



# Asylum and Immigration Act 2004: main changes and issues of concern

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## Introduction

The Immigration and Asylum Bill received Royal Assent on 22 July 2004. With 50 sections, the Act is nearly twice as long as it was when it was first published in November 2003. Despite this it does not address the basic problem of the quality of decision making and there remain serious concerns about the way people are treated during the asylum process.

In particular the Act does not address the need to safeguard the rights of refugee women for whom there is insufficient protection from gender persecution both nationally and internationally.

The Act contains provisions which introduce substantial changes to the asylum appeals process, including the replacement of the current two-tier adjudicator and tribunal appeals process with the single tier Asylum and Immigration Tribunal. Other

measures include an extension of the safe third country provisions and a list of behaviours that can damage an applicant's credibility for the first time put on the face of an Act.

Changes to asylum support include a provision to allow termination of support to families and a power to attach a condition of community activity to hard case support. The Act also contains provisions added to the Bill at a late stage, including plans to replace backdated benefits payments with a refugee integration loan; and changes to homelessness law so that a refugee will be deemed to have acquired a local connection with the local authority in which their dispersal accommodation is situated. The Act also creates new penalties for people who arrive in the UK without valid documentation.

This briefing summarises the main changes set out in the Act and how they affect asylum seekers.

## **Commencement**

Most of the provisions of this Act are to be brought in by order of the relevant Minister. Some will take some time to implement, such as the changes to the appeal structure where there are interim provisions. The exceptions are Sections 2, 32(1), 32(2) and 35 - all of which commence on 22<sup>nd</sup> September 2004.

## **Content of the Act**

### **1. Entering the UK without a passport**

Where: **Section 2** of the Asylum and Immigration (Treatment of Claimants, etc.) Act (Commences 22<sup>nd</sup> September 2004).

- It is now a criminal offence for a person not to possess, without 'reasonable excuse', a valid document showing his/her identity and nationality when first interviewed by an immigration officer after arriving in the UK. A person shall be presumed not to have a valid document if s/he fails to produce it at the request of an immigration officer.
- It is a defence for an applicant to produce a false immigration document if that document was used as an immigration document for all purposes in connection with the journey to the UK.
- It is a defence to show an applicant has travelled to the UK without, at any stage since the start of the journey, possessing an immigration document.
- The fact that a document has been deliberately destroyed or disposed of is not a reasonable excuse, unless the disposal or destruction was for a reasonable cause or beyond the control of the person charged with the offence. Reasonable cause does not, except in some circumstances include relying on the advice of a smuggling agent.

- If an immigration officer believes that an offence has been committed s/he may arrest the individual without a warrant.

Any person found guilty of this offence may face a fine and/or imprisonment for up to two years. If an adult accompanies a child without valid documentation, the individual may face prosecution. Children over the age of ten can be prosecuted.

### **The Refugee Council's concerns**

The Refugee Council believes that this measure could penalise refugees for arriving without travel or identity documents, in effect punishing refugees for behaving like refugees. The United Nations High Commissioner for Refugees (UNHCR) points out that 'in most cases a person fleeing from persecution will have arrived with the barest necessities and very frequently without personal documents.' Often this is because of the impossibility of obtaining a passport from the very authorities that are responsible for the acts of persecution from which people are fleeing. Whilst the various defences are to be welcomed, the burden of proof will be on the applicant. Unless the applicant is able to produce the required evidence under interview, s/he is likely to face the criminal penalty.

Increased border controls, which in recent years have included the extension of visa requirements to refugee-producing countries, carrier liabilities and juxtaposed controls, have reduced options for a safe and legal transit to the EU for the purpose of seeking asylum.

Although the government has produced draft guidelines about how it is intended to proceed in relation to such prosecutions there remain concerns about how these will operate in practice and whether people's rights will be protected.

In particular, the Refugee Council strongly believes that with reference to unaccompanied children there should be an absolute defence in all cases i.e. a child should not be asked to explain why s/he followed the instructions of a smuggler – it should be presumed that it is not reasonable to expect them to refuse.

We are also concerned about the position of women as this measure is more liable to penalise women refugees more, as they are less likely to have access to their own travel or identity documents. They are less likely to be able to obtain a passport as they commonly need permission of husband/father/brother.

Women who are under threat of being killed by their own community or subjected to gender related persecution (FGM, enforced marriage, honour related crime, enforced sterilisation and abortion, restriction on movement etc.) fear to make their grievance public especially in relation to detention and associated rape or sexual abuse. They thus do not have any real choice or power and become dependent upon and forced to follow the advice and instruction of people facilitating their escape.

## **2. Trafficking people for exploitation**

Where: **Section 4** of the Asylum and Immigration (Treatment of Claimants, etc.) Act.

- It will be a criminal offence for anyone to traffic another person into, within, or out of the UK for the purposes of exploitation.

It is important to recognise the distinction between trafficking and smuggling. People are being trafficked if they are brought into another country to be exploited for their labour or services. Smuggling involves people paying a fee to have their entry facilitated into another country. People who are convicted of a trafficking offence can face a maximum prison sentence of 14 years.

### **The Refugee Council's concerns**

We welcome the Government's commitment to tackling the highly exploitative practice of people-trafficking.

However, it is regrettable that Section 2 of the Act, which creates a new offence for entering the UK without valid immigration documentation, could potentially penalise the victims of trafficking as well. Many victims of trafficking will have entered the UK illegally, and may be too frightened to come forward for fear of being themselves prosecuted. Section 2 will severely undermine attempts to clamp down on traffickers.

We believe that this measure does not go far enough to provide protection for victims, especially women and girls. There are gaps in protection that render women and children vulnerable to trafficking. Trafficked women and girls' lives could be in danger from their own community or family if they have returned to their country.

There are alternatives. For example, in Italy and the US victims are given residence and work permits. Victims of trafficking for exploitation should be given support and accommodation in a safe house, just as the Home Office offers to victims of trafficking for sexual exploitation. Some victims may well fear returning to their country of origin, particularly if they have cooperated with the police in prosecution of their traffickers.

## **3. Credibility of asylum applicants**

Where: **Section 8** of the Asylum and Immigration (Treatment of Claimants, etc.) Act

This clause sets out various behaviours which the authorities must take into account in deciding whether to believe a statement made in support of an asylum or human rights claim. These behaviours include:

- Failure without reasonable explanation to produce a passport on request to an immigration officer.
- Production of a passport as though it were genuine which then turns out to be false.
- The destruction, alteration, or disposal of a ticket or other document connected with travel, without reasonable explanation.
- Failure without reasonable explanation to answer a question by a deciding authority.
- Failure to claim to make asylum or human rights claim while in a safe country.

### **The Refugee Council's concerns**

This measure marks a worrying trend within the UK's asylum procedures of judging an asylum application by looking at how an individual came to claim asylum rather than why they had to flee. It thus represents a threat to refugee protection as it further adds to the lack of balance and negativity in decision making.

The Refugee Council believes this measure contravenes the spirit of the Refugee Convention. The UNCHR's handbook on advice to asylum case-workers states:

*"A person who, because of his experiences, was in fear of the authorities in his own country, may still feel apprehensive vis a vis authority. He may therefore be afraid to speak freely and give a full and accurate account of his case".*

*"Whilst an initial interview should be sufficient to bring an applicant's story to light, it may be necessary for the examiner to clarify any apparent inconsistencies and to resolve any contradictions in a further interview, and to find an explanation for any misrepresentation or concealment of material facts. Untrue statements themselves are not a reason for refusal of refugee status and it is the examiner's responsibility to evaluate such statements in the light of all the circumstances of the case".*

There continues to be poor initial decision making which fails to relate to gender specific issues. It is a matter of common knowledge that victims of torture and rape are generally unwilling or reluctant to discuss their experience. The Immigration Appellate Authority's own guidance states that:

*"Delays in claiming asylum or revealing full details of an asylum claim, will not necessarily be due to lack of credibility ... torture, sexual violence, and other persecutory treatment produce profound feelings of shame. This shame response is a major obstacle to disclosure. Many victims will never speak of sexual violence, or will remain silent about it for years".*

The assumption that an individual's asylum claim can be deemed less credible if s/he has travelled through another country before reaching the UK builds on a false premise. In fact, there is nothing in international law that obliges people in need of protection to make a claim for asylum in the first country they reach. Nor is it reasonable to expect them to do so.

## **4. Withdrawal of basic support for families**

Where: **Section 9** of the Asylum and Immigration (Treatment of Claimants, etc.) Act

This section extends the provisions in Section 54 and Schedule 3 of the NIA 2002 to create a further class of person ineligible for support; a failed asylum seeker with family.

- The Home Secretary must certify (after interview) that in his opinion an individual has failed, without 'reasonable excuse' to leave the UK voluntarily. Support will be stopped 14 days after the person has received notice of the Secretary of State's decision. As a result, the family would be ineligible for support from local authorities under Sections 21 and 29 of the National Assistance Act 1948; support for the elderly under Section 45 of the Health Services and Public Health Act 1968; support from Social Services under the Children Act 1989 or Children (Scotland) Act 1995; accommodation under the homeless legislation; promotion of well being under Section 2 of the Local Government Act 2000.

In the event of a child's welfare being compromised, support under Section 20 of the Children Act 1989 may be provided, but only to children under 18. Local authorities will not be able to provide accommodation and subsistence to any other members of the household. If necessary, children will be separated from their families.

- A decision to remove support in this way will attract a right of appeal to the Asylum Support Adjudicator.

### **The Refugee Council's concerns**

We accept that asylum-seeking families who have reached the end of a fair and transparent determination process should be assisted to return. However, we consider removal of support to destitute asylum-seeking families while they are still in the UK to be inhumane. Removing access to all support except Section 20 of the Children Act will not only undermine the principles of the Children Act itself, but will place further pressure on the resources of social service departments. It would potentially also place social workers in the difficult position of having to take children away from their parents.

The Secretary of State will have to consider whether termination of support would lead to human rights breaches. This decision cannot be a mere formality and each case will have to be considered on its own merits. Section 55 caselaw (Court of Appeal SSHD vs. Limbeuela 21/5/04) illustrates the preparedness of the courts to deem the risk of destitution as a possible breach of Article 3.

The remit of an appeal before the asylum support adjudicator will be limited to whether the Secretary of State has the power under asylum legislation to remove support. The adjudicator will not be able to consider whether there has been a breach of the Children Act.

## **5. Unsuccessful asylum seekers: accommodation**

Where: **Section 10** Asylum and Immigration (Treatment of Claimants) Act 2004.

- This provision allows the Secretary of State (SoS) to further regulate the 'hard case' accommodation scheme. This provision enables the SoS to make receipt of 'hard case' support to be conditional upon the performance of participation in community activities. 'Community activities' is defined as "activities that appear to the Secretary of State to be beneficial to the public or a section of the public". This provision also permits payment or allowances to a person performing or participating in community services.
- A decision to remove support in this way will attract a right of appeal to the Asylum Support Adjudicator.

### **Refugee Council concerns:**

We welcome two provisions in this section; the right of appeal against decisions to refuse or withdraw Section 4 support and the payment of allowances. However, we consider this measure worrying. The only similar scheme is the Community Punishment Order which is for people who have committed a criminal offence; although the Government insists that this measure is not punitive, there is a risk that public perception will once again link asylum seeking with criminality as a result of this measure. We also share the concerns raised by the Joint Committee on Human Rights who believe that there is a 'serious risk' that this measure contravenes articles 4 and 3 of the ECHR, as threatening to take away food and shelter if the community activities are not performed may amount to forced labour and withdrawing food and shelter may constitute inhuman and degrading treatment. Women in particular become at risk of sexual exploitation when forced to live in destitution.

## **6. Accommodation for asylum seekers: local connection**

Where: **Section 11** Asylum and Immigration (Treatment of Claimants) Act.

- This provision amends the homelessness provisions in the Housing Act 1996 by stipulating that a local connection will develop with a local authority in which dispersal accommodation is located unless the individual is subsequently dispersed to accommodation in another local authority. Placement within an accommodation centre will not count for local connection.

### **The Refugee Council concerns:**

It is to some extent a matter of chance where people are initially placed on dispersal since it depends on the availability of accommodation. The area to which an individual is dispersed may not necessarily be the best place for them to be in the longer term if they are subsequently allowed to remain in the UK. As such, the

changes to local connection provisions are unlikely to 'keep' individuals within the dispersal areas as naturally refugees will chose to move to areas where they will get the support of their communities and other support networks to build a safe, secure and sustainable home.

## **7. Refugee: backdating of benefits**

Where: **Section 12** Asylum and Immigration (Treatment of Claimants) Act.

- This provision repeals Section 123 of the 1999 Act, which allowed retrospective payments of income support to individuals recognised as refugees. The payment amount would have been the difference between normal income support rates and the lower rate of asylum support backdated to the date of the asylum claim.
- The rationale given for this measure is that it allows the Government to fund the refugee integration loan.

### **The Refugee Council concerns**

Article 23 of the 1951 Refugee Convention states that refugees should be accorded the same treatment with regard to public relief and assistance as the national of the receiving country.

Refugees should not lose benefit entitlement because of delays in deciding their case and at the very least backdated payments of any difference should be made. The refugee integration loan is a loan and should not need funding in this way.

## **8. Integration loan**

Where: **Section 13** Asylum and Immigration (Treatment of Claimants) Act.

- This provision enables the Secretary of State to provide integration loans to newly recognised refugees. Regulations with detail on how the scheme will work are to follow.

The recognition that support at the point of transition from asylum to refugee status is crucial is to be welcomed as there are multi-faceted barriers to transition. However, loan repayments may be an additional burden for people who are already faced with these difficulties. We suspect that the fear of debt will discourage many people who may be in need of such assistance. At the very least, the repayments should be subject to the ability to pay.

## **9. More powers to immigration officers**

Where: **Section 14** of the Asylum and Immigration (Treatment of Claimants, etc.) Act.

- Section 14 provides immigration officers with a power of arrest, entry, search and seizure in respect of a number of specified offences.

Currently, these powers exist only in relation to immigration-related offences under the current immigration legislation. The new powers will apply to a long list of criminal offences which range from theft to bigamy.

### **The Refugee Council's concerns**

These are alarmingly wide powers, allowing immigration officers to arrest without warrant anyone suspected of any of the long list of offences listed in Section 14, Subsection 2. Along with powers of arrest, there are powers to enter premises, search and powers of seizure. We are concerned that the exercise of these new powers will not be subject to scrutiny under the Police and Criminal Evidence Act 1984.

## **10. Unification of appeal system**

Where: **Section 26** the Asylum and Immigration (Treatment of Claimants, etc.) Act.

- This clause abolishes the current two-tier asylum appeals system and replaces it with a single tier tribunal called the Asylum and Immigration Tribunal (AIT). Most decisions will be made by a single tribunal judge.
- If there has been an 'error of law' (which includes breach of natural justice, lack of evidence, lack of jurisdiction) decisions of the new AIT can be referred to the High Court for review on the papers, but no oral hearing, within five working days. The High Court has a power to order the AIT reconsider their decision.
- Where a decision is reconsidered and still refused, there is a right of appeal, on a point of law only, to the Court of Appeal. Thus some element of judicial oversight is retained.

### **The Refugee Council's concerns:**

This provision was amended considerably during the passage of the Bill. The original clause proposed to remove all scrutiny of tribunal decisions by the higher courts and attracted considerable criticism, most notably from the Lord Chief Justice. Although the new provision retains the principle of judicial oversight, it is feared that procedural and practical barriers will, in effect, undermine it.

Applicants whose cases are rejected by the AIT will now be able to go - on the papers only, not in person - to the High Court to get the AIT to review its decision (if the case raises important legal issues, the High Court may pass it on to the Court of Appeal). Applications to the High Court must be made within 5 days of an AIT refusal. The merits test for legal aid, for applicants seeking a reconsideration of an AIT refusal, is likely to be 'robust' – that is set at a high, possibly prohibitive, level.

It should be noted, however, that the Government had wanted to place legal aid for such challenges on a 'no win, no fee' footing (with the decision on whether to award legal aid at reconsideration stage being made by the Tribunal on the grounds of whether the reconsideration had been successful) but backed down in the face of substantial opposition in the Lords. However, a very high threshold for the merits test would effectively reinstate this position.

Section 26 also contains a power to make regulations enabling a new legal aid scheme for the High Court/Court of Appeal review process and for reconsideration by the tribunal. Instead of the Legal Services Commission taking the funding decision this power will be given to the judiciary.

The five day time limit for applications to the High Court continues to be of some concern, and attracted concern from the Law Society and UNHCR during the passage of the Bill. These were well summarised in the 6<sup>th</sup> Joint Committee on Human Rights report of March 2004:

*"We consider the five day limit to be far too short for the right of access to the High Court and beyond to be practically effective. The number of tasks to be performed between receipt of decision and lodging an application for review makes it simply impracticable to require applications to be lodged within five days. An application for reconsideration will require the applicant's legal rep to receive a copy of the decision, read it, marshal any necessary evidence (which may require a meeting with the applicant at which an interpreter might well be required, to draft the legal grounds of challenge, and to lodge the grounds at the High Court)".*

## **11. Removing asylum seekers to 'safe third countries'**

Where: **Section 33** and Schedule 3 of the Asylum and Immigration (Treatment of Claimants) Act.

- These provisions build on powers contained in Sections 11 and 12 of the Immigration and Asylum Act 1999 and Section 94 of the Nationality Immigration and Asylum Act 2002. They allow removal from the UK to a third country (of which the asylum seeker is not a citizen). 'Safe third countries' will have been designated by the Secretary of State as respecting Refugee Convention and European Convention on Human Rights (ECHR) rights. There are now four sets of circumstances in which a person may be removed without substantive consideration of their asylum claim or right of appeal to a 'safe third country' these correspond to four lists set out at Schedule 3.

- List 1: The proposed removal is to an EU country, or to Norway or to Iceland, although other countries outside the EU may also be added. EU countries are already named as safe for Refugee Convention and ECHR. An applicant cannot argue that removal to one of these countries undermines his or her rights because, for example, that country interprets the Refugee Convention incorrectly. It is assumed that these countries will not remove an individual on to another state in breach of article 33(1) of the Refugee Convention (which states that people should not be returned to the risk of persecution – known as *refoulement*). This effectively means there are no appeal rights either for the Refugee Convention or the ECHR unless the breach is in the third country itself. Even if such a breach is alleged, it can be certified as clearly unfounded and there is no appeal right. The main concern here is that people may now be removed to a third country even where there is evidence that they will then be returned to their country of origin in breach of their human rights.
- List 2: The Secretary of State (by Statutory Instrument) can designate countries (currently unspecified) to be safe for both Refugee Convention and ECHR purposes. An applicant cannot argue that removal to one of these countries undermines his or her rights because, for example, that country interprets the Refugee Convention incorrectly. It is assumed that these countries will not remove an individual on to another state in breach of article 33(1) of the Refugee Convention. These countries will also be deemed safe for ECHR purposes, human rights claims and appeals will be classified as unfounded. There is no automatic bar to appeal rights under the ECHR but there will be a presumption that all such claims are clearly unfounded and certified as such with no appeal rights.
- List 3: The Secretary of State (by Statutory Instrument) can certify states to be safe for Refugee Convention purposes. An applicant cannot argue that removal to one of these countries undermines his or her rights because, for example, that country interprets the Refugee Convention incorrectly. It is assumed that these countries will not remove an individual on to another state in breach of his rights. There will not be a presumption that human rights claims are unfounded but they may be certified as such.
- List 4: Any country may be deemed safe for a particular individual, on the assumption that the person is not at risk of being *refouled* and not at risk of being persecuted there for any Refugee Convention reason. The Secretary of State must certify such cases on an individual basis.

### **The Refugee Council's concerns**

The lack of substantive consideration of an asylum application and the lack of appeal against removal to 'safe third countries' creates a real risk that individuals will be removed in breach of their fundamental human rights. A fundamental premise of asylum is that each case is examined without prejudice and on its own individual merits. No country can therefore be assumed to be safe for all people all of the time. Further, within the Act the criteria for what constitutes a 'safe third country' are

wholly inadequate. There is not even a requirement that the country is a signatory to the 1951 Refugee Convention, a key indicator of a country's commitment to protecting refugees.

The Refugee Council is concerned that there is a real risk that the designation of countries as 'safe' will be driven by trade or political interests rather than human rights considerations. Asylum seekers will be unable to challenge their removal and may therefore face the real possibility that they may be sent from the UK to a country where their safety is at risk.

Some of our concerns about designating countries as 'safe' have been graphically illustrated in the recent research by the Refugee Women's Resource Project (*Safe for Whom? Women's Human Rights in 'Safe List' countries: Albania, Jamaica and Ukraine, 2004*). This research highlighted how in countries designated as 'safe' for returns women's rights continue to be systematically violated and women have very little recourse to protection or legal redress.

## **12. Co-operation with deportation or removal procedures**

Where: **Section 35** of the Asylum and Immigration (Treatment of Claimants, etc.) Act (Commences 22<sup>nd</sup> September 2004).

This section creates a new offence of failing to cooperate, without reasonable excuse, with steps by the Secretary of State to carry out removal. This would include requirements by the Immigration Service to re-document an individual. If a police officer or an immigration officer has a reasonable suspicion that this particular offence has been committed he may arrest the individual without a warrant.

- Guidance about the application of this section will be published and will cover issues specific to children.

### **The Refugee Council's concerns**

This Section is drafted in wide, generalised and all embracing terms. Failure to comply could lead to a term of imprisonment of up to 12 months. There is no detail of the cooperation required by the individual concerned in terms of the process, forms, nature and scope of interviews; guidance to immigration officers in the conduct of interviews and decisions to refer for prosecutions.

We are also concerned about issues of confidentiality as there is the clear danger that details of the persons asylum claim may become obvious to the receiving authority.

The Government rejected calls for this offence to be limited to persons over 18.

Section 35 contains another example of extremely wide powers to arrest without a warrant and to search and enter for failure to comply with a travel documents

procedure. As such, it represents a worrying trend of using criminal law to enforce asylum procedures.

In the context of other measures in this Act we are concerned that many individuals who have been denied access to a fair hearing of their asylum claim will face removal back to life-threatening situations. We are also concerned about how this clause will be used in relation to children, in light of proposals to remove unaccompanied refugee children from the UK before they turn 18.

### **13. Electronic monitoring**

Where: **Section 36** of the Asylum and Immigration (Treatment of Claimants, etc.) Act.

- This provision allows for the electronic monitoring of persons subject to immigration control who are at least 18 years of age, where a residence restriction is imposed and where a reporting restriction could be imposed or where immigration bail is granted This includes bail granted by the Special Immigration Appeals Commission.
- A person subject to electronic monitoring is required to cooperate with arrangements to help detect and record his or her location at specified times.

#### **The Refugee Council's concerns**

The Government argues that in order to manage an effective immigration policy it needs to have an effective end-to-end case management system. This means having people available when required for interview, for appeal and, if necessary, for removal at the end of the process.

The use of electronic monitoring has so far in the UK only been used in criminal cases, usually to shorten the term of a custodial sentence. It is hence a matter of concern that this approach should be applied for administrative convenience to asylum seekers. It has the potential to stigmatise asylum seekers and in the minds of the public import an association with criminality.

The Refugee Council is concerned that monitoring appears to be based on the idea that it is cheaper and more humane than detention. However, given the civil liberties implications of electronic monitoring and the absence of evidence of risk of absconding we would urge greater use of reporting as an alternative to detention and electronic monitoring.

## 14. Other issues

### Exclusion from Convention protection for serious criminal offences

Although not directly part of the 2004 Act there are concerns about a related measure contained in the 2002 Nationality, Immigration and Asylum Act which has simultaneously been brought into force.

Article 33(2) of the 1951 Refugee Convention allows states to exclude refugees from the protection of the Convention (and hence allow their removal) if they "having been convicted by a final judgment of a particularly serious crime, constitute a danger to the community of that country".

Section 72(2) of the 2002 Act reads: *"A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom if he is (a) convicted in the United Kingdom of an offence, and (b) sentenced to a period of imprisonment of at least two years"*.

There is a concern here that people convicted under Section 2 of the 2004 Act could receive a two year sentence and hence could be returned to persecution simply for destroying their documents.

However, in addition, Section 72(4) states: *"A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom if (a) he is convicted of an offence specified by order of the Secretary of State"*.

On 22nd July 2004 an order specifying a long list of offences was laid before parliament. It came into force on 12th August 2004. Although many of the offences relate to clearly serious crimes relating to terrorism, firearms and drugs, the list also includes theft and criminal damage. Unlike Section 72(2), there is no limitation in terms of a two year sentence. Thus people could be excluded for relatively minor crimes, for example minor theft.

UNHCR have expressed serious concerns about this measure.