

THE UK GOVERNMENT'S NEW PLAN FOR IMMIGRATION: REFORM OF THE UK'S ASYLUM SYSTEM

While immigration and asylum policy is reserved to the UK Government, the Scottish Government and local authorities in Scotland, through the New Scots Strategy, are responsible for supporting the integration of refugees and asylum seekers in Scottish communities. The proposed reforms will therefore have far-reaching consequences for how refugees and asylum seekers are treated and supported in the devolved nations. It is crucial therefore that there is early and sustained engagement between the UK Government and the Devolved Administrations on the proposed reforms.

The consultation was held during the pre-election period for the parliamentary elections in Scotland and Wales. This has therefore severely limited the ability of governments and parliamentarians in the devolved nations to engage with the UK Government on the proposals. It is not clear to us that there were exceptional circumstances that necessitated the consultation being held during the pre-election period. It will be important to ensure that there is sufficient and sustained opportunity for governments and parliamentarians in the devolved nations to engage meaningfully with the UK Government on the proposed reforms.

The New Plan for Immigration cites only one academic reference. It is crucially important that the reforms take account of the substantial body of independent research evidence on immigration and asylum before they proceed further. Home Office and other government data should not be the only source of evidence.

The UK Government proposes a two-tier system with those who enter by the government's resettlement system being redefined as 'genuine' asylum seekers while others using irregular routes of entry involving a third country will be considered inadmissible for asylum protection. This is despite the fact that between 2016 and 2018 more than 50% of applicants were granted asylum-related protection, highlighting that their claims were judged to be valid irrespective of their travel route to the UK. The RSE does not consider it fair or compatible with our treaty obligations to introduce a new asylum system which effectively discriminates against asylum seekers based on the route they have travelled.

Summary

The UK Government plans to introduce a more rigorous standard for testing whether an individual has a “well-founded fear of persecution”. However, the existing definition used by the Refugee Convention is accepted throughout the world and its interpretation has been well tested by UK and other international courts. It is not clear why a more rigorous standard should be required.

The RSE broadly welcomes the proposed changes in relation to reforming and updating British nationality law to address historical anomalies. Great care does, however, need to be taken in relation to the proposal to extend the discretionary powers available to the Home Secretary.

The UK’s withdrawal from the EU means that the Dublin III Regulation which, among other aspects, provided a legal route for reuniting separated asylum-seeking family members including unaccompanied asylum-seeking children, no longer applies in the UK. There is a pressing need for a post-Brexit agreement between the EU and the UK that provides at least the same level of rights and protections to unaccompanied children and on family reunion as existed under the Dublin Regulation.

The proposals draw attention to the need for a faster system for determining asylum claims and appeals to reduce delays. A desirable way of reducing delays would be to improve the resourcing of the system. However, this is not discussed in the proposals. The New Plan shows that of the 9,000 asylum appeals determined in 2019, 44% were successful. However, no information is provided on the reasons for the high rate of decisions reversed on appeal. Information of this kind is needed to inform improvements in the claims and appeals’ process and decision-making. There is also a continuing need to assess and improve the quality and effectiveness of the Home Office’s oversight of the asylum system and of immigration enforcement.

Regrettably, many of the proposals lack sufficient detail to enable respondents to reach a clear view on their merits. This includes the plan to introduce the “one-stop” process. Similarly, while we support the proposal to improve integration support packages for refugees, there is a lack of detail on what the improved support will look like and how it will be delivered. There is also no discussion of how the UK Government would secure returns’ agreements to allow it to return asylum seekers to other countries.

Introduction

- 1 The Royal Society of Edinburgh (RSE), Scotland's National Academy welcomes the opportunity to respond to the Secretary of State for the Home Department's proposals for reforming the asylum system.¹ Drawing upon its multidisciplinary Fellowship, the RSE established a working group comprising a breadth of expertise and practitioner experience, including in immigration and asylum policy, immigration and human rights law, human geography, citizenship and refugee integration. It is crucially important that the government hears from those with direct experience of seeking asylum and refuge in the UK. The RSE working group included members of the RSE Young Academy of Scotland (YAS) which is a peer-elected multidisciplinary network of early career researchers and professionals which includes members with lived experience of asylum and of refugee integration in Scotland. In 2016, YAS launched its At Risk Academic Refugees (ARAR) initiative to recognise talented young professionals from Scotland's refugee and displaced migrant communities. The first of its kind in the world, this initiative provided encouragement and support to outstanding members of the refugee and displaced migrant communities to apply for membership of YAS.²
- 2 We would be pleased to meet with UK Government officials to discuss further our comments. As well as responding directly to the online survey we have published our response in the form of this RSE Advice Paper. We also plan to engage with the Scottish Government, parliamentarians and others in Scotland on the issues raised by the proposals.

Intergovernmental relations

- 3 While immigration and asylum policy are both reserved to the UK Government, the Scottish Government and local authorities in Scotland are responsible for supporting the integration

of refugees and asylum seekers in Scottish communities and for care of migrants in Scotland. This includes providing access to essential services like housing, healthcare, education and employment. The *New Scots Strategy* sets out Scotland's approach to supporting refugee integration in Scotland.³ Reform of the UK asylum system will therefore have far-reaching consequences for how refugees and asylum seekers are treated and supported in the devolved nations. It is therefore crucial that there is early, close and sustained engagement between the UK Government and the Devolved Administrations on the proposed reforms.

- 4 This raises wider points in relation to engagement between UK Government and the Devolved Administrations, particularly in the context of the short formal (six-weeks) consultation period. This coincided with parliamentary elections being held in Scotland and Wales, and severely limited the ability of governments and parliamentarians in the devolved nations to engage with the UK Government on the proposals. The HM Government Code of Practice on Consultation states that, "*Consultation exercises should not generally be launched during local or national election periods...*" unless there are "*exceptional circumstances where launching a consultation is considered absolutely essential.*"⁴ The current consultation was launched one day (24th March) prior to the official pre-election period and closed on 6th May, polling day. It is not clear to us that there were exceptional circumstances that necessitated the consultation being held during the pre-election period. These points serve to reinforce the importance of ensuring that there is sufficient and sustained opportunity for governments and parliamentarians in the devolved nations to engage meaningfully with the UK Government on the formulation and scrutiny of the proposed reforms.

1 <https://www.gov.uk/government/consultations/new-plan-for-immigration>

2 <https://www.rse.org.uk/wp-content/uploads/2020/10/At-Risk-Academics-Booklet.pdf>

3 <https://www.gov.scot/publications/new-scots-refugee-integration-strategy-2018-2022/>

4 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/100807/file47158.pdf

Evidence base for the proposals

- 5 Since the New Plan for Immigration cites only one academic reference, it is critical to balance the data presented with the findings of independent researchers. The Plan refers to the UK's proud history in helping those facing persecution and cites the UK as being the top performing European country for arrivals via resettlement schemes, 2015–2019. However, Walsh (2020), University of Oxford, notes that 'when adjusting for population size, the UK ranks 15th among the EU 28 in having granted asylum in 2019 to 0.2 asylum seekers per 1000 of its resident population of 67 million.'⁵ The differential between Walsh's analysis and the picture presented by the New Plan occurs for at least two reasons. First, the New Plan ignores population size in making its international comparisons and second (and more importantly) because most asylum applications in EU countries happen 'in-country' rather than via 'resettlement' schemes. This is one important example of the selective use of data to substantiate points made in the proposals.
- 6 The New Plan makes many claims and assumptions that do not appear to be underpinned by evidence. For example, there is a statement that, *"left unchecked, illegal immigration puts unsustainable pressures on public services"*, and another that, *"this system is collapsing under the pressures of what are in effect parallel illegal routes to asylum."* Neither of these claims is substantiated by evidence.
- 7 While Home Office and other government data should indeed be drawn from to inform the proposals, they should not be the only source of evidence. It is crucially important that substantive proposals such as these are also informed by independent peer-reviewed research evidence. The Government's Chief Scientific Adviser's Guidelines on the use of scientific advice in policy making states that, *"Gathering evidence from a range of experts... ensures a more independent view..."*, and makes clear the importance of ensuring that all relevant streams

of evidence are considered so that the process has the confidence of experts and the public.⁶ The UK Government should therefore ensure that the proposed asylum reforms are informed by the available research evidence. Throughout this response we highlight a range of peer-reviewed research which is relevant to the proposed reforms. We strongly encourage the UK Government to take account of the substantial body of independent research evidence on immigration and asylum before it proceeds further.

Protecting those Fleeing Persecution, Oppression and Tyranny

Creation of a two-tier asylum system

- 8 The New Plan makes clear the UK Government's emphasis that controlling the UK's borders is the starting point to developing a fair asylum system. In essence, it proposes a two-tier system with those who enter by the government's resettlement system being redefined as 'genuine' asylum seekers while others using irregular routes of entry involving a third country are regarded as 'not seeking refuge from imminent peril' and categorised as 'illegal' and being 'unfair' to 'genuinely vulnerable people' (p17). 'Anyone who arrives into the UK illegally... will be considered inadmissible to the asylum system' (p19). This is despite data showing that for asylum claims made between 2016-18, 54% of applicants were granted asylum-related protection.⁷ This makes clear that the majority of those making a claim are in some way judged to have met the existing rigorous criteria for asylum protection, irrespective of their travel route to the UK. The RSE does not consider it fair or compatible with our treaty obligations to introduce a new system governing asylum which effectively discriminates against asylum seekers based on the route they have travelled. This proposal runs counter to the overriding objectives of the reforms for fairness and access to asylum being based on need.

5 Walsh P (2020) *Asylum and Refugee Resettlement in the UK*, Briefing Paper 4 December 2020, The Migration Observatory, University of Oxford <https://migrationobservatory.ox.ac.uk/resources/briefings/migration-to-the-uk-asylum/>

6 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/293037/10-669-gcsa-guidelines-scientific-engineering-advice-policy-making.pdf

7 Walsh (2020) Walsh P 2020 *Asylum and Refugee Resettlement in the UK*, Briefing Paper 4 December 2020, The Migration Observatory, University of Oxford

- 9 Many people fleeing violence or persecution do not enjoy the time or resources to evaluate alternative routes to safety. The existing policy relating to the Carrier Liability Scheme inhibits nearly all asylum seekers from access to the most obvious legal means to direct international travel to the UK (air travel). Unauthorised entry is – for most asylum seekers – the only means they have of entering the UK and thus applying for asylum.

Support for Refugee Integration

- 10 We welcome the proposals to improve integration support programmes for refugees, including those relating to education, skills development, language training and employment. However, as with other elements of the proposed reforms, there is a lack of detail on what the support packages will look like, on how they will be implemented and targeted, who will administer these and whether they command trust in communities, on how refugees will be supported to access them, and on the level of resource to be allocated to ensure that the provision and timing of support matches demand.
- 11 The proposals also raise questions as to where jurisdictional responsibility for funding and supporting integration will lie given the relationship between reserved and devolved policy, not only between the UK Government and the Devolved Administrations, but also including the implications for local authorities who have direct responsibility for supporting refugees and asylum seekers in relation to the delivery of education, housing and social services. The New Scots Refugee Integration Strategy is a human-rights based framework in Scotland. It begins with integration of asylum seekers from day one of arrival in Scotland. This has proven to be a positive step for communities in Scotland.⁸

Safe and legal routes including Family reunion for unaccompanied asylum seeking children

- 12 The UK's withdrawal from the EU means that the Dublin III Regulation which, among other aspects, provided a legal route for reuniting separated asylum-seeking family members, no longer applies in the UK, and no successor

agreement between the EU and UK has been developed. There is therefore currently no safe and legal routes for unaccompanied asylum-seeking children in the EU to reunite with family members in the UK, raising the potential that an increasing number of unaccompanied asylum-seeking children will attempt to enter the UK through irregular ways, thereby creating the risk of exposing them to perilous journeys. It is therefore crucial that there is a post-Brexit agreement between the EU and the UK that provides at least the same level of rights and protections to unaccompanied children and on family reunion as existed under Dublin III.

- 13 While UK Immigration Rules allow pre-flight dependent children to join their family members in the UK, it is very difficult for unaccompanied under-18 children to use this route, particularly as they will often not have the necessary identification and other documents to prove their relationship. The existing process is complex, onerous and presents a significant barrier to the Government's objective being met.
- 14 While the UK accepts resettlement of refugee children, for example, through UN Refugee Agency resettlement schemes and the UK Gateway Protection Programme, reports indicate that only a very small number of unaccompanied children have been resettled through such schemes.⁹ It is therefore important that successor schemes ensure a more proactive and open approach to protecting unaccompanied asylum-seeking children.
- 15 The New Plan indicates that refugee family reunion routes will only be available for refugees who have arrived in the UK through safe and legal routes. As per our earlier comments, this in effect will create a two-tier system with those who enter by the government's resettlement system being redefined as genuine asylum seekers while others using irregular routes will be categorised as 'illegal'. The RSE does not consider it fair or compatible with our treaty obligations to introduce a new system governing UK asylum which effectively discriminates against asylum seekers based on the route they have travelled, and which effectively closes down the only available avenue for seeking asylum.

⁸ <https://www.ukri.org/wp-content/uploads/2020/10/UKRI-22102020-GCRF-Hub-booklet-June-2019.pdf>

⁹ Fewer than 100 unaccompanied children have been resettled through the Vulnerable Children's Resettlement Scheme, amounting to just 5.6% of the total An Inspection of UK Refugee Resettlement Schemes (November 2019-May 2020); Independent Chief Inspector of Borders and Immigration https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/933956/An_inspection_of_UK_Refugee_Resettlement_Schemes.pdf

16 As the Home Office has highlighted, “*The presence of family members affects the sense of home felt by refugees (AMMSA, 2017) and promotes wellbeing (UNHCR, 2011). Increased use of the Dublin Regulation in a way that promotes family reunification is therefore likely to have a positive impact on integration.*”¹⁰ Bringing family members over and re-establishing family bonds is therefore a critical concern and is a precursor for the sponsor’s continuing integration.¹¹ Enabling safe, administratively straightforward, and orderly passage for family members of people who have already been recognised as refugees in the UK is a key means of offering a safe route to protection. This also makes clear the importance that the UK and the EU agree a successor to the Dublin Regulation.

Ending Anomalies and Delivering Fairness in British Nationality Law

17 The RSE broadly welcomes the proposed changes in relation to reforming and updating British nationality law to address historical anomalies. We recognise the importance of the need to be able to address historic injustices, including in response to Windrush. However, great care needs to be taken in relation to the proposal to extend the discretionary powers available to the Home Secretary, including those relating to the granting of citizenship. As with other aspects of the proposed reforms, there is a lack of detail on how the proposed new discretionary powers will be applied, especially as to how the *compelling* and *exceptional* circumstances will be defined.

Reforming the Asylum System

Proposal to introduce a differentiated approach to asylum claims

18 More than 50% of applicants were granted asylum-related protection between 2016 and 2018, highlighting that their claims were judged to be valid irrespective of their travel route to the UK.

Any change to UK rules should ensure that genuine asylum seekers are not turned away because of additional hurdles raised by the UK Government to entry. To raise new hurdles and to redefine ‘genuine’ asylum seekers in the way that is proposed would be to step back from the principle of protecting all those who in good faith are fleeing persecution, oppression and tyranny.

19 Article 31 of the Refugee Convention provides that: “*The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.*”

20 This makes clear that refugees in need of protection should not be penalised on the basis that they entered the UK illegally. The UK Government proposals for asylum reform would appear to rely heavily on the words “coming directly”, so that those who have arrived in the UK having passed through another safe country would not be permitted to seek asylum in the UK and would be rapidly removed from the UK to the safe country from which they embarked.

21 As an island most asylum seekers will have come through another safe country to reach the UK. However, it is hard to argue that all asylum seekers travelling via a third country have no ‘genuine’ reasons (such as family networks) for seeking to come to the UK rather than other destinations.¹² There is also no detail on how the UK Government would secure returns agreements with the safe country through which the claimant has passed through or alternative third countries. Indeed, there is a complete absence of discussion within the New Plan document of measures to be put in place to protect people when they are returned to another country.

¹⁰ Integrating refugees; What works? What can work? What does not work? A summary of the evidence; Home Office; June 2019 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/812891/intergrating-refugees-2019.pdf

¹¹ See, for examples: One Day We Will Be Reunited: Experiences of Refugee Family Reunion in the UK, Scottish Refugee Council, 2010 <https://www.scottishrefugeecouncil.org.uk/wp-content/uploads/2019/10/%E2%80%9COne-day-we-will-be-reunited%E2%80%9D-Experiences-of-Refugee-Family-Reunion-in-the-UK.pdf>
A journey towards safety: A report on the experiences of Eritrean refugees in the UK, Refugee Council, Scottish Refugee Council and UNHCR, 2018 <https://www.unhcr.org/uk/a-journey-towards-safety-a-report-on-the-experiences-of-eritrean-refugees.html>
Safe Not Settled: the impact of family separation on refugees in the UK, Oxfam, 2018 <https://www.oxfam.org/en/research/safe-not-settled-impact-family-separation-refugees-uk>

¹² (Crawley et al, 2019) Deciding where to go *International Migration*, 57, 20-35

Introducing a more rigorous standard for testing “well-founded fear of persecution”

22 The UK Government plans to introduce a more rigorous standard for testing whether an individual has a “well-founded fear of persecution”. However, the Refugee Convention definition of “well-founded fear of persecution” is accepted throughout the world and its interpretation has been well tested by UK and other international courts. The New Plan proposals are silent on why a more rigorous standard for testing is needed, or on the academic or legal evidence base for such a contention, especially given the guidance from court decisions that already exists. It is stated that the introduction of a new standard would be consistent with the Refugee Convention. However, it is clear that this will be a ‘higher standard’ for testing that an individual has a well-founded fear of persecution, thereby potentially narrowing the protection too far and in a way that would not align with the Refugee Convention. This could have unintended consequences by paving the way for extensive legal challenges, adding further delays to what is already an overwhelmed system for determining asylum claims.

Temporary Protection Status

- 23** The UK Government plans to introduce a new temporary protection status with less generous entitlements and limited family reunion rights for people who are inadmissible but cannot be returned to their country of origin or to another safe country. This is concerning and appears similar to the German category of *Duldung* (‘toleration’), which has caused immense challenges, creating a class of unauthorised but unremovable migrants living at the fringes of formal systems. The New Plan indicates that rejected applicants ‘with no right to remain’ would have their support removed. This would almost certainly lead to destitution.
- 24** However, as the Centre for Global Development has noted the reduction in entitlements to asylum seekers will be detrimental to the UK economy.¹³

Research shows that the best returns to the UK economy arise from encouraging asylum seekers to use their time (while waiting for an outcome of their case) to enhance their educational portfolio, to re-skill to match the needs of the economy and to develop softer skills such as improved language skills to enable them to integrate more rapidly in the UK.

- 25** Work also shows that local authorities have balanced meeting the needs of refugees with supporting wider community planning needs. This has allowed local authorities to mobilise existing expertise, expand existing services and develop capacity for new services, and develop new ways of community working, which benefits whole communities. There is also the regenerative potential for housing stock, local economies and local communities.¹⁴

Amending sections 77 and 78 of the Nationality Immigration and Asylum Act 2002

- 26** The New Plan proposes amending sections 77 and 78 of the Nationality Immigration and Asylum Act 2002 so that it is possible to move asylum seekers from the UK while their asylum claim, or appeal is pending. We strongly question the compatibility of this proposal with refugee law as claimants should not be under the threat of removal until the outcome of their claim has been determined. The UK Government needs to make clear how the rights of claimants would be safeguarded in such circumstances.
- 27** Connected to this, the New Plan proposes creating the opportunity for processing asylum claims in another country. While in principle this could reduce the numbers of asylum seekers making unsafe journeys, much more detail is required on how it would be implemented and resourced to allow respondents to form an objective view. Based on the limited information available, in-country asylum claims would need to be supplementary and not a substitute for claiming in the UK.

¹³ <https://www.cgdev.org/blog/patels-new-plan-immigration-economically-harmful-and-wont-work>

¹⁴ GLIMER Research in Scotland

Reception Centres

28 We note the plan to introduce new asylum reception centres to provide basic accommodation and to process asylum claims onsite. However, there is a lack of detail and clarity as to how the proposed reception centres will operate in practice. International experience to-date suggests that reception centres have only worked where they have been able to process new arrivals fairly and quickly. While the proposals refer to the intention to bring forward a new fast-track appeals process, the RSE would wish to see further details of this to enable respondents to comment from a more informed position and with a view to ensuring the procedural fairness of the new reception centre and claims process. Existing evidence, including from the Home Affairs Select Committee and the Independent Chief Inspector of Borders and Immigration suggest that institutional accommodation is unsafe and unsuitable for accommodating asylum seekers.¹⁵ There is also a potential for claimants to be in a reception centre limbo with limited access to support.

Pull factors for unauthorised migration

29 The New Plan does not mention the role of ‘pull factors’ in driving and sustaining unauthorised migration. Demand for irregular labour is one of the principal drivers of unauthorised migration¹⁶, and is best addressed through more tightly regulated labour markets (including enforcing the minimum wage/working conditions) and enforcement of employer sanctions in key sectors.

Assessing Age Appropriately

30 The RSE is in principle supportive of the proposal to establish a new National Age Assessment Board (NAAB) which would set out the criteria, process and requirements to be followed to assess age, including using the most up to date scientific technology. With its multidisciplinary expertise and practitioner experience, the RSE would be pleased to have the opportunity to offer further advice to the UK Government on the creation of

the NAAB. It is also vital that such a body is constituted of experts with the full medical, social and intercultural range of expertise required to understand that age is not to be easily determined simply by a medical model and varies culturally world-wide.

31 However, other proposals, including legislating so that front-line immigration officers and other staff who are not social workers are able to make reasonable assessments of age, would appear to be of less value. Given that social workers have struggled to make age determinations, the chances of immigration officers being able to do this more successfully would seem to be minimal. As with the determination of language origins, this is an area of determination which requires serious expertise and holistic treatment.¹⁷

Streamlining Asylum Claims and Appeals

Introducing a ‘one-stop process’ for all protection claimants

32 The UK Government plans to introduce a new ‘one-stop’ process requiring people to raise all protection-related issues upfront and have these considered together. As with other proposals made in the New Plan, there is limited information available on what the ‘one-stop process’ will look like in practice to enable us to offer an informed view. It raises many questions. As examples, how will the system ensure that the notion of the one-stop-process is communicated and fully understood by all users of the system? What are the implications for claimants who may be traumatised and where it takes a while for disclosure to be made, or in those cases where not all of the necessary information and evidence is available at the start of the process? And what level of resource will be made available to support the new process? It will therefore be crucially important that the notion of ‘one-stop’ does not become ‘one chance’ and takes account of the unique nature of claimants’ circumstances.

¹⁵ Home Office preparedness for COVID-19 (Coronavirus): institutional accommodation, Home Affairs Select Committee, July 2020 <https://publications.parliament.uk/pa/cm5801/cmselect/cmhaff/562/56202.htm>
An inspection of the use of contingency asylum accommodation – key findings from site visits to Penally Camp and Napier Barracks, Independent Chief Inspector of Borders and Immigration, March 2021 <https://www.gov.uk/government/news/an-inspection-of-the-use-of-contingency-asylum-accommodation-key-findings-from-site-visits-to-penally-camp-and-napier-barracks>

¹⁶ E.g. Hein de Haas (2008) The Myth of Invasion: the inconvenient realities of African migration to Europe, *Third World Quarterly*, 29:7, 1305-1322, DOI: 10.1080/01436590802386435

¹⁷ Craig, S. (2012) The use of language analysis in asylum decision making in the UK: a discussion. *Journal of Immigration, Asylum and Nationality Law*, 26(3), pp. 255-268.

33 It will be important for the UK Government to engage directly with asylum seekers and their legal representatives to gather views as to whether there are impediments to asylum seekers in gaining access to legal advice which would make the one-stop process difficult for them to access.

'Gaming' the system

34 We agree with the overarching objectives of making the asylum and appeals system faster and fairer. However, we are concerned that the New Plan presents asylum claimants as seeking to play and frustrate the system at every opportunity to achieve their desired outcome. This is exemplified by the opening sentence of Chapter 5 which states, "*We are seeing repeated unmeritorious claims, sometimes made at the very last minute, which frequently frustrate the removal of people with no right to be in UK.*" While we are in no doubt that the system will be abused, on occasion, by some claimants, it is paramount that claimants are afforded appropriate legal safeguards and protection, including access to sufficient appeal processes. The majority should not be penalised for actions of a small minority.

'Good Faith' requirement

35 Similarly, the proposal to introduce a 'good faith' requirement pre-supposes that a majority of claimants and their representatives do not currently act in good faith. There is a sense that applicants are wilfully withholding information and/or not disclosing all of the relevant information at the earliest opportunity. However, experience from professionals supporting refugees indicates that this is likely to be due to them being unable or feeling unable to disclose information, as a consequence of there being language and cultural understanding issues, or not understanding or being fearful, or needing to find the courage and support to make appeals in the context of having been socialised (and/or brutalised) by regimes of shame and stigma. The comments we make in relation to supporting victims of modern slavery are also applicable here.

Increasing the efficiency of the system

36 The proposals draw attention to the need for a faster system for determining asylum claims and appeals to reduce delays. Given the lengthy delays in asylum cases being heard, change is needed to increase the efficacy of the system. There are many reasons for the increased delay in processing asylum claims. This in part has been because of the rise in number of applications, but the rise has been small when examined in historical context (only about 40% of the levels of the late 1990s). A desirable way to reduce the delays in reaching a decision on asylum applications would be to improve the resourcing of the system to allow a more expedient processing of cases. However, this does not seem to be discussed in the plan.

37 The New Plan shows that of the 9,000 asylum appeals determined in 2019, 44% were successful. However, no information is provided on the reasons for the high rate of decisions reversed on appeal. Information of this kind is needed, and will be important in helping to determine how improvements in both process and decision-making can be made to enhance the efficiency and effectiveness of the claims and appeals' process. We would strongly encourage the Home Office to make available this information.

38 The New Plan uses data on backlogs in processing asylum cases and appeals, the consequent costs borne by the tax payer, and the low levels of returns and removals, to justify the proposed reforms. However, previous governments and monitoring bodies including parliamentary select committees, the Independent Chief Inspector of Borders and Immigration and the National Audit Office, among others, have considered these data to indicate the need for improvement in Home Office and UK Border Agency performance.¹⁸ Coupled with our comment, above, on the need to consider the resourcing of the system, there is also a continuing need to assess and improve the quality and effectiveness of the Home Office's oversight of the asylum system and of immigration enforcement.

¹⁸ Boswell, C. (2014) The Double Life of Targets in Public Policy: Disciplining and Signalling in UK asylum policy <https://onlinelibrary.wiley.com/doi/abs/10.1111/padm.12134>

Access to advice

39 We are supportive of the proposal to provide more 'generous' access to advice, including legal advice, to support people to raise issues and to provide evidence as early as possible. However, much more information needs to be brought forward on what areas of advice will be covered, and how this will be resourced, implemented and targeted to meet the specific needs of different claimants.

Supporting Victims of Modern Slavery

40 The UK has played a pivotal role in focussing attention and resources on addressing modern slavery both domestically and internationally. This has led to a greater collective understanding of the issue and more effective identification of survivors. While welcoming the proposed review of the 2014 Modern Slavery Strategy, a number of the proposed changes to the process of identifying and supporting survivors of modern slavery in the UK risk undermining progress which has been made.

Improving First Responders' understanding of when to make a referral to the National Referral Mechanism

41 Effective identification is key to bringing protection and assistance to those who have suffered modern slavery or human trafficking. In that regard First Responders play an important gatekeeping role and it is vital that they receive specialist training so that they understand not only their responsibilities, but how trauma and fear might impact an individual's ability or willingness to disclose their experience. Training must therefore be trauma-informed and it must make clear the importance of prioritising safeguarding responsibilities over other considerations.

42 In order for victims to access justice, it is vital that the system of identification and support is sensitive to the complexities involved in modern slavery cases and considerate of individual needs. First responders are the gatekeepers to support and assistance – an individual cannot make their own referral for support or identification. It is vitally important therefore that first responders adopt an approach, informed by their

victim-centred, trauma informed training, which makes the individual feel safe, that their rights, dignity and welfare will be prioritised and protected.

Clarifying the Reasonable Grounds threshold

43 Raising the threshold for the reasonable grounds decision risks preventing survivors from accessing support to which they are entitled. Individuals cannot make an application to the National Referral Mechanism (NRM). They are referred to the NRM because a First Responder believes that they may have been a victim of modern slavery, and in the case of adults, they have consented to a referral. The burden of proof should not therefore be on the individual to establish that they have been a victim, particularly at what is likely to be a moment of great vulnerability. However, the proposed requirement of 'objective factors' suggests a degree of evidence or proof will be required.

44 Each case is different, but it would not be uncommon for an individual leaving exploitation to do so as part of a police operation, or to leave exploitation in a hurried fashion. In such circumstances it would be quite reasonable for them not to have evidence to constitute 'objective factors' indicating that they have been a victim. They may not have the appropriate paperwork. In the case of children, this is perhaps even more likely. This should not, in itself, be reason not to believe their account or to withhold access to support.

45 It is also unclear what is meant by 'objective factors' or how they can be consistently and reliably identified in cases of trafficking or modern slavery. An approach which is victim-centred understands that each person's victimisation is individual and specific to them. By placing standards of 'objectivity' onto complex and varied situations without clear guidance on how this can be secured, there is a significant risk that vulnerable people will be denied vital support and protection.

46 It is also important to consider that there may be reasonable and legitimate reasons for inconsistencies within an individual's account of events, or why they did not disclose the exploitation at an earlier opportunity. Those with expertise of working with survivors of trafficking suffering from trauma have articulated the importance of working to build trust in order to resolve or clarify apparent inconsistencies in an individual's account. In and of themselves, such inconsistencies should not be a reason to issue a negative Reasonable or Conclusive Grounds decision.

Clarifying the definition of "public order" to enable the UK to withhold protections where there is a link to serious criminality or risk to UK national security

- 47 Modern slavery and human trafficking are very often interwoven with criminality. Criminal exploitation is common. Forced benefit fraud, cannabis cultivation, drug trafficking are frequently identified forms of forced criminal activity suffered by victims in the UK. Each offence could carry a lengthy sentence upon conviction.
- 48 Introducing a public order restriction risks creating a barrier to identification, much-needed support and safeguarding protection. Great progress has been made in recent years to understand child criminal exploitation, particularly in so-called 'county lines' cases. Previously considered criminals, children have been recognised as victims and as such have greater access to support and assistance. It would be a regressive step to withhold support and protection from victims of county lines exploitation or any other forced criminal activity.
- 49 This proposal may unintentionally strengthen the hand of traffickers who frequently use fear as a method of control. If people cannot be sure of receiving support due to offences which they have been forced to commit, there may be little incentive for them to report their exploitation. This proposal also risks a presumption of guilt as the determination of whether a public order exemption should be applied may be made with little evidence and before criminal proceedings can establish a person's guilt.

Legislating to clarify the basis on which confirmed victims of modern slavery may be eligible for a grant of temporary, modern slavery specific, leave to remain.

50 Long term support is vital to help survivors achieve a sustainable recovery from their exploitation, in order to build independent lives and resilience to further abuse or exploitation. Key to this is ensuring secure immigration status for survivors who are non-UK nationals. Ensuring that survivors have the stability of this immigration security can be helpful in their recovery, and access to ongoing support is important to building resilience and independence.

Continuing to strengthen the criminal justice system response to modern slavery, and providing additional support to victims

- 51 We welcome efforts to strengthen the capacity and capability of the criminal justice response to modern slavery. When justice systems are trained and equipped to proactively hold perpetrators to account and protect vulnerable people the prevalence of exploitation can be substantially reduced. However, in order for this to succeed, it must be done in tandem with providing specialist support for survivors. This means from the first interaction with the individual through to after the Conclusive Grounds decision has been reached. It cannot be the role of the police to serve as both investigator and social worker.
- 52 Crucially, support must also extend to those who return to their country of origin as they may remain vulnerable in these contexts, especially if they were the origin points of their entry into modern slavery. It is vitally important that survivors are supported both to assist their recovery and also, to engage with the investigation and prosecution of their traffickers in the UK, if they choose to do so.

Disrupting Criminal Networks Behind People Smuggling

- 53** We see no evidence reported in the New Plan to support the view that reducing the rights of asylum seekers who enter the UK by irregular routes will reduce people trafficking. Rather than disrupting the business model of criminal traffickers, the proposals (i.e. penalising claimants for having entered the UK via irregular routes and/or via other countries) will exclude many people in genuine need of protection.
- 54** Research has shown that increasing penalties for smuggling and trafficking offenses tends to increase fees and render routes more dangerous. The market thus becomes higher risk/higher reward for organised crime, thereby exacerbating the problem in terms of both profits for organised crime, and risks for migrants and refugees.¹⁹ This is well established in research as a paradox of tighter border controls.²⁰
- 55** Similarly, assumptions about stricter penalties acting as deterrents need careful scrutiny, as research on information diffusion and decision-making of migrants and refugees suggests such changes to the rules are not efficiently disseminated, or trusted or seen as relevant as a basis for decisions.²¹

Electronic Travel Authorisations

- 56** It is proposed that legislation will be used to establish and enforce Electronic Travel Authorisations (ETAs) whereby those intending to travel to the UK will need to apply for permission where aspects of any criminality must

be provided through self-declaration. However, in the absence of further detail, it is unclear how this would provide more relevant data than the current Advanced Passenger Information (API), which is supplied via carriers and checked against a watchlist (containing information on known criminal activity) prior to travel. It is unclear how a system based on self-declaration (rather than intelligence) will provide a more robust means of checking at the border. We would also welcome more detail on the statement that ETAs will improve the UK's capability to count people in and out, noting that this has been an objective of e-borders and successor programmes since 2003 and has not been achieved.

Enforcing Removals including Foreign National Offenders (FNOs)

- 57** There is extensive discussion of removals, but the New Plan fails to clarify the range of obstacles to removing rejected asylum applicants, FNOs, and unauthorised residents. In many cases, the obstacle is likely to lie in absence of documentation ascertaining place of origin or travel route, and/or unwillingness of country of origin or transit to admit them. This issue has been a persistent challenge for successive Home Secretaries, and for the EU (which has struggled to conclude readmission agreement with many third countries, and to implement the Dublin Regulation). It is difficult to see how the UK can feasibly negotiate more robust and comprehensive agreements with third countries or countries of origin outside of the EU, and especially now that it is no longer in the Dublin system.

¹⁹ Koslowski 2011 <https://www.migrationpolicy.org/sites/default/files/publications/bordercontrols-koslowski.pdf>

²⁰ Hyab Teklehaimanot Yohannes (2021) Refugee Trafficking in A Carceral Age: A Case Study of the Sinai Trafficking, *Journal of Human Trafficking*, DOI: 10.1080/23322705.2021.1885005

²¹ See, e.g., Cornelius and Salehyan 2007 <https://onlinelibrary.wiley.com/doi/pdfdirect/10.1111/j.1748-5991.2007.00007.x>

Additional Information

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