Office should update its country information more regularly. For an example of the limits of country information, refer to ICAR's navigation guide on [lesbian, gay, bisexual and transgender refugees and asylum seekers](#).¹⁵⁰

¹⁴³ Hansard (Lords) 10 July 2002, Columns 798 – 800. <http://www.parliament.the-stationery-office.co.uk/pa/ld200102/ldhansrd/vo020710/text/20710-30.htm>

¹⁴⁴ Advisory Panel on Country Information (ACPI) <http://www.apci.org.uk/>

¹⁴⁵ <http://www.irb-cisr.gc.ca/index.htm>

¹⁴⁶ Goodwin-Gill, G. (2002) 'The case for an Independent Refugee Board'. *Refugee Legal Centre Annual Review 2001-2002*. London: Refugee Legal Centre. http://www.refugee-legal-centre.org.uk/AnnualReport_01-02.pdf

¹⁴⁷ Morgan, B., Gelsthorpe, V., Crawley, H. and Jones, G. (September 2003) *Country of Origin Information: A User and Content Evaluation*. Home Office Research Study 271. London: Home Office. Available at <http://www.homeoffice.gov.uk/rds/pdfs2/hors271.pdf>

¹⁴⁸ Immigration Advisory Service Research and Information Unit – Home Office country information analysis http://www.iasuk.org/C2B/document_tree/ViewADocument.asp?ID=259&CatID=60

¹⁴⁹ National Audit Office (June 2004) *Improving the speed and quality of asylum decisions*. London: Audit Office. http://www.nao.org.uk/publications/nao_reports/03-04/0304535.pdf

¹⁵⁰ <http://www.icar.org.uk/?lid=2006>

In response to recommendations made by the Advisory Panel the responsibility for the production of country reports was transferred to the [Country of Origin Information Service](#)¹⁵¹ (COI Service) in the [Research, Development and Statistics](#)¹⁵² (RDS) section of the Home Office in June 2005. It was felt that this department would be seen as more impartial as it does not engage in the development of country specific policy and it also has an expertise in research.

The Country Specific Asylum Policy Team (CSAPT) of the Home Office Asylum and Appeals Policy Directorate produces [Operational Guidance Notes](#)¹⁵³ (OGNs). These are briefer summaries of the general, political and human rights situation of a particular country. They aim to provide guidance on whether the main types of claim are likely to justify the grant of asylum, Humanitarian Protection or Discretionary Leave.

Useful resources

Asylum Aid (1995) *'No Reason at All': Home Office Decisions on Asylum Claims*. London: Asylum Aid.

Asylum Aid (1999) *'Still No Reason at All': Home Office Decisions on Asylum Claims*. London: Asylum Aid.
<http://www.asylumaid.org.uk/Publications/Still%20No%20Reason%20At%20All.PDF>

Asylum Rights Campaign (1996) *The Risks of Getting it Wrong: the Asylum and Immigration Bill Session 1995/6 and the Determination of Special Adjudicators*.

Bloch, A. (2000) 'A New Era or More of the Same? Asylum Policy in the UK'. *Journal of Refugee Studies* 13 (1), pp. 29-42.

Crawley, H. (1999) *Breaking Down the Barriers: A report on the conduct of asylum interviews at ports*. London: Immigration Law Practitioners' Association.

Goodwin-Gill, G. (2002) 'The case for an Independent Refugee Board'. *Refugee Legal Centre Annual Review 2001-2002*. London: Refugee Legal Centre.
http://www.refugee-legal-centre.org.uk/AnnualReport_01-02.pdf

IRSS, Home Office (March 2001) *Bridging the Information Gaps: A Conference of Research on Asylum and Immigration in the UK*. London: Home Office. Especially chapter entitled 'Workshop 2: Asylum and Appeals in the UK'.
<http://www.homeoffice.gov.uk/rds/pdfs/irssconf21301.pdf>

Law Society (June 2000) *Report on results from Law Society questionnaire to CLS contracted suppliers on asylum seekers and completion of SEFs*. London: Law Society.

Lester, T. (September 2000) 'Access to legal services for asylum-seekers in Britain: an exploratory study of recent developments'. Sussex Migration Working Paper No. 1.
<http://www.sussex.ac.uk/migration/documents/mwp1.pdf>

Medical Foundation (2000) *Caught in the Middle: A Study of Tamil Torture Survivors Coming to the UK from Sri Lanka*. London: Medical Foundation.

¹⁵¹ http://www.homeoffice.gov.uk/rds/country_reports.html

¹⁵² <http://www.homeoffice.gov.uk/rds/index.html>

¹⁵³ <http://www.ind.homeoffice.gov.uk/lawandpolicy/csp>

National Audit Office (June 2004) *Improving the speed and quality of asylum decisions*. London: Audit Office.

http://www.nao.org.uk/publications/nao_reports/03-04/0304535.pdf

Pirouet, L. (2001) *Whatever Happened to Asylum in Britain? A Tale of Two Walls*. Oxford Berghahn.

Refugee Council (1995) *Beyond Belief: The Home Office and Nigeria*. London: Refugee Council.

Sergeant, H. (2001) *Welcome to the Asylum*. The Centre for Policy Studies with The Chameleon Press.

Shah, P. (1998) 'Immigration and Judicial Review', In Trevor Buck (ed.) *Judicial Review and Social Welfare*, Pinter

Smith, E. (2004) 'Right First Time?' *Medical Foundation for the Care of Victims of Torture*, London: The Medical Foundation for the Care of Victims of Torture.

Travers, M. (1998) 'Recognising the Refugee: An Analysis of Judicial Decision-Making in the British Immigration Courts'. Paper presented at Socio-Legal Studies Association Conference.

Legal representation

Concerns have been expressed over asylum seekers' lack of access to good quality legal advice and representation for a number of reasons. The dispersal of asylum seekers to various parts of the UK can impact their case because their representation has been disrupted. Asylum seekers may also have difficulties determining which firms are reliable and have the expertise to help prepare a good case. Additionally, the new limitations on the number of hours of advice and representation that each client is entitled to receive has been identified as having a negative impact on the quality of advice. Poor, or no, representation will obviously place an applicant at a disadvantage and can result in a case being refused. A recent Home Office [publication](#)¹⁵⁴ on the role of early legal advice in asylum applications found that competent legal representation in the initial stages can contribute to good quality decision-making.

Regulation

The Immigration and Asylum Act 1999 established an independent public body, the [Office of Immigration Services Commissioner \(OISC\)](#)¹⁵⁵, to regulate immigration advisers and to promote good practice. Immigration advisers do not have to be trained solicitors, although many are. Since 1 April 2005 the LSC has required that all advisers are accredited through the LSC/Law Society accreditation scheme if they wish to provide legally aided immigration advice. Three levels of caseworker have been implemented: Level 1 – Accredited; 2 – Senior; 3 – Advanced. There is also a supervisor standard. The level of advice that an adviser can give is determined by the level of accreditation they have achieved. Nevertheless, it has been observed that the quality of asylum advice varies enormously and although there are some excellent practitioners, poor quality advice is still a major issue.¹⁵⁶

Publicly funded work

Publicly-funded legal advice and representation is available for asylum cases, as it is for other areas of the law. In England and Wales the legal aid fund is called the [Community Legal Service Fund](#)¹⁵⁷ and is administered by the [Legal Services Commission](#)¹⁵⁸ (LSC). Free assistance is available throughout the asylum process, for asylum seekers who either have no income, or a very low income. The LSC will only fund advisers that they have a contract with to provide specialist immigration advice. There are different levels of legal aid available. 'Legal help' covers initial advice and applications to the Home Office, 'Controlled Legal Representation' covers appeals and 'Legal Representation' is for cases before the High Court, Court of Appeal and House of Lords.

The legal aid costs of providing advice and representation in immigration and asylum work (including judicial reviews) have risen from £81.3m in 2000-2001¹⁵⁹ to £204m in 2003-2004¹⁶⁰. In June 2003, the [Department for Constitutional Affairs](#)¹⁶¹ (DCA) published [proposals](#)¹⁶² to limit the amount of time that will be funded by

¹⁵⁴ <http://www.homeoffice.gov.uk/rds/pdfs05/rdsolr0605.pdf>

¹⁵⁵ <http://www.oisc.gov.uk>

¹⁵⁶ **Mayor of London** (2005) *Into the Labyrinth: Legal advice for asylum seekers in London*, (Greater London Authority) http://www.london.gov.uk/mayor/refugees/docs/labyrinth_report.pdf

¹⁵⁷ <http://www.clsdirect.org.uk/legalhelp/clscharges.jsp?lang=en>

¹⁵⁸ <http://www.legalservices.gov.uk>

¹⁵⁹ **Department of Constitutional Affairs** (March 2004) Proposals for changes to publicly funded Immigration and Asylum work. <http://www.dca.gov.uk/risk/ria-asylum04.htm#part13>

¹⁶⁰ Legal Services Commission, Press Release, 16 June 2004

http://www.legalservices.gov.uk/press/press_release17.asp

¹⁶¹ <http://www.dca.gov.uk>

¹⁶² <http://www.dca.gov.uk/consult/leg-aid/asylum.htm>

the Legal Services Commission (LSC) in asylum and immigration cases and began consultation on this issue. Refugee and legal advocacy organisations have commented that the government's desire to limit expenditure on legal aid should be replaced with an emphasis on 'front-loading' of resources: ensuring good initial quality decision-making and thereby reducing the need for costly appeals and reviews.

Responses from interested parties on the DCA consultation on publicly-funded asylum work:

- **Citizen Advice Bureau**
http://www.citizensadvice.org.uk/index/pressoffice/press_index/press-030829.htm
- **Immigration Law Practitioners Association (ILPA)**
<http://www.ilpa.org.uk/submissions/ILPAsummarypubliclyfunded.html>
- **Refugee Council**
http://www.refugeecouncil.org.uk/downloads/policy_briefings/legaid_response.pdf
- **Refugee Legal Centre**
<http://www.refugee-legal-centre.org.uk/DCA%20Consultation%20Paper%201208031.doc>
- **UNHCR**
http://www.unhcr.org.uk/legal/positions/UNHCR%20Comments/comments_public_funding.htm

The House of Commons Constitutional Affairs Committee launched an enquiry into DCA's proposals and produced a critical [report](#)¹⁶³ in October 2003. The report highlights concerns that the measures may have a negative impact on the quality of representation offered to asylum seekers. Similar concerns were raised by legal professionals and NGOs. They highlighted the fact that the Home Office and courts look unfavourably upon an applicant's claim or appeal if they do not raise all of the information that is relevant to their case at the earliest opportunity, and expressed concern that if representatives were constrained by the pressures of funding limitations, it would be difficult for them to ensure that all of the relevant facts are outlined in the initial application. This is especially true if clients are traumatised or if there are linguistic and cultural barriers that make it difficult to obtain information. Law firms also expressed concern about the amount of their time that is taken up with negotiations with the LSC over funding issues and observed that this pressure detracted from the amount of time that they have available to dedicate to their clients.

On 27 November 2003, a [ministerial statement](#)¹⁶⁴ was made which presented the new proposals. On 1 April 2004, the [Community Legal Service \(Scope\) Regulations 2004](#)¹⁶⁵ came into force, (no primary legislation was needed to implement the changes). The following changes were made:

- A new five-hour threshold was implemented for preparing asylum cases up to the initial Home Office decision [this is 24 hours if claimants are in detention]. Solicitors are only able to exceed the threshold with prior permission of the LSC on a case-by-case basis, (this provision was implemented in May 2004);
- Legal advisers are required to obtain permission from the LSC to carry out any appeal work. Decisions are made on an individual basis, and a financial threshold is awarded if the LSC approves funding;
- All lawyers and caseworkers doing legally aided asylum work have to be accredited, (this became compulsory in April 2005);

¹⁶³ House of Commons Constitutional Affairs Committee (October 2003) *Immigration and Asylum: the Government's proposed changes to publicly funded immigration and asylum work. Volume 1. Fourth Report of Session 2002 - 2003*. HC 1171 – I.

<http://www.parliament.the-stationery-office.co.uk/pa/cm200203/cmselect/cmconst/1171/1171.pdf>

¹⁶⁴http://www.publications.parliament.uk/pa/cm200304/cmhansrd/vo031127/wmstext/31127m08.htm#31127m08.html_s bhd4

¹⁶⁵<http://www.legislation.hmso.gov.uk/si/si2004/draft/20048947.htm>

- A [unique client number](#)¹⁶⁶ was introduced in April 2004 with the intention of reducing duplication of work by different advisers;
- The withdrawal of funding for representation at Home Office interviews (except for cases relating to individuals who are minors; suffer from a 'mental incapacity'; are going through fast-track decision-making processes at Harmondsworth, Yarl's Wood and Oakington; are being interviewed with the anticipation of a possible criminal charge; or who are alleged to pose a threat to national security).

The Refugee Legal Centre produced a [briefing](#)¹⁶⁷ on these regulations, which includes examples of formal complaints and/or further representations made by the RLC following an Home Office asylum interview, which 'could not have been made but for representation at the interview'.

Funding for an appeal to the Asylum and Immigration Tribunal (AIT) will only be granted to advisers if they can demonstrate to the LSC that the prospects of success are moderate or better and that the likely benefits of the proceedings justifies the cost involved. Applications for judicial review before the High Court and appeals to the Court of Appeal and House of Lords may also be funded by the LSC under the 'legal representation' scheme. However, the merits tests in these cases are far more stringent than for AIT appeals and appellants may be required to make a monthly financial contribution.

In November 2004, the DCA published a [consultation paper](#)¹⁶⁸ entitled 'The Asylum and Immigration Tribunal - The Legal Aid Arrangements for Onward Appeals'. The DCA sought views on the draft Community Legal Service (Asylum and Immigration) Regulations 2005. These regulations set the framework for the new legal aid arrangements in England and Wales and for the review and reconsideration of appeal decisions made by the new Asylum and Immigration Tribunal (AIT). The responses have been summarised in a [report](#)¹⁶⁹ outlining the conclusions reached.

In April 2005, the Asylum and Immigration Tribunal (AIT) replaced the two-tiered Immigration Appellate Authority by integrating the Immigration Adjudicators and the Immigration Appeal Tribunal into a single-tier Tribunal. This was established under Section 26 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004. Further details of these changes are outlined in the [LSC newsletter](#)¹⁷⁰ (June 2005).

The effect of dispersal

The Immigration and Asylum Act 1999 saw the introduction of the National Asylum Support Service (NASS) which, since April 2000, has been responsible for dispersing asylum seekers from the South-East of England to other less populated areas of the UK. Refugee advocacy groups claim that dispersal has negatively impacted on asylum seekers' ability to access good legal advice. For example, UNHCR has observed that the legal advice of individuals who have been dispersed is interrupted by this process and yet they are still subject to the five hour legal aid advice limits.¹⁷¹

An Amnesty International publication on whether the dispersal of asylum seekers to Glasgow has influenced their chances of having their asylum applications upheld, found that dispersal can lead to a disruption of any legal representation that the asylum seeker may have initiated prior to being moved. Furthermore, asylum seekers trying to maintain contact with their original legal representatives face the problems of long distance

¹⁶⁶ http://www.legalservices.gov.uk/docs/immigration_docs/FAQs1stIssue.pdf

¹⁶⁷ <http://www.refugee-legal-centre.org.uk/representation250304.doc>

¹⁶⁸ <http://www.dca.gov.uk/consult/asylum/legalaid-cp30-04.htm#conspap>

¹⁶⁹ <http://www.dca.gov.uk/consult/asylum/legalaidresp.pdf>

¹⁷⁰ http://www.legalservices.gov.uk/docs/immigration_docs/LSCImmigrationNewsletterfinal.pdf

¹⁷¹ http://www.unhcr.org/legal/positions/UNHCR%20Comments/comments_public_funding.htm

communication, such as expensive telephone calls and the language difficulty of telephone communication. The report also found that asylum seekers were unlikely to find new legal representation in the dispersal area in time to meet application process deadlines.¹⁷²

The effect of legal aid restriction

Restrictions on legal aid have forced many law firms to withdraw from offering advice on asylum claims as they do not believe they can operate effectively within the new restriction of only being able to claim for five hours work. As a result many asylum seekers are unable to continue with their asylum application or mount a successful appeal against a decision that could be overturned, leading to the withdrawal of NASS support and impending destitution.¹⁷³

A recent Greater London Authority [report](#)¹⁷⁴ into the effects of the legal aid restrictions found that 'lack of access to competent legal advice has caused or contributed to the refusal of asylum claims where protection should have been granted and this, in turn, has contributed to:

- an increasing number of asylum seekers who face destitution at the end of the asylum process with implications for health, for refugee communities who try to support them and for community safety
- the risk of asylum seekers being removed to situations where they are in danger of persecution.'

Bail for Immigration Detainees (BID) and Asylum Aid produced a joint research report in April 2005 on the effect of the cuts to legal aid.¹⁷⁵ According to the [report](#) the key impacts include:

- many asylum seekers being unable to access legal representation
- legal representation is being restricted by bureaucracy resulting in quality being driven down
- the LSC have effectively become 'gatekeepers of justice'
- voluntary organisations cannot absorb the consequences.

In addition to destitution, the consequential effects of the cuts to legal aid to asylum seekers across the UK are reported to include an increase in illegal working, loss of faith in the justice system, desperation and exploitation.

For further information, refer to ICAR's briefing on [destitution amongst refugees and asylum seekers in the UK](#).¹⁷⁶

¹⁷² **Nicola Smith** (May 2001) *Safe in Scotland? Has the dispersal of asylum seekers to Glasgow influenced their chances of having their applications upheld?* Report for the Cross Party Group on Refugees and Asylum Seekers. Edinburgh: Amnesty International.

¹⁷³ **Refugee Action** (June 2005) *Leicester Refugee and Asylum Seekers' Voluntary Forum, A report of destitution in the asylum system in Leicester*. <http://www.refugee-action.org.uk/campaigns/documents/LVSFDestitutionreport.doc>

¹⁷⁴ **Mayor of London** (2005) *Into the Labyrinth: Legal advice for asylum seekers in London*, (Greater London Authority) http://www.london.gov.uk/mayor/refugees/docs/labyrinth_report.pdf

¹⁷⁵ **Bail for Immigration Detainees (BID) and Asylum Aid** (April 2005) *Justice Denied – Asylum and Immigration Legal Aid – a System in Crisis*. <http://www.asylumaid.org.uk/Publications/Justicedenied.pdf>

¹⁷⁶ <http://www.icar.org.uk/?lid=6575>

Useful resources

Bail for Immigration Detainees (BID) & Asylum Aid, (April 2005) *Justice Denied, Asylum and Immigration Legal Aid – a system in crisis*. <http://www.asylumaid.org.uk/Publications/Justicedenied.pdf>

Home Office (June 2005) *The role of early legal advice in asylum applications*, Immigration Research and Statistics Service. <http://www.homeoffice.gov.uk/rds/pdfs05/rdsolr0605.pdf>

House of Commons Library (December 2003) *Immigration and asylum: proposed changes to publicly funded immigration work*. Research paper 03/89. London: House of Commons. <http://www.parliament.uk/commons/lib/research/rp2003/rp03-089.pdf>.

Lester, T. (September 2000) 'Access to legal services for asylum-seekers in Britain: an exploratory study of recent developments'. Sussex Migration Working Paper No. 1. <http://www.sussex.ac.uk/migration/documents/mwp1.pdf>

Mayor of London (2005) *Into the Labyrinth: Legal advice for asylum seekers in London*, (Greater London Authority) http://www.london.gov.uk/mayor/refugees/docs/labyrinth_report.pdf

Pirouet, L. (2001) *Whatever Happened to Asylum in Britain? A Tale of Two Walls*. Oxford Berghahn.

Shah, P. (1998) 'Access to legal assistance for asylum seekers'. *Immigration and Nationality Law and Practice*, Vol. 9 No.2.

Smith, N. (May 2001) *Safe in Scotland? Has the dispersal of asylum seekers to Glasgow influenced their chances of having their applications upheld? Report for the Cross Party Group on Refugees and Asylum Seekers*. Edinburgh: Amnesty International. <http://hardy.amnesty.org.uk/images/ul/s/safeinscotland.pdf>

Alternatives to the process of asylum determination

As the number of people arriving at the borders of developed countries and claiming asylum has risen, various governments have questioned the capacity of their asylum determination procedures to cope with the large number of decisions that need to be made on a case-by-case basis. In the UK, a backlog of initial decisions and appeal decisions has built up over the last decade as has the number of asylum seekers with failed claims that remain in the country. One of the aims of the Immigration and Asylum Act 1999 was to try and reduce the waiting time by speeding up the decision-making process, with subsequent acts introducing criteria for cases to be fast-tracked.

Despite this, and the sharp fall in asylum applications in the UK over the past few years, the volume of cases waiting to be dealt with is still of concern to the Home Office. The government may argue that their policies in recent years have acted as a deterrent to people lodging false asylum claims, yet there is an acceptance that new or increased conflict in certain regions of the world could force numbers back up again. Consequently, alternative forms of protection and processing are under consideration domestically, regionally and internationally.

Useful resources

ECRE (June 2003) *Comments of the European Council on Refugees and Exiles on the Communication from the Commission to the Council and the European Parliament. Towards a more accessible, equitable and managed international protection regime*. (COM [2003] 315 final).

<http://www.ecre.org/statements/thessalstate.doc>

Refuge (2004) 'New approaches to asylum: reconciling individual rights and state interests' Vol. 22(1)

UNHCR (February 2001) *Global Consultations on International Protection - Protection of Refugees in Mass Influx Situations: Overall Protection Framework*

<http://www.unhcr.org/cgi-bin/texis/vtx/protect?id=3b7cea1b4>

Resettlement

In his 'Lisbon Speech' Jack Straw, the then Home Secretary, called for an international debate about the possibility of alternative forms of protection for people fleeing persecution. He argued that Europe should consider a system of quotas. The idea is that each member state would agree to offer resettlement to a yearly quota of refugees identified by UNHCR.

The themes raised by Jack Straw were taken up by David Blunkett in the white paper [Secure Borders, Safe Haven: Integration with Diversity in Modern Britain](#)¹⁷⁷. He proposed a UK resettlement programme as part of a global system providing solutions to refugee protection, which would operate in addition to the asylum determination process with the assistance of organisations like UNHCR, the Red Cross and the International Organisation for Migration (IOM). Subsequent legislation has activated this proposal and refugees started arriving in the UK in March 2004 under the Gateway Protection Programme.

- For more information on the resettlement programme, refer to [navigation guide to refugee resettlement programmes in the UK](#).¹⁷⁸

¹⁷⁷ <http://www.archive2.official-documents.co.uk/document/cm53/5387/cm5387.pdf>

¹⁷⁸ <http://www.icar.org.uk/?lid=2002>

Criticism of proposals

In some areas, the idea of an EU-wide quota system has been welcomed because it is argued that the demand for illegal routes of migration would be reduced, while the risk incurred by individuals using these methods to make it into Europe would be removed. It has also been argued that proactively facilitating the arrival of refugees means that the opportunity to enjoy asylum in another country is opened up to those who would not otherwise have the means to travel to Europe and apply independently.

Advocates of refugee rights, however, have responded cautiously to the idea of introducing an EU-wide quota system for the resettlement of refugees. There is concern that this policy would encourage governments to restrict the right to spontaneously claim asylum. The European Council on Refugees and Exiles (ECRE) has written in depth on this issue, and also on the discussions and debates that are taking place within the EU on the resettlement of refugees. It is considered that resettlement is a useful and important part of an overall approach to dealing with the consequences of global displacement, but that it should complement spontaneous asylum, not replace it.

Useful resources

Bloch, A. (1999) 'Kosovan Refugees in the UK: the Rolls Royce or Rickshaw Reception?' *Forced Migration Review* 5, August 1999.

<http://www.fmreview.org/FMRpdfs/FMR05/fmr5full.pdf>

ECRE (2000) *Reflection on the changing nature of resettlement and the impact upon the operational environment*. Speech at annual tripartite consultations on resettlement, Geneva, 3–4 July 2000.

<http://www.ecre.org/speeches/resettle.shtml>

Refugee Council (March 2002) *Principles for a UK Resettlement Programme*

http://www.refugeecouncil.org.uk/downloads/policy_briefings/resettlement.pdf

For more information on what resettlement means and how **UNHCR** is involved, refer to the 'Protecting Refugees' area of the **UNHCR** website.

<http://www.unhcr.org/cgi-bin/texis/vtx/protect>

Details of the countries that currently operate resettlement quotas are provided by **UNHCR** in their *Resettlement Handbook and Country Chapters*.

<http://www.unhcr.org/cgi-bin/texis/vtx/protect?id=3d4545984>

Temporary protection

The idea of resettlement is not entirely untested in the UK. To date, most people who have been awarded refugee status, exceptional leave to remain in the UK, humanitarian protection or discretionary leave, will have had to make an asylum or human rights application once they arrived in the country. There have however, been exceptions to this procedure in the past, and the UK has resettled ad-hoc quotas of refugees from Uganda, Chile, and Vietnam. The government has also provided temporary protection to refugees from Bosnia and, more recently, Kosovo.

- For more information, refer to ICAR's [navigation guide on resettlement programmes in the UK](#)¹⁷⁹.

¹⁷⁹ <http://www.icar.org.uk/?lid=2002>

In his Lisbon speech, Straw indicated his desire for the international community to learn from the way in which the Kosovan refugees were assisted in 1999 by providing them with a temporary form of protection instead of long-term resettlement. The protection offered to them by the UK and other European governments fitted into a broader approach of humanitarian intervention and assistance. Again, refugee rights organisations have expressed ambivalence towards the desire of Western governments to promote the use of temporary protection, which is increasingly becoming their preferred response for coping with large-scale refugee situations. On the one hand, it expands the protection for those individuals who cannot satisfy the criteria under the Refugee Convention; on the other hand, however, there is the fear that protection which is informal and discretionary means that it cannot be monitored and enforced in the same way that a refugee rights regime can.

Useful resources

Chimni, B. (February 2000) *Globalisation, Humanitarianism and the Erosion of Refugee Protection*, Refugee Studies Centre Working Paper No.3.

<http://www.rsc.ox.ac.uk/PDFs/workingpaper3.pdf>

ECRE (March 1997) *'Position on temporary protection in the context of the need for a supplementary refugee definition'*.

<http://www.ecre.org/positions/tp.shtml>

Fitzpatrick, J. (April 2000) *'Temporary Protection of Refugees: Elements of a Formalized Regime'* *American Journal of International Law* Vol.94 No.2.

Koser, K. and Black, R. (1999) *'Limits to Harmonization: The "Temporary Protection" of Refugees in the European Union'* *International Migration*, Vol. 37(3)

Vedsted-Hansen, J. (February 2002) *Complementary or Subsidiary Protection? Offering an appropriate status without undermining refugee protection*, New Issues in Refugee Research, UNHCR Working Paper No. 52

<http://www.unhcr.org/cgi-bin/texis/vtx/research/opendoc.pdf?tbl=RESEARCH&id=3c7528894>

Extra-territorial processing

In the context of domestic political concern over asylum, a heightened perception of global insecurity and unsuccessful policies to remove asylum seekers with failed claims, the idea of processing asylum claims outside the territory has gained currency among European governments. These ideas are not particularly new, yet to propose such policies at an EU level represents a significant difference.¹⁸⁰

UK proposals

In March 2003, the then Home Secretary, David Blunkett, announced a proposal for 'zones of protection'. There are two parts to this proposal. The first is the concept of **'Regional Protection Areas'** (RPA). This involves the development of protection zones near areas where there have been natural disasters or regional conflicts. These zones will provide accommodation and protection for fleeing populations until an appropriate time when the refugees, or internally displaced people, will be resettled back to their places of origin.

¹⁸⁰ **Schuster, L.** (2005) *'The realities of a New Asylum Paradigm'*, COMPAS Working Paper WP-05-20
<http://www.compas.ox.ac.uk/publications/wp-05-20.shtml>

The second part is the creation of 'Transit Processing Centres', (TPC). These zones would be located in countries outside of the EU, and the examples have included Albania and Russia. Asylum seekers arriving in the UK, or any other EU country, would be sent to these processing centres and detained while their claim was decided. It is also possible that asylum seekers intercepted en route would be sent to these centres. Successful applicants would be resettled within the EU on a 'burden-sharing basis'. Unsuccessful claimants would either be returned to their country of origin or given temporary protection until repatriation is possible. The proposal excludes the right to move judicial review of rejected asylum applications.

UNHCR proposal

The UK government's scheme has been met with resistance and criticism from the UNHCR and NGOs. Rudd Lubbers, the High Commissioner for Refugees, responded to the British proposal by launching a 'counter proposal' closely associated with the ethos of both the 'Agenda for Protection' and 'Convention Plus'.

- For more information, refer to the section on the [relevance of the Refugee Convention today](#).

The alternative UNHCR scheme is laid out in a working paper and is entitled 'UNHCR's three-pronged proposal'. The first prong to the proposal advocates regional solutions and the support of refugees in their original host states where this is accompanied by strengthened protection capacity. UNHCR observes that effective regional hosting would require increased support, in the form of finance and materials, from donor states. The agency also supports the promotion of voluntary repatriation, sustainable reintegration, the promotion of self reliance, and the expansion of resettlement programmes based on the principle of burden-sharing.

The second prong of the proposal suggests the establishment of closed reception centres within the EU, where all asylum seekers making a claim in the EU will be transferred. 'Processing' would be conducted in accordance with commonly agreed procedures respecting international standards. First instance decisions would be taken promptly, and appeals could be handled in the form of simplified reviews. All persons found to be in need of international protection would be distributed fairly amongst member states, according to a pre-determined key that would take into account effective links, including family, educational, or cultural ties. The last prong of the proposal advocates the introduction of a single asylum procedure in the EU. UNHCR also feels that there should be more investment in good quality legal advice and decision-making, a swift return of asylum seekers who are rejected, and short time lines for first instance decisions. The agency has said that it would support the processing of asylum claims outside the EU for a limited number of applicants whose basis of claim was deemed to be 'manifestly unfounded', and these applicants would be given a chance to rebut this assumption. For more information, refer to the [UNHCR working paper](#)¹⁸¹.

UNHCR is concerned that the British scheme will be seen as a desire to off-load their responsibilities towards asylum seekers onto non-EU countries. However, some would argue that the schemes are not as far apart as this would suggest in terms of the logic involved,¹⁸² yet the emphasis of UNHCR's plan is protection and capacity building in regions of origin, whereas the UK scheme appears to privilege externalising the asylum process over effective protection.

- For more information, see ICAR's navigation guide to [Regional Protection Zones and Transit Processing Centres](#)¹⁸³

¹⁸¹ http://www.ecre.org/eu_developments/debates/unhcr3prong.DOC

¹⁸² **Amnesty International** (June 2003) *UK/EU/UNHCR unlawful and unworkable - Amnesty International's views on proposals for extra territorial processing of asylum claims*. London: Amnesty International.
[http://web.amnesty.org/library/pdf/IOR610042003ENGLISH/\\$File/IOR6100403.pdf](http://web.amnesty.org/library/pdf/IOR610042003ENGLISH/$File/IOR6100403.pdf)

¹⁸³ <http://www.icar.org.uk/?lid=27>

EU response

At the EU summit in June 2003, the UK government discussed the proposals with other EU governments. The idea of transit processing centres was rejected and the concept of protection zones was not given official EU backing, but left to the individual countries to support if they wished.

The European Commission produced a document in June 2003 entitled '[Towards more accessible, equitable and managed asylum systems](#)'¹⁸⁴. This document is a communication from the Commission to the European Council and Parliament and analyses the UK proposals. The Commission endorses the UK's analysis of the deficiencies in the present system, but urges caution in pursuing the proposed solutions. The House of Lords Select Committee on European Union Affairs has begun taking submissions from interested parties on the Commission document and the UK proposals and the Home Office has produced a [response](#) to the Commission's report.

- For more information, refer to the section on [EU asylum policy and procedure](#).

Further proposals and prospects

Despite the largely negative reaction from the European Commission and some Member States, other countries have also formulated similar proposals. The most far-reaching response to the consultation was that of the German Interior Minister, Otto Schilly, who proposed 'safe zones' or camps to be set up in North Africa, financed by the EU. There were negative responses from the Swedish and Finnish governments, but the Austrian Minister of the Interior took on this theme with reference to the EU's eastern borders as well as the Mediterranean, specifically proposing the Ukraine as a potential venue for processing.

Some have argued that the logic of extra-territorial processing appears to have taken a hold of EU discussions over asylum policy, particularly among Member States. Despite the fall in asylum numbers, there remains concern among the populations of Europe over asylum and governments are looking for a mechanism that will allow claims to be processed outside EU's territory. There are, however, serious obstacles in the way of any such plan being implemented at an EU level. Achieving agreement among Member States will require lengthy negotiation as will obtaining compliance from the states proposed as locations for the processing, as will reaching consensus among the EU's various bodies. There are also serious legal questions around states' obligations under international law and humanitarian concerns over the conditions in processing facilities and the efficacy of status determination procedures. Additionally, the organisational and financial requirements of operating this type of scheme have not been fully considered at this stage.

In April 2006, the Australian government announced plans to extend the 'pacific solution' by excising all of its islands and its entire coastline from the official migration zone.¹⁸⁵ Consequently, anyone arriving by boat and wishing to claim asylum in Australia will now be transferred to processing centres, like those previously used in Nauru and Papua New Guinea, to have their claims assessed. Furthermore, those found to be refugees will be resettled to a third country, according to the latest proposals.¹⁸⁶ These plans have prompted condemnation from the UNHCR and other human rights groups, as well as receiving criticism from experts in refugee law. Australia has in the past been the first country to take steps to externalise aspects of their asylum system and some of these ideas have gained currency amongst politicians in Western Europe. It is as yet unclear how these new proposals will influence policy in the UK and the EU.

¹⁸⁴ http://europa.eu.int/eur-lex/pri/en/dpi/cnc/doc/2003/com2003_0315en01.doc

¹⁸⁵ Clausen, L. 'Closing the Asylum Gate' *Time Asia*, 24th April 2006

¹⁸⁶ 'Australia toughens asylum rules' *BBC Online*, 13th April 2006

Useful resources

Betts, A. (2004) 'The International Relations of the "New" Extraterritorial Approaches to Forced Migration' *Refugee* Vol. 22(1)

ECRE (December 2003) *Complementary/Subsidiary Forms of Protection in the EU states: an overview.*
<http://www.ecre.org/research/survcompro.pdf>

Noll, G. (2003) 'Visions of the Exceptional: Legal and Theoretical Issues Raised by Transit Processing Centres and Protection Zones' *European Journal of Migration Law* Vol. 5(3)

Oxfam (2005) *Foreign Territory: The Externalisation of EU Asylum Policy* Oxford: Oxfam

Uçarer, E. (2006) 'Burden-Shirking, Burden-Shifting, and Burden-Sharing in the Emergent European Asylum Regime' *International Politics*, Vol. 43(2)

UNHCR (2006) *The state of the world's refugees: human displacement in the new millennium* Oxford University Press, Chapter 2.
<http://www.unhcr.org/cgi-bin/texis/vtx/publ/openssl.htm?tbl=PUBL&id=4444d3bf4>

Veenkamp, T., Bentley, T. and Buonfino, A. (2003) *People Flow: Managing migration in a New European Commonwealth*, London: Demos
<http://www.demos.co.uk/catalogue/peopleflow2>

See also the *Asylum Outsourcing* programme of work on the Challenge: Liberty & Security website
<http://www.libertysecurity.org/mot93.html>

Responses to proposed 'zones of protection':

Asylum Aid

http://www.asylumaid.org.uk/Press%20statements/zones_of_protection_0503.htm

Immigration Advisory Service

<http://www.iasuk.org/C2B/PressOffice/display.asp?ID=103&Type=2&Search=true>

Refugee Council

http://www.refugeecouncil.org.uk/publications/pub014_2003.htm#newvision

Submissions to the House of Lords Select Committee:

Human Rights Watch (September 2003) *New Approaches to the Asylum Process*. Submission to the House of Lords, Select Committee on the European Union, Sub-Committee F (Social Affairs, Education and Home Affairs)

<http://hrw.org/backgrounder/eca/asylum-process.htm>

Refugee Council (September 2003) *Refugee Council's response to the House of Lords Select Committee on the European Union's enquiry into New Approaches to Asylum Process*

http://www.refugeecouncil.org.uk/publications/pub007.htm#lords_newapproaches

Several academics have made proposals for a comprehensive restructuring of the European/international refugee protection regime:

Academic Group on Immigration – Tampere (AGIT) (1999) 'Efficient, effective and encompassing approaches to a European Immigration and Asylum Policy' *International Journal of Refugee Law*, 11

Anker, D., Fitzpatrick, J, and Shacknove, A. (1998) 'Crisis and Cure: A Reply to Hathaway/Neve and Schuck'. *Harvard Human Rights Law Journal* 11, pp.295-309

Hathaway, J. and Neve, R. (1997) 'Making International Refugee Law Relevant Again: A Proposal for Collectivised and Solution-Oriented Protection'. *Harvard Human Rights Law Journal* 10, pp. 115-211

Asylum and security

The [Refugee Convention](#)¹⁸⁷ does not explicitly mention terrorism, but does exclude individuals from its protection if they have committed a crime against peace, a war crime, a crime against humanity, a serious non-political crime, or who have been guilty of acts contrary to the purposes and principles of the United Nations, Article 1 F (c). For more information, refer to the paragraph on exclusion clauses in the section on [interpretation and application of the Convention](#).

International

In 2001, the Security Council adopted [resolution 1377](#)¹⁸⁸ which states that acts of international terrorism are contrary to the purposes and principles of the UN Charter, a position reaffirmed by [resolution 1624](#)¹⁸⁹ in 2005. However, it is important to note that these resolutions do not contain definitions of international terrorism.

The events of 11 September 2001 re-ignited the international debate on how to deal with terrorism. The UN has a number of different conventions that addresses different forms of terrorism, such as airline threat and the taking of hostages, but an internationally recognised definition of terrorism has never been agreed upon and is an incredibly contentious issue.

A comprehensive convention on international terrorism has been under negotiation for a number of years. Most articles of the drafts are complete, but there is still disagreement over how broadly the label 'terrorist' can be applied to self-determination movements and national armed forces. This draft convention requires governments to take appropriate measures, before granting asylum, to ensure that the asylum seeker has not engaged in terrorist activities. Negotiations over the comprehensive convention continue; and remain controversial. For an update on the progress of the convention, please refer to the [UN Ad Hoc Committee on Terrorism](#)¹⁹⁰.

There has been increasing debate over whether or not acts deemed as terrorist in nature fall within the scope of Article 1 F and refugee advocacy groups have expressed concern that the lack of an internationally agreed definition may pave the way for asylum seekers to be automatically excluded if they are labelled as terrorists, despite the fact that the Convention gives specific circumstances under which someone may be lawfully excluded.

Useful resources

Amnesty International (October 2001) 'United Nations General Assembly, 56th Session 2001, Draft Comprehensive Convention on International Terrorism: A Threat to Human Rights Standards'.
<http://web.amnesty.org/library/Index/ENGIOR510092001?open&of=ENG-369>.

Human Rights Watch (October 2001) 'Human Rights Watch Commentary on the Draft Comprehensive Convention on Terrorism'.
<http://www.hrw.org/press/2001/10/terrorcom1017.htm>.

¹⁸⁷ <http://www.unhcr.org/cgi-bin/texis/vtx/protect/openssl.pdf?tbl=PROTECTION&id=3b66c2aa10>

¹⁸⁸ <http://www.un.org/Docs/scres/2001/sc2001.htm>

¹⁸⁹ <http://daccessdds.un.org/doc/UNDOC/GEN/N05/510/52/PDF/N0551052.pdf?OpenElement>

¹⁹⁰ <http://www.un.org/law/terrorism/index.html>

EU

In 2001, the EU Commission responded to the events of September 11 by producing a [working document](#)¹⁹¹ on the issue of 'the relationship between safeguarding internal security and complying with international protection obligations and instruments'.¹⁹² The purpose of this document was to facilitate discussion of this issue with the view to potential legislation in the medium to long term and marked the launch of the anti terrorism action plan which is renewed every six months. In September 2005 the European Council approved a new [strategy](#)¹⁹³ for counter-terrorism.

The EU Qualification directive, which is due to be implemented by Member States by October 2006, contains a clear set of criteria for qualifying either for refugee or subsidiary protection status, and sets out what rights are attached to each status. The way in which security concerns were to be incorporated into the Qualification directive was an issue debated hotly during the negotiation period. The main focus of the discussion was on whether or not security concerns should become a ground for exclusion from the provisions of the Refugee Convention or an exception to the principle of *non-refoulement*.¹⁹⁴ Eventually security concerns were reflected in the documents as part of the revocation clause (Article 14) and as an exception to the principle of non-refoulement (Article 19). Refugee advocacy agencies have observed that the inclusion of security concerns in an article on revocation may in fact result in the widening of the exclusion clauses in the 1951 Refugee Convention.¹⁹⁵

The case of *Ramzy v Netherlands*, which is currently before the European Court of Human Rights, is dealing with the scope of Article 3.¹⁹⁶ The applicant claims that he will be exposed to a real risk of torture or ill-treatment if returned to Algeria. However, the Dutch government has issued an exclusion order against the applicant on the basis that he was posing a threat to national security and they began removal proceedings against him. Removal has been stayed until a ruling on the case is made; a ruling that will have a great impact on the application of Article 3 within the EU and the prohibition of transfer to States where there is a substantial risk of torture or ill-treatment.

Useful resources

Euractiv, EU anti-terrorism policy

<http://www.euractiv.com/en/justice/anti-terrorism-policy/article-136674>

European Council Directive (29 April 2004) on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted

<http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML>

Gil-Bazo, M. (2005) *Refugee Status and Subsidiary Protection under EC Law -The EC Qualifications Directive and the Right to be granted Asylum*, Refugee Studies Centre

<http://www.rsc.ox.ac.uk/PDFs/mtgb2.pdf>

¹⁹¹ http://www.ecre.org/eu_developments/terrorism/safeguard.pdf

¹⁹² http://www.ecre.org/eu_developments/terrorism/safeguard.pdf

¹⁹³ http://ue.eu.int/uedocs/cms_Data/docs/pressdata/en/jha/87257.pdf

¹⁹⁴ Article 33 of the Refugee Convention states that no contracting state shall return or 'refouler' an individual to persecution

¹⁹⁵ <http://www.ecre.org/statements/jha5603.doc>

¹⁹⁶ <http://www.interights.org/doc/Ramzy%20final%20brief%2022%20Nov.doc>

<http://www.echr.coe.int/Eng/Press/2005/Oct/ApplicationlodgedRamzyvNetherlands.htm>

Domestic

The current lacuna in international law has meant that national governments have implemented a plethora of domestic legislation in order to define terrorism. The UK's [Terrorism Act 2000](#)¹⁹⁷ introduced a new definition of terrorism, replacing that found in the 1973 Prevention of Terrorism Act. Previously terrorism was generally defined as violence with a political motivation but now it includes anyone serving a political, religious or ideological cause.

Definition and proscription

Under the 2000 Terrorism Act, terrorism is defined as the use or threat of action where the action is designed to influence the government or advance a political, religious or ideological cause and all subsequent anti-terrorism legislation has been based on this definition. The Act contains a power to issue a 'proscribed organisations order', which makes it illegal to become a member of, or support, 21 different groups in the UK. Two examples of these organisations are the PKK (Kurdish Workers Party) and the LTTE (The Liberation Tigers of Tamil Eelam), which have support in some parts of the Kurdish and Tamil asylum seeker/ refugee community in the UK. There are currently 40 international organisations proscribed under the 2000 Act.¹⁹⁸

The definition of terrorism in this Act has been criticised as being 'very wide and open to subjective interpretation'.¹⁹⁹ Some commentators have observed that there is often a fine line between a 'freedom fighter' and a 'terrorist' and that many movements, historically supported by the UK, would fall foul of the criteria under the Act.²⁰⁰ Refugee advocacy organisations are concerned that under the legislation people will be suspected of terrorist activities even when they have only loose associations with a named organisation. They have argued that a catch-22 situation may develop whereby an asylum seeker is fleeing persecution because of their association with an organisation deemed to be illegal in the UK. As a result, the very basis of their asylum claim may result in their exclusion from the asylum process or potential prosecution.²⁰¹

Counter-terrorism legislation is currently independently reviewed by Lord Carlile of Berriew QC.²⁰² At present, the definition of terrorism in UK law is under examination and several organisations, including Article 19, Campaign against Criminalising Communities, Liberty and the Refugee Council have submitted responses.²⁰³ The Refugee Council has raised concerns that the UK definition of terrorism currently undermines the 1951 Refugee Convention and the International Protection regime by dramatically extending the grounds on which refugees can be prosecuted for terrorist offences and denied protection in the UK.

¹⁹⁷ <http://www.hmso.gov.uk/acts/acts2000/20000011.htm>

¹⁹⁸ <http://www.homeoffice.gov.uk/security/terrorism-and-the-law/terrorism-act/proscribed-groups>

¹⁹⁹ Amnesty International (2001) *Media briefing: UK Terrorism Act 2000*, 20 February 2001

<http://web.amnesty.org/library/Index/ENGEUR450072001?open&of=ENG-GBR>

²⁰⁰ Statewatch (2001) *UK Terrorism Act: 21 new proscribed organisations*.

<http://www.statewatch.org/news/2001/jun/02terror.htm>

²⁰¹ CARF (2001) *The Terrorism Act – embracing tyranny* June/July 2001.

<http://www.carf.demon.co.uk/feat51.html>

²⁰² <http://www.homeoffice.gov.uk/security/terrorism-and-the-law/checks-on-laws2>

²⁰³ Article 19 <http://www.article19.org/pdfs/analysis/united-kingdom-review-of-terror-definition.pdf>

Campaign against Criminalising Communities http://www.campacc.org.uk/Library/carlile_submission_040306.pdf

Liberty <http://www.liberty-human-rights.org.uk/resources/policy-papers/2006/terrorism-definition-response.PDF>

Refugee Council

http://www.refugeecouncil.org.uk/downloads/policy_briefings/RCresponseCarlileterrorismreviewMay2006.pdf

Asylum appeals

Under Section 97 of the Nationality, immigration and Asylum 2002 Act an appeal to the AIT against a negative asylum or human rights decision will not be allowed if the person's exclusion from the UK is in the interests of national security and if the decision was made on the basis of information that cannot be disclosed for reasons of national security. In these cases, there is instead a right of appeal to the Special Immigration Appeals Commission (SIAC)²⁰⁴. At SIAC hearings, appellants are entitled to two legal representatives: a special advocate appointed by the government who is allowed to view the 'sensitive material' in closed session and make representations on behalf of the appellant; and another representative that represents the appellant in the open sessions.²⁰⁵

Exclusion

In August 2005 the Prime Minister announced a 12-point plan for dealing with the terrorist threat in the UK and stated that 'anyone who has participated in terrorism, or has anything to do with it anywhere will be automatically refused asylum in our country'.²⁰⁶ Section 55 of the [Immigration, Asylum and Nationality Act 2006](#)²⁰⁷ allows the Secretary of State to issue a certificate that an appellant is not entitled to the protection of Article 33 (1) of the Refugee Convention because Article 1F applies or Article 33 (2) applies on national security grounds. It requires the Asylum and Immigration Tribunal (AIT) or the Special Immigration Appeals Commission (SIAC) to begin substantive consideration of the asylum appeal by considering the statements in the certificate. If SIAC or the AIT agrees with the statements in the certificate, then it must dismiss the appeal insofar as it relies on the Refugee Convention.

Section 55 raises concern as the power to exclude claimants from the protection offered by refugee law is already sanctioned by the 1951 Refugee Convention and, consequently, a number of diverse organisations (UNHCR, Association of Chief Police Officers, the parliamentary Joint Committee on Human Rights and the Refugee Council) have all questioned the purpose of incorporating an exclusion clause into national legislation.²⁰⁸ The fear is that the operation of Section 55 may result in the UK government 'extending an overly broad application of Article 1F(c) with the result that certain persons, who do not fall within the scope of the exclusion clauses, are denied the benefit of international protection'.²⁰⁹

Deprivation of citizenship

Section 56 of the Immigration, Asylum and Nationality Act 2006 enables the deprivation of British nationality on the basis that it is conducive to the public good to deprive a person of his or her British nationality. A deprivation order may not be made on this basis if it would make a person stateless. Some commentators have expressed concern that the Secretary of State is now able to deprive an individual of nationality on the basis that it is 'conducive to the public good' as this is an incredibly broad definition and there is no requirement of proof that the individual in question has engaged in terrorist acts or has been found guilty of a criminal act.²¹⁰

²⁰⁴ <http://www.hmcourts-service.gov.uk/cms/1646.htm>

²⁰⁵ <http://www.publications.parliament.uk/pa/cm200405/cmselect/cmconst/323/323ii.pdf>

²⁰⁶ <http://www.number-10.gov.uk/output/Page8041.asp>

²⁰⁷ <http://www.opsi.gov.uk/ACTS/acts2006/20060013.htm>

²⁰⁸ Hansard <http://www.publications.parliament.uk/pa/ld199900/ldhansrd/pdvn/lds06/text/60119-29.htm>

http://www.unhcr.org.uk/legal/positions/UNHCR%20Comments/comments_dec2005clause52.htm

²⁰⁹ http://www.unhcr.org.uk/legal/positions/UNHCR%20Comments/comments_dec2005clause52.htm

²¹⁰ Blake, N. (26 April 2006) *Why is there no song and dance about this Act?* The Times <http://www.timesonline.co.uk/article/0,,200-2146936,00.html>

Detention

Part 4 of the 2001 Act gave power to the immigration authorities to detain non-UK nationals suspected of international terrorism even if they have not been charged with any offence. The detention period was indefinite even if it had been found that the person could not be removed because they were protected by Article 3 of the ECHR. Detention of an individual who cannot be removed is potentially in breach of the UK's obligations under Article 5 of the ECHR, but the government announced that it was derogating from this article because there was a 'public emergency'. Part 4 of the Act has a sunset clause, which means that it automatically ceases to have effect in November 2006. In the meantime, Sections 21-23 of Part 4 Act were renewed twice by parliament and continued until March 2005.

A number of individuals were detained under the 2001 Act. Initially the Special Immigration Appeals Commission (SIAC) ruled that it was not lawful to detain only non-nationals as it was discriminatory, but the ruling was overturned by the Court of Appeal on 25 October 2002. This decision has since been appealed to the House of Lords. At the end of December 2003, the Privy Council Review Committee, made up of members of both the House of Commons and the House of Lords, said the law should be replaced. On 16 December 2004 the Law Lords ruled the derogation incompatible with European Human Rights laws, which placed significant pressure on the government to withdraw the legislation.²¹¹

Control orders

In 2005, the Government repealed the Part 4 powers of the 2001 Act and replaced them with a system of control orders under the [Prevention of Terrorism Act 2005](#)²¹². This Act allowed for control orders to be made against any terror suspect, whether a UK national or non-UK national, or whether the terrorist activity was national or international.

[Control orders](#)²¹³ enable the government to impose conditions upon individuals ranging from prohibitions on access to specific items or services (such as the Internet), and restrictions on association with named individuals, to the imposition of restrictions on movement or curfews. The Home Secretary must normally apply to the courts to impose a control order based on an assessment of the intelligence information. Control orders are time limited and may be imposed for a period of up to 12 months at a time. Breach of any of the obligations of the control order without reasonable excuse is a criminal offence punishable with a prison sentence of up to five years and/or an unlimited fine.

Recent government attempts to apply control orders have resulted in them being overturned by the High Court. In April 2006, the High Court overturned the first control order stating that the suspect had not received a fair hearing. The most recent case in June 2006 resulted in the nullification of control orders for six Iraqi asylum seekers suspected of terrorist activities.²¹⁴ The control orders were deemed to breach Article 5 of the European Convention on Human Rights, which prohibits indefinite detention without trial.

²¹¹ <http://www.publications.parliament.uk/pa/ld200405/ldjudgmt/jd041216/a&others.pdf>

²¹² <http://www.opsi.gov.uk/acts/acts2005/20050002.htm>

²¹³ <http://www.opsi.gov.uk/acts/acts2005/50002--a.htm#1>

²¹⁴ <http://news.bbc.co.uk/1/hi/uk/5125668.stm> and <http://politics.guardian.co.uk/homeaffairs/story/0,,1808088,00.html>

Recent legislation

The latest piece of legislation to be introduced is the [Terrorism Act 2006](#),²¹⁵ which received Royal Assent on 30 March 2006 and came into force on 13 April 2006. This Act creates a number of new offences, such as:

- Acts Preparatory to Terrorism - this aims to arrest those planning serious acts of terrorism.
- Encouragement to Terrorism - this makes it an offence to directly or indirectly incite or encourage others to commit acts of terrorism. This includes the glorification of terrorism, where this may be understood as encouraging the emulation of terrorism.
- Dissemination of Terrorist Publications – this covers the sale, loan, or other dissemination of terrorist publications. This includes those publications that encourage terrorism, and those that provide assistance to terrorists.
- Terrorist training offences - this makes sure that anyone who gives or receives training in terrorist techniques can be prosecuted. The Act also criminalises attendance at a place of terrorist training.

The Act also makes amendments to existing legislation, including:

- Introducing warrants to enable the police to search any property owned or controlled by a terrorist suspect.
- Extending terrorism stop and search powers to cover bays and estuaries.
- Extending police powers to detain suspects after arrest for up to 28 days (though periods of more than two days must be approved by a judicial authority).
- Improved search powers at ports.
- Increased flexibility of the proscription regime, including the power to proscribe groups that glorify terrorism.²¹⁶

²¹⁵ <http://www.opsi.gov.uk/acts/acts2006/20060011.htm>

²¹⁶ <http://www.homeoffice.gov.uk/security/terrorism-and-the-law/terrorism-act-2006>

Useful resources

Amnesty International (February 2006) '*United Kingdom: Human rights: a broken promise*' *The effect of the UK's anti-terrorism policies on human rights*.

<http://web.amnesty.org/library/index/engneur450042006>

ECRE (May 2002) 'ECRE comments on the Commission Working Document on the relationship between safeguarding internal security and complying with international protection obligations and instruments'.

<http://www.ecre.org/statements/security.shtml>.

Fitzpatrick, J. (2002) 'Terrorism and migration'. The American Society of International Law Task Force on International Terrorism <http://www.asil.org/taskforce/fitzpatr.pdf>

Guild, E. (2003) 'International terrorism and EU immigration, asylum and borders policy: the unexpected victims of September 11th'. *European Foreign Affairs Review* 8:331-346

Lord Woolf, the Lord Chief Justice, in a speech to the British Academy 'Human rights: have the public benefited?' on 15 October 2002 underlined the importance of the Human Rights Act and the safeguards it offers against provisions in the Anti-Terrorism Act.

<http://www.britac.ac.uk/pubs/src/tob02/index.html>.

The Home Office's advice and overview on security issues is available at

<http://www.homeoffice.gov.uk/security>

Human Rights Watch (November 2001) 'Commentary on the Anti-Terrorism, Crime and Security Bill 2001'.

<http://www.hrw.org/backgrounder/eca/UKleg1106.htm>

Liberty's overview of terrorism issues

<http://www.liberty-human-rights.org.uk/issues/terrorism.shtml>.

UN Action against Terrorism

<http://www.un.org/terrorism>

Zard, M. (2002) 'Exclusion, terrorism and the refugee convention', *Forced Migration Review*

http://www.migrationpolicy.org/files/FMR_13_zard.pdf