



# The Nationality, Immigration and Asylum Act 2002: changes to the asylum system in the UK

*Edition one*

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# Introduction

The Nationality, Immigration and Asylum Act 2002 (NIA Act) received Royal Assent on 7 November, 2002. It is the fourth piece of legislation affecting the UK asylum system in a decade. Many of the measures contained in the NIA Act were initially introduced in the Government's White Paper *Secure Borders, Safe Haven: Integration with Diversity*, published in February, 2002.

The White Paper set out the Home Secretary's plans to radically overhaul the asylum system. One of the things it announced was the replacement of the voucher system by a cash voucher system. Until then, asylum applicants had to buy essential food items at designated supermarkets with vouchers and were unable to retain any change from their purchases.

However, the White Paper put emphasis on the control and the removal of unsuccessful asylum applicants. The NIA Act confirms that.

During its passage through Parliament, the NIA Act received a number of amendments – some of which were announced only recently and have far-reaching implications on asylum applicants' life in the UK:

1. In an article by the Home Secretary in *the Times* newspaper on 7 October 2002, the Government announced its intention to end the presumption that all destitute asylum applicants should receive support from the National Asylum Support Service (NASS).
  - ⇒ This drastic measure is being implemented with effect from 8 January 2003. It will inevitably lead to widespread homelessness and severe destitution for many asylum applicants who do not immediately apply for asylum with the immigration authorities once they have entered the UK. It echoes the measures introduced in the Asylum and Immigration Act 1996 to withdraw benefit entitlement from in-country asylum applicants, which was successfully challenged in the courts at the time.
2. In the same article, the Government also announced that asylum applicants from some safe countries would have their applications certified as 'clearly unfounded'. Section 115 (7) now contains a list of safe countries. Lists of this type, such as the one introduced by the Asylum and Immigration Act 1996, but later repealed, are known as 'white lists'. The countries on this list are the ten EU accession countries (Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovak Republic, Slovenia). The Home Secretary has the power to add more countries as he sees fit.
  - ⇒ The effect of such certification is that asylum applicants affected are denied an in-country right of appeal.

This briefing is a topic-by-topic summary of the changes resulting from the various measures contained in the NIA Act and the changes to the asylum system that did not specifically require legislation as well as our response to these changes. Many, but not all of the changes were set out in the White Paper – we have marked them by adding WP at the end.

# Changes to the asylum system in 2002

## 1. Citizenship and nationality

### What are the changes?

Part 1 of the Nationality, Immigration and Asylum Act 2002 (NIA Act) covers the issue of nationality. It introduces a number of measures:

- The requirement of applicants for British citizenship to pass an English language test (the elderly and disabled are exempt from the English language test when they apply for British citizenship *(WP)*)
- A citizenship ceremony involving an oath of allegiance *(WP)*
- The power to take British nationality away if a British citizen has done anything 'seriously prejudicial to the vital interests of the UK' *(WP)*
- The right for children to be registered as British citizens *(WP)*

### Implementation

These measures came into effect when the NIA Act received Royal Assent on 7 November 2002.

### What do we think?

The Government's aim is to strengthen active participation in the democratic process and a sense of belonging to a wider community. We believe that the key to achieving this lies not in how and what people are taught, but in how they are treated. People will only feel that they are able to participate meaningfully in society if they are welcomed and valued.

We welcome the Government's recognition of the value of cultural diversity, which is brought by immigrants to the UK. We also welcome the idea that everyone who is settled here should be made to feel welcome and valued regardless of whether or not they have chosen to become a British citizen. It is important that the acquisition of citizenship remains optional as many refugees have very good reasons for not wishing to acquire citizenship and they should not be less valued as a result.

The Refugee Council appreciates the need to ensure asylum seekers' and refugees' access to English language courses and orientation programmes, to raise their awareness about Britain at the early stages of their residence in the UK. We are pleased to note that the Home Office believes it is necessary to provide them with an opportunity to receive language tuition.

We agree that lack of adequate knowledge of English language can lead to social exclusion. Our experience has shown that refugees are very keen to learn English and to contribute to British society, both through gainful employment and active participation in the community. However, we do have the following concerns:

- ⇒ The main barrier to refugees learning English is not lack of will but rather the lack of suitable language courses. Our own experience and research by the Department for Education and Employment shows that lack of English is the key barrier to accessing education, training and employment. More provision of English language courses is vital if people are to be prepared for citizenship through language training and citizenship education.

- ⇒ There also needs to be diversity of provision and the needs of specific groups of learners must be taken into consideration to avoid exclusion, for example, for those with caring responsibilities, for those with mobility restrictions or for those who are not confident in a learning situation.
- ⇒ There also needs to be support underpinning language classes to ensure accessibility, in particular help with travel and childcare costs.
- ⇒ We are pleased to note that the Government aims to ensure that those living permanently in the UK are able to take their place fully in society. This fundamental objective, however, can only be achieved if refugees are given the opportunity to learn English at the asylum application stage or even as soon as they arrive in the UK. This will ensure they have sufficient time and opportunities to improve their comprehension, literacy and communicative competence, and pass the language test and take their place fully in society if they are granted status in the UK.
- ⇒ Although English for Speakers of Other Languages (ESOL) courses are available free of charge to asylum applicants and refugees with English language needs, it is our experience that there is an acute shortage of available courses. This was also highlighted in the Audit Commission's report *Another country: implementing dispersal under the Immigration and Asylum Act 1999*, published in June 2000.

## 2. Working in the UK

### **What are the changes?**

The most fundamental change in respect of working in the UK did not require legislation:

- Since 23 July 2002, asylum applicants are no longer able to work or undertake vocational training until they are given a positive decision on their asylum application, irrespective of how long they wait for a decision. The Government justified this new policy on the basis that most asylum decisions would be made in less than six months and based on its view that employment acts as a 'pull-factor'. This measure does not affect asylum applicants who were allowed to work before 23 July 2002, nor those who applied for their work restriction to be lifted before 23 July 2002.

There is a range of measures in the NIA Act to help the Government tackle illegal working (see Section *Trafficking and illegal entry* for more details):

- Powers to enter and search business premises without a warrant (Section 153)
- Extending the obligation of employers to show proof of eligibility to work to business partnerships (Section 147)

The White Paper already introduced the following, which is unlikely to impact significantly on asylum applicants and refugees:

- The Highly Skilled Migrant Programme – the Home Office launched this on 28 January 2002 thereby allowing individuals with exceptional skills and experience to come to the UK to seek and take up work (*WP*)

- Fees for work permit applications were introduced – this is now covered in Section 122 of the NIA Act (*WP*)
- Proposals to meet the demand for short-term casual labour – a Managed Migration Team has been set up at the Work Permits UK department of the Home Office to review the Seasonal Agricultural Workers’ Scheme and looking into other schemes to meet the demand for short-term casual labour (a scheme to address labour shortages in the hospitality and food industries was announced by the Government on 7 October 2002)

### Implementation

Ending work concession for asylum applicants	23 July 2002
Highly Skilled Migrant Programme	28 January 2002
Fees for work permit applications	Yet to be introduced in practice
Review of Agricultural Workers’ Scheme	Consultation ended 23 August 2002 Implementation on 1 January 2004
Sections 153 to 155 give constables and immigration officers new powers of entry to premises and search for evidence	8 January 2002
Section 147 covers obligations on employers to show proof of eligibility to work	Date not yet known

### What do we think?

This policy to end the work concession for asylum applicants was pushed through in haste and without consultation. The Refugee Council strongly opposes this measure:

- ⇒ There is no evidence that giving asylum seekers who are awaiting a decision permission to work encourages more asylum applications. In fact, research commissioned by the Home Office (Home Office Research Study 243: *Understanding the decision-making of asylum seekers*, July 2002) demonstrates that this is not a reason why people apply for asylum in the UK.
- ⇒ There is clearly public support for the idea that where possible asylum seekers should work to pay their way.
- ⇒ There will be significant extra costs in supporting asylum seekers who are no longer allowed to work.
- ⇒ The work concession is only meaningful if the Government is unable to meet its targets for decision times; if the targets are met there is no need to remove the concession.
- ⇒ Changing the policy has a major impact on the future integration of those who will subsequently be allowed to stay and who have had to wait more than six months for an initial decision. It will particularly affect those with specialist occupations, such as health professionals, who need to keep their skills up to date.
- ⇒ Removing the work concession from asylum applicants effectively denies UK employers access to a pool of untapped skills and resources that are needed to tackle current skills shortages in the country.

⇒ Employers will inevitably be more reluctant to employ asylum applicants – even if they have permission to work – and even people with refugee status or ELR if they are not clear about their documentation and eligibility to work.

### 3. Resettlement programme

#### What are the changes?

While resettlement featured prominently in the White Paper, it required legislation only to allow for funding for reception services related to resettlement. The UK already runs two resettlement programmes with UNHCR:

1. The mandate refugee programme (also referred to as the *ad-hoc* programme) where refugees outside the UK can apply to UNHCR to be reunited with close family members in the UK
2. The 'ten or more' programme, where UNHCR recommends ten or more refugees outside the UK with serious medical needs to be resettled in the UK

Under the new resettlement programme, the Government is expected to set an annual quota (500 people in 2003) to take a more active role in selection and to assist resettled refugees on arrival in the UK. According to the NIA Act, the Home Secretary can

- 'arrange or assist the settlement of migrants (whether in the UK or elsewhere); (*WP*)
- finance organisations involved in resettlement;
- offer assistance to the 'migrants' concerned. (*WP*)

#### Implementation

Consultation timetable	To be announced
Programme begins	1 April 2003

#### What do we think?

A small number of refugees will have an opportunity to have their cases considered abroad and to travel to the UK 'legally' without having to resort to smugglers or deception.

Currently, resettled refugees are offered little assistance and find themselves almost wholly dependent on family members on arrival in the UK. The new scheme is expected to offer a package of support to those selected, including pre-departure orientation, initial reception and orientation on arrival and longer-term assistance with integration into the UK.

People who would otherwise have little chance of reaching the UK will be offered rapid and long-term access to protection. Some resettlement countries, particularly in Europe, target the most vulnerable, such as women-headed households and people with medical needs. The UK government may choose to select those refugees who are most vulnerable for the resettlement programme.

However, non-governmental organisations (NGOs) in other resettlement countries warn of the risk that the public may begin to see resettled refugees as 'good' and asylum seekers as 'bad'. In addition, the Home Secretary is understood to have made any expansion of the pilot (500 individuals in the first year) conditional on anticipated savings made as a result of fewer so-called 'unfounded' asylum applications.

We have the following key concerns:

- ⇒ By accepting resettled refugees, the UK supports an important pillar of the international regime for protecting refugees; it does not escape any of its responsibilities under the 1951 Convention Relating to the Status of Refugees to refugees who travel independently. In its response to the White Paper, the Refugee Council welcomed the Government's reaffirmation that any resettlement programme would be additional to current asylum procedures. It also emphasised that it would focus on the most vulnerable and emphasise the Government's commitment to meeting the special needs of resettled refugees on arrival.
- ⇒ The Refugee Council's primary concern, however, is that resettlement may be used as a fig leaf for policies of migration control, which effectively side-step the UK's obligations under international law by preventing people in fear of persecution from setting foot on our shores. This concern is heightened by reports that the Home Secretary considers expansion of the programme beyond the pilot stage to be conditional on a reduction in the number of so-called 'unfounded' asylum applications.
- ⇒ The Refugee Council hopes that the scheme will expand and help to demonstrate a real commitment by the UK to sharing global responsibility that falls disproportionately on the shoulders of developing countries.
- ⇒ A two-tier system must not be allowed to develop from the mistaken idea that resettled refugees are 'better' than refugees who arrive as asylum seekers. In Australia this has resulted in the detention of all asylum applicants in appalling conditions and inferior rights for those who are subsequently recognised as refugees.
- ⇒ It remains unclear why the Government should need the power to settle migrants 'elsewhere' than the UK.

The Refugee Council has produced a set of principles to guide the development of a UK programme, which can be found at:

<http://www.refugeecouncil.org.uk/publications/pub007.htm#resettlement>

## 4. Asylum process

### 4.1 Induction centres

#### **What are the changes?**

There are no specific references to induction centres in the NIA Act. The plans to set up induction centres across the UK were originally set out in the White Paper published in February 2002, and covered:

- ⇒ The set up of a national network of induction centres to provide a comprehensive reception service to all asylum applicants entering the UK (*WP*)
- ⇒ Each centre to be located near a port and to provide full-board accommodation for 200-400 asylum applicants and being located near a port (*WP*)

- ⇒ Each centre to provide a series of briefings by video and orally by staff to ensure asylum applicants understand the asylum process, the dispersal process and issues around voluntary departure (*WP*)
- ⇒ Each centre to provide basic health screening (*WP*)
- ⇒ Asylum applicants to stay at the induction centre and their application for NASS support to be decided within a maximum of seven days (*WP*)

A pilot induction centre has been operational since the beginning of 2002, and further centres are currently being developed.

### **What do we think?**

The Refugee Council is in favour of a more integrated induction process for newly arrived asylum seekers. We are pleased that the Government is aiming to meet asylum seekers' needs for comprehensive information about the asylum and support processes, and introducing basic health screening. We particularly welcome the Government's recognition of the importance of identifying special needs early. Our concerns are the following:

- ⇒ The Refugee Council believes seven days to be an acceptable length of time to stay in Induction Centres. However, we know from experience that NASS has not been able to disperse the majority of new applicants within this timeframe. It is essential that people are not left for weeks or months in this initial stage.
- ⇒ The Refugee Council welcomes the proposal to offer an initial health assessment to newly arrived asylum seekers. This assessment would have clear benefits such as enabling early identification of special needs and early access to healthcare where it is required. Procedures would need to be developed to ensure that asylum seekers with disabilities are swiftly allocated specialist care. However, it is worrying to note that in the pilot induction centre in Dover even basic health screening is not yet available to all asylum applicants.
- ⇒ When delivering initial health assessments at induction centres, mechanisms should be put in place to ensure that duplication of screening carried out at the port of entry is avoided. At the same time, consent to the health assessment should be obtained from the asylum applicant in accordance with the General Medical Council's guidance *Duties of a doctor*, published in 1995. Staff should clearly explain to the asylum seeker that the information gathered is confidential and will not impact on an individual's asylum claim.
- ⇒ As the new centres are being developed, it is essential that agreement on the delivery of the health assessments is treated as a priority.
- ⇒ The Refugee Council believes all asylum seekers should have equal access to quality legal advice at all stages of the asylum process. It is absolutely vital that early access to such advice should be built in at the induction centre stage.
- ⇒ We urge the Government to ensure that asylum seekers with additional needs are given appropriate care and to use the induction process to ensure a fairer asylum determination process.

## 4.2 Application registration cards

### **What are the changes?**

The Application Registration Card (ARC) is currently replacing the Standard Acknowledgement Letter (SAL) as the identity document for asylum applicants in the UK. The ARC is a plastic smartcard, which provides biometric data about the asylum applicant (personal details, photograph, and the individual's fingerprint). It also states whether the cardholder is entitled to work.

Section 148 of the NIA Act creates new offences regarding fraud, deception and abuse of ARCs. There is nothing else in the Act about the ARCs and they are already fairly widely in use. They were first introduced for new asylum applicants at Croydon in April 2002. Since then, there has been a programme of gradual replacement of SALs with the new ARC. All new asylum applicants now receive an ARC and no longer a SAL.

### **Implementation**

ARCs have already been in use since April 2002. The Government's target is to have 70 percent of asylum applicants' SALs replaced by ARCs by February 2003, and 90% replaced by September 2003.

### **What do we think?**

We recognise that asylum seekers need a robust form of identification if they are to access certain services. Our main concerns are:

- ⇒ Service providers may demand to see the ARC before they allow the asylum applicant access to health, education, or even police services. We do not wish to see the ARC being requested in situations where ID is currently not a prerequisite for any other person.
- ⇒ However, the technology behind the ARC allows for further such use, and there are no legislative safeguards in place to ensure that the use of these cards cannot be changed in the future.
- ⇒ It is possible that asylum applicants will be without an ARC, for example if they have lost the card, or it got stolen, or the information on it may be updated to include permission to work. In such cases, there would need to be sufficient flexibility to enable individuals to continue to access support and other services.

## 4.3 Reporting

### **What are the changes?**

The White Paper outlined a new regime for reporting to ensure closer contact between asylum applicants and the authorities, which included a requirement to report to a report in centre or a police station. Asylum applicants are, in fact, expected to travel up to 90 minutes or within a 25-mile radius in order to report. Failure to report can lead to detention and possible loss of NASS support.

- Section 69 of the NIA Act gives the Home Office new powers to pay travel costs incurred by asylum applicants who comply with the reporting requirements imposed on them. This covers reporting to the police or an immigration officer in connection with temporary admission, release from detention, bail, or pending deportation.

Such travel is currently not covered by NASS and it is clearly unreasonable to expect people to comply with a requirement and not provide the means to do so. This has now been remedied and is therefore welcome.

### **Implementation**

These changes became effective when the NIA Act received Royal Assent on 7 November 2002.

### **What do we think?**

This is a welcome correction of an anomaly and does address at least one aspect of the difficulties connected to reporting, but we still have the following concerns:

- ⇒ It does not address problems of access – people may still be required to report up to 25 miles away or within a 90 minutes journey by public transport. This will affect people with disabilities and women with children. But at least they should now have the fare paid.
- ⇒ Other problems also continue. Being detained on reporting can also be an unnecessarily brutal experience with no allowance for people to put their affairs in order. People are expected to live in a situation of fear and, presumably, permanent readiness for removal.
- ⇒ It is not unusual for people to lose touch with their most personal belongings with no provision in place to assist their retrieval. There is also growing anecdotal evidence of people simply being detained and presumably removed and then proving to be impossible to trace by relatives or social services departments involved with their families.

## **4.4 Legal advice and decision-making**

### **What are the changes?**

Legal-advice: There is nothing in the NIA Act that directly addresses the issues of access to quality legal advice and decision-making. However, the collective effect of the accelerated procedures it does contain can only have a detrimental effect.

- Section 29 of the NIA Act outlines the facilities to be provided to asylum applicants staying in an accommodation centre. Paragraph (3) provides for facilities to be available at the yet to be built accommodation centres for people providing legal advice to residents at the centres.

Decision-making: Following the Home Office's announcement to review ELR on 7 October 2002, it announced that it would stop granting ELR in its present format.

- ELR is now being replaced by a 'humanitarian protection' status. This new status will be granted for three years – a change from the policy that operated since 1998, where the

Home Office could grant ELR for four years. If the individual no longer has protection needs at the end of the three years, the Home Office will refuse further leave to remain.

The Government said that it had already ended the routine granting of ELR on a country basis and the Home Secretary would retain the power to allow some of those who fall outside the 'humanitarian category' to stay on an exceptional, discretionary basis. Unsuccessful asylum applicants who do not fall into any of these groups would not be granted leave to remain.

### **Implementation**

Accommodation centres have yet to be established. The replacement of ELR by a new 'humanitarian protection' status was officially announced on 29 November 2002, and takes immediate effect.

### **What do we think?**

Legal advice: The fact that this is the only direct reference to the provision of legal representation in the whole Act reflects the Government's view that legal advice is not necessary, at least at the outset. We strongly oppose this view.

- ⇒ It means that there is no provision of legal representation routinely available either at induction centres or at removal centres. Only a minority of asylum applicants will pass through an accommodation centre. For the remainder, access to good quality legal representation will continue to be the lottery that it is at present.
- ⇒ This has to be set against the backdrop of significant tightening of the legal help 'merits test' set by the Legal Services Commission applications for appeal. Legal representatives are to be more strictly controlled in relation to the funding of appeals. It is anticipated that, as a result, although people may have the right of appeal still in this country, they will not be able to get their solicitor to represent them.

Decision-making: ELR was originally designed to provide protection to those asylum applicants who did not meet the criteria for refugee status in line with the *1951 Convention Relating to the Status of Refugees*, but were considered to be at risk if returned to their country. At the same time and by its own admission, the Home Office has increasingly granted ELR to unsuccessful asylum applicants whom it has difficulties removing to their country and it maintains that the rise in grants of ELR in recent years is a result of this.

- ⇒ ELR has been used as a discretionary status for 'humanitarian protection' and the Government's stated objective of reducing the numbers of accepted applicants is unacceptable. It is impossible to have targets for protection – someone either needs protecting or they do not.
- ⇒ The circumstances in which the Home Office previously granted ELR on a discretionary basis now fall broadly within the context of the European Convention of Human Rights (ECHR), as incorporated into the Human Rights Act 1998. It is therefore right that people should be allowed to stay on such grounds – they should not be granted an 'exceptional' (lesser) status but normal leave to remain. Any new status should reflect this.

## 4.5 Country assessment advisory panel

### What are the changes?

Despite previous efforts by refugee agencies and other NGOs in the UK in the wake of the Asylum and Immigration Act 1996, the Government did not pursue the idea of setting up an independent documentation centre – until now.

- Section 142 of the NIA Act now provides for the appointment of an advisory panel consisting of ten to twenty members on country information. The purpose of the panel is to consider and make recommendations to the Home Secretary about 'the content of country information'.

### Implementation

No further details are yet known about when the panel is to set up and who the members are going to be.

### What do we think?

The decision as to whether a person meets the legal definition of a refugee should be made impartially on objective factual information. The credibility of country information and decisions themselves are inevitably undermined when those responsible may be vulnerable to political pressures. Equally importantly, high quality country information leads to good decisions and good decisions result in a more efficient asylum system.

- ⇒ Ultimately, the Refugee Council would like to see serious consideration given to establishing an independent refugee board similar to the Canadian model, incorporating a fully independent research and documentation service. By not establishing an independent country information centre, the Government has missed an opportunity to move towards a more credible and efficient asylum system.

## 4.6 Asylum appeals

### What are the changes?

The most significant change in the NIA Act concerning asylum appeals is the introduction of 'non-suspensive' appeals (where lodging an appeal does not prevent the authorities from removing that person from the UK) for people with 'clearly unfounded' asylum applications. The NIA Act sets out the following:

- Under Section 94, people may have their asylum application certified as 'clearly unfounded' and be removed to their country of origin prior to appeal. This means that the asylum applicant is denied an in-country right of appeal. *(WP)*
- Under Section 93, people may also be removed prior to appeal to a safe third country regardless of the merits of their claim. *(WP)*
- Under Section 101, people refused leave to appeal to the Immigration Appeal Tribunal will have only a Statutory Review rather than full judicial review. This will be to a single High Court judge, and only relating to matters of law rather than questions of fact.

- Much of the remainder of Part V in the NIA Act clarifies and codifies the grounds for appeal.

### Implementation

Non-suspensive appeals, which currently applies to the ten EU accession states (Republic of Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovak Republic, Slovenia), but can also apply to any other asylum applicant	On Royal Assent of the NIA Act 7 November 2002
Remainder of Part V (Appeals)	April 2003
Other certification under Paragraph 9 of Schedule 4 of the 1999 Act (other than 'manifestly unfounded' – now 'clearly unfounded') will continue until April 2003 when Schedule 4 is repealed.	

### What do we think?

We have the following serious concerns:

- ⇒ We are extremely concerned about the designation of countries as essentially safe, for example, the inclusion of Poland and the Czech Republic raises questions about the UK Government's failure to recognise well-documented protection needs of Roma.
- ⇒ Experience shows that refusals of leave to appeal to the Immigration Appeal Tribunal (IAT) are frequently overturned by judicial review following an oral hearing. This measure represents a further curtailment of a fair process.

## 4.7 Detention

### What are the changes?

The most troubling change of the NIA Act is the repeal of the provision for automatic bail hearings, which was provided for in the Immigration and Asylum Act 1999. In accordance with the Government's declared aim of increasing the use of detention and removal, detention centres have been redesignated removal centres. The changes are that

- part III of the Immigration and Asylum Act 1999 (statutory bail) has been repealed;
- detention centres have been renamed removal centres;
- wider powers have been granted as to who can authorise and extend detention as well as grant bail;
- wider powers have been given to enter premises and detain;
- functions may be conferred on to prison officers;
- there are wider powers as to who can detain and to enter premises in order to detain.

### Implementation

Repeal of Part III of Immigration and Asylum Act 1999	By order – date not known
Remainder	By order – date not known

## **What do we think?**

The Refugee Council has a list of serious concerns regarding detention:

- ⇒ We are bitterly disappointed that the Government repealed most of Part III of the Immigration and Asylum Act 1999. This represents a truly backward step in relation to bail. It is no less true today than it was in 1999 that individual decisions to detain should be subject to independent judicial review and that we believe that failure to do so is in contravention of Article 5 of the ECHR. The bail provisions were introduced as an acknowledgement that there should be greater judicial scrutiny. This has now been abandoned.
- ⇒ There is a wealth of case experience through organisations such as Bail for Immigration Detainees (BID) to show that the process of internal review of cases by the Immigration Service is frequently deeply flawed, superficial and often contrary to the Immigration Services' own internal instructions. It remains the practice to detain people on arrival as well as prior to removal.
- ⇒ This means that people continue to be detained often for arbitrary reasons and for indefinite periods without any external scrutiny. The casework experience of BID itself highlights the shortcomings of the existing bail arrangements. There also remains the continuing problem of sureties for bail, neither of which the White Paper and NIA Act address at all. It is wholly unrealistic to expect asylum applicants to be able to put forward two individuals known to them, who are willing to vouch for them and are able to produce the often considerable sums as surety (unless the new procedure rules will state that bail could be granted without the need for surety).
- ⇒ We remain opposed to any form of detention, unless there is evidence that an asylum applicant has committed a crime or is likely to abscond. Such evidence needs to stand up in court. It cannot be acceptable that such a fundamental principle should be discarded purely on grounds of speed or numbers. If the intention is to detain immediately prior to removal for a short time then anybody going above that time should have the right to have his or her case independently reviewed.
- ⇒ The redesignation of detention centres without changing the criteria for detention appears to be purely for cosmetic purposes. Officials have made it quite clear that they will continue to detain newly-arrived asylum applicants whose case is newly under consideration but who will be placed in a centre designated 'removal'. This does not suggest a dispassionate and independent process.
- ⇒ We welcome the ending of the deplorable practice of using prison accommodation for immigration detainees but some concerns remain. In particular, people may still be moved into prisons as a form of punishment but it is not clear what the criteria for this are, nor whether there is any system for appealing against this.
- ⇒ Whilst the redesignation of Haslar and Lindholme is a welcome step, as this means they are subject to detention centre rules, it is still the case that these rules are routinely breached by all the detention centres. Operating standards for these centres have still not been produced, despite contracts having been let, and those drafts that we have seen are conspicuous for their lack of clear criteria that can be audited.
- ⇒ We remain totally opposed to the detention of children, especially as detention has now been extended to apply to any stage of the process, not just prior to removal. The

welfare of children should always be paramount and to routinely detain children for the whole or part of the asylum process is a quite unnecessary given the alternatives of reporting being available.

⇒ The additional powers to authorise detention, grant bail and enter premises are clearly intended to develop maximum flexibility in the powers to detain and remove people.

## 5. Asylum support

### 5.1 Withdrawal of in-country asylum support

#### **What are the changes?**

Sections 55 and 57 of the NIA Act 2002 will come into force on 8 January and affect asylum applicants' eligibility to apply for NASS support for asylum applicants:

1. Eligibility for NASS support: Under Section 55 of the NIA Act, asylum applicants will only be eligible to apply for NASS support if

- they can prove they have applied for asylum – this only happens once they have been through the asylum screening procedures;
- they meet the criteria for destitution;
- they apply for asylum 'as soon as reasonably practicable' after arrival in the UK.

1. Withdrawal of NASS support: Section 57 allows the Home Secretary to introduce secondary legislation to withhold access to NASS support for all those in-country asylum applicants who

- are unable to provide a clear and coherent account of how they came to the UK;
- are unable to provide coherent and accurate information about their circumstances, such as how they have been living in the UK so far;
- do not cooperate with the authorities with further enquiries.

3. Power to remove subsistence-only support option: The White Paper already set out legislative measures to be introduced to enable the Government to remove the option for applying for subsistence support only at any time in the future. This is now set out in Section 43 (1).

#### **Implementation**

The fundamental changes to eligibility to apply for NASS support will come into force on 8 January, 2003. The Government has as yet not made use of its power to remove subsistence-only support.

#### **What do we think?**

The impact of this change will be extremely serious. It will potentially affect the lives and wellbeing of thousands of asylum applicants in the UK forcing them into extreme poverty and making it more difficult to pursue their asylum application.

In 1996, when the Conservative government tried to remove support for all in-country applicants, the Labour Party was fiercely critical of this. Today, by the Government's own

admission, this measure seeks to refuse to provide food and shelter to asylum seekers irrespective of their needs and the merits of their asylum application. We are extremely anxious about this measure being implemented for the following reasons:

- ⇒ This will force many asylum applicants who have fled serious human rights abuses into total destitution. There is no evidence that those who apply for asylum once they are in the UK are any less likely to be granted status – in fact, quite the opposite. The Home Office’s own figures show that currently, around 65 per cent of positive decisions are given to in-country asylum applicants.
- ⇒ NASS currently estimates that this will affect around 100 asylum cases per day. The Refugee Council is extremely concerned that this will inevitably lead to homelessness and destitution, and force many in-country asylum applicants - even vulnerable young adults and people with special needs - onto the streets. This clearly undermines the Government’s stated aims to tackle rough sleeping and reduce social exclusion. Other asylum applicants may be forced to stay with friends and relatives who themselves are living on extremely low incomes, or rely on support from their own already over stretched and under-resourced communities.
- ⇒ The Government expects the burden of proof to lie with the asylum applicant on whether they made every attempt to apply as quickly as possible after entry. However, it will be virtually impossible to prove this.

We are also extremely concerned

- ⇒ that the Government may eventually decide to deny asylum applicants the opportunity to apply for subsistence support only. This will inevitably increase the number of destitute asylum applicants applying for help with subsistence and accommodation. This increases the need for additional accommodation and the overall costs to the Government.

For more details on this, please refer to the Refugee Council briefing on withdrawal of in-country support on our website at: [www.refugeecouncil.org.uk/publications/pub014.htm](http://www.refugeecouncil.org.uk/publications/pub014.htm)

## 5.2 Dispersal and regionalisation of NASS

### **What are the changes?**

There are no specific references to the dispersal policy and regionalisation of NASS in the NIA Act. The White Paper set out plans to decentralise NASS operations by deploying more resources regionally.

In terms of dispersal, the Government has already extended the ‘move-on’ period from 14 days to 21 days for asylum applicants who receive a negative decision, and from 14 to 28 days for those who are granted refugee status or exceptional leave to remain.

### **Implementation**

We hope that the target date of April 2003 for the implementation of the NASS regionalisation project is realistic and that after this date there will be a progressive improvement of support for asylum seekers nationally.

### **What do we think?**

The Refugee Council has actively criticised many aspects of the current dispersal system, which has failed to deliver quality accommodation and support for asylum seekers dispersed to the regions. The Government states it is committed to implementing the recommendations from its review of the dispersal system. However, although this review was completed over a year ago, many of the recommendations are yet to be implemented.

NASS has recently carried out a further internal review of dispersal, the outcomes of which are yet to be announced. However, we would encourage a speedy resolution to the on-going issues of dispersal. In the meantime, we are still experiencing a situation where people are staying in emergency accommodation for an unacceptable length of time.

As regards regionalisation of NASS, our concerns are the following:

- ⇒ The Refugee Council has always stated the need for NASS to have a significantly increased presence in the regions, both in terms of consultation and planning with the regional consortia, and in terms of access points for asylum seekers supported by NASS.
- ⇒ The Government needs to look at the role and capacity of NASS in the regions in conjunction with the roles and capacities of the key organisations with regional responsibility for supporting asylum applicants, such as the regional consortia and the regional one stop services. There needs to be greater clarity and consistency about the remit and capacity of existing regional structures, and about how effectively they involve and work with other stakeholders, such as local authorities, other statutory service providers, private accommodation providers and voluntary and community organisations.
- ⇒ The Refugee Council is encouraged that progress has been made with the planning of NASS regionalisation in terms of the investigations, outreach and housing contract management functions of NASS. However, we would encourage further consideration to be taken in terms of regionalising the operations functions, as there are many aspects of those that continue to cause major difficulties for asylum applicants.

## 5.3 Accommodation centres

### What are the changes?

Part 2 of the NIA Act outlines the setting up of accommodation centres. Facilities envisaged are:

- Full-board accommodation
- Access to health care, interpreters, and legal advice
- Children to be educated at these centres rather than mainstream schools
- Residence restrictions may apply
- Education and training facilities are to be provided

### Implementation

The Government is still in the process of identifying accommodation centre sites, and there have been issues with planning permissions for sites already earmarked. We do not expect these centres to be in place by 2005.

### What do we think?

We welcome commitment from the Government to ensure quality legal advice for all asylum seekers not just those accommodated in accommodation centres. However, we do have a number of concerns:

- ⇒ The White Paper states that the accommodation centres will provide education for children. We feel that this sets a dangerous precedent. It is normal practice not to withdraw children from mainstream education provision and it is discriminatory to do so. Children learn best in the mainstream system and they need to learn more than just English to advance their level of education suitable to their age. They learn much more from interaction with peers at school than they would in an isolated environment. The long-term implications for children are worrying in terms of their development and ability to integrate. Although asylum-seeking children may initially face difficulties in schools, they are nevertheless probably the best ambassadors for building links with their community. Going to school is a vital and integral step in the integration process, even if children are only resident in the UK for a short period.
- ⇒ The experience of other European countries shows that for any support system to be effective it needs to allow people to be independent. The White Paper proposals do not appear to do that. Residence and daily reporting requirements suggest that residents can be prevented from leaving the accommodation centre without good reason. As asylum-seeking families will be given full-board accommodation, they will be denied the opportunity to carry out normal everyday family activities such as shopping and cooking. A less rigid regime, such as self-catering arrangements, could drastically reduce the risk of people getting bored and becoming institutionalised.
- ⇒ Accommodation centres are to be located away from any indigenous communities denying asylum seekers the opportunity to mix. Ultimately this will delay the integration process when people are asked to leave the centre and settle independently in the community. We question whether the centres are an appropriate and indeed cost-effective means of support for destitute asylum seekers. Setting the centres up will take time, and they will ultimately only cater for a small percentage of newly arrived asylum seekers. In the meantime, there is a risk that the majority of asylum seekers who receive support under the existing dispersal scheme will be neglected.

## 5.4 Unaccompanied asylum-seeking children

### **What are the changes?**

In the White Paper, the Government re-stated their commitment that children separated from parents and other family will continue to be cared for under the 1989 Children Act and that the Home Office will work with local authorities to improve the care and support arrangements for unaccompanied children.

It also stated its intention to continue to facilitate discussions with all relevant agencies assisting young asylum-seeking children, introduce measures around age determination and interview unaccompanied children about their asylum applications more frequently than is currently the case. The plans did not require legislation. Indeed, some policies were already being implemented at the time of the White Paper. The main measures, all introduced in the White Paper, were:

- Interviewing of unaccompanied asylum seeking children (*WP*)
- Closer working relationships with local authorities (*WP*)
- Safe case transfer of children to areas outside of London and the South East (*WP*)
- More robust measures to challenge what the Government sees as adults posing as children (*WP*)

Interviewing: The Home Office has already introduced a new policy for young people who apply as unaccompanied children and turn 18 before a decision is made on their claim. From 23 July 2002, all such applicants will be interviewed before receiving any decision from the Home Office.

The move to interview more unaccompanied children about the substance of their claim (often referred to as the 'substantive interview') does not require legislation but will be introduced from January 2003. The Home Office has designed additional training for those who will be interviewing children. They have also introduced other safeguards. For example, children will not be interviewed unless a 'responsible adult' is present, although it is still unclear how much of this will work in practice.

Closer working relationships with local authorities: The Home Office developed a partnership project with the Department of Health (the department taking the policy lead on support and care for unaccompanied children), lasting for 12 months (January to December 2002). The aims of this project included closer working relationships with local authorities. Its activities included two seminars for local authorities and the establishment of working groups to continue the developmental work begun by the project officers. The Home Office also produced an information note for social services officers to improve their knowledge of the asylum system and to facilitate contact.

Safe case transfer: Local authorities are not restricted to finding placements within their own boundaries. The practice of placing children in another local authority is not new. However, local authorities have increasingly called for a system that allows them to transfer responsibility for overseeing and monitoring the placement to the local authority in which the child is to live. The Children Act currently only allows this to be done on a voluntary basis, for example, the 'receiving' local authority must agree to the transfer. A pilot has just been established between Kent and Manchester, which is supported by the Home Office and Department of Health.

Age disputes: The Immigration and Nationality Directorate (IND) has begun to issue letters to those young people it does not accept as children. The letter (an IS97M) states that 'the Secretary of State has decided that the individual concerned is an adult and that s/he will therefore be treated as an adult'. This has severe implications for young people in this situation (for example, there may be a shorter deadline to submit their Statement of Evidence form, or they may be detained). It also impacts on the support the person receives, as they will be directed to apply for NASS support unless they are able to persuade social services that they are a child. This is very difficult as many social service departments are unwilling to contradict what they see as a decision made by the Secretary of State.

## **Implementation**

All changes are already introduced or in the process of being implemented.

### **What do we think?**

Interviewing: Some young people will welcome the opportunity to tell their experiences to the person assessing their claim for asylum. We are not yet aware how many children and young people this will affect, or how they will be selected. It is not yet clear how some of the potential difficulties will be resolved by the Home Office, for example, the implications for children who are too distressed to speak about their experiences. It still remains the case that children are dealt with differently to children in the domestic judicial system.

⇒ We would like to see more of the safeguards and understanding that have been built into this area and would advise the Home Office to draw directly from those professionals who have experience in interviewing children in sensitive situations.

Closer working relationships with local authorities: This is a move that will largely benefit young people. Currently at its very early stages, it is hoped that eventually professionals from both areas of work will understand each other's principles, roles and skills and reduce the confusion that currently exists. Some sharing of information is clearly in the best interests of children; it is important therefore that the sharing of information about children includes sharing with the child or young person. It is also important to recognise that the information needs of different agencies vary and that their roles remain distinct from each other.

⇒ The role of refugee community organisations and other voluntary organisations must not be underestimated, as much of the specialist expertise about and direct work with refugee children is undertaken by the voluntary and community sector.

Safe case transfer: This will probably improve the situation in which many young people are currently living. Local authorities currently work out borough placements in a number of ways. Some of them are adequately monitored.

⇒ However, many young people are still placed in unsupported accommodation, much of the time living with adult asylum seekers, in practice, treating the young people as if they were single adults. A more formal arrangement with minimum standards for support and monitoring is largely to be welcomed. However, it is crucial that this remains a project aiming to improve the situation for young people and that each placement is based on the assessed needs of the individual.

Age disputes: It is very important that anyone asked to make a judgement about the age of a person has the time and skills to do so. The process currently services young people badly and a number of things are urgently needed to improve the situation:

- ⇒ Guidance should be issued to those who have the difficult task of judging a person's age.
- ⇒ The Home Office should make it clear that social services have a duty to make their own assessment and the IS97M letter should reflect this.
- ⇒ The benefit of the doubt must always be given to the young person involved.

## 6. Return

### 6.1 Voluntary assisted returns

#### **What are the changes?**

Voluntary return programmes already operate through the International Organization for Migration (IOM), Refugee Action and others. There is also currently a voluntary return programme specifically for Afghanistan. The NIA Act provides for extended statutory provision for these schemes, which the Government is keen to encourage:

- Under Section 58, the Secretary of State may 'make arrangements' to assist people to return voluntarily or to help them to make a decision about returning. *(WP)*
- Such assistance could involve advice, travel and financial assistance for help with those who have arrived to resettle in the UK.

#### **Implementation**

Return programmes are already operating or being developed.

#### **What do we think?**

Voluntary return is far preferable and more sustainable than forcible returns and we are pleased to see the development of such schemes.

However, we have the following concerns:

- ⇒ Such schemes should not be seen as an alternative to a robust decision-making process for asylum applications.
- ⇒ No one should be pressurised into participation in any return scheme, particularly for nationalities of countries, which continue to be highly volatile.
- ⇒ For people with refugee status or temporary protection, there needs to be provision to protect their status through 'Explore and Prepare' type programmes.

### 6.2 Removals

#### **What are the changes?**

Many of the measures to increase the rate of removal of unsuccessful asylum applicants are already in place and do not require further legislation. The most significant changes contained in the NIA Act are those relating to 'non-suspensive' appeals:

- People may be removed if their asylum application is certified as 'clearly unfounded' before being able to pursue any appeal. *(WP)*
- People may be removed to a safe third country including, but not only to, EU member states. *(WP)*
- People who have committed a very serious crime may be removed if they have been sentenced for two years or more. This also applies to those with refugee status and would face persecution back in their country, although they may still have protection rights under Article 3 of the European Convention on Human Rights. *(WP)*
- Removal directions for the first time apply to all members of the family, including any child born in the UK.
- Detention centres have been formally renamed removal centres. *(WP)*
- Wider powers are given as to who can detain and for detainee custody officers to enter premises and search. *(WP)*

#### **When are the changes being implemented?**

Non-suspensive appeals for asylum applications certified as 'clearly unfounded'	Implemented when NIA Act received Royal Assent on 7 November 2002
Remainder	By order – date not known

#### **What do we think?**

Clearly, the most significant issue is the policy of removal of people prior to their appeal:

- ⇒ There are continuing concerns about people being subject to accelerated procedures and not guaranteed good quality legal advice.
- ⇒ Removal of recognised refugees to their country of origin is a serious matter and should be decided on its merits and not according to the length of sentence.

## **7. Refugee integration**

#### **What are the changes?**

The White Paper highlighted the Government's commitment to promoting the successful integration of refugees, though it contained no specific measures to achieve this.

Since the publication of the White Paper in February 2002, the Government has addressed integration in a number of ways, but has also taken action, which will inhibit successful integration. The NIA Act lacks any specific provisions to enable successful settlement in the UK. However, a number of its provisions will have a direct or indirect effect, positive and negative, on integration. The Government has taken positive steps to promote integration:

- It has increased the Challenge Fund from £500,000 to £1,000,000 per year.
- It held a two-day seminar on integration.

- It piloted a skills audit of persons receiving exceptional leave to remain and refugee status whose results will inform the development of ESOL and other provision for refugees.
- It has agreed to review in three months from now the situation with regard to the provision of advice and information on accommodation for persons leaving NASS accommodation to settle in the UK, as well as the resources required to do this.
- It has extended the notice period for termination of NASS support from 21 to 28 days for people with a positive decision on their asylum application.
- It has reduced the age at which a child may be registered as a British citizen.

On the other hand, the Government has taken negative steps with regards to integration:

- It withdrew the right of asylum applicants to apply for permission to work after 6 months in July 2002.
- It failed to provide the resources needed to implement the national refugee integration strategy entitled *Full and Equal Citizens*, which is currently being developed by the multi-agency National Refugee Integration Forum.

### **When are the changes being implemented?**

They were implemented when the NIA Act received Royal Assent on 7 November 2002.

### **What do we think?**

We still have concerns about some of the changes in the NIA Act that indirectly affect the integration process:

- ⇒ Extending the notice period will allow more, although not sufficient time for the difficult transition from NASS support to benefits and from NASS accommodation to alternative housing.
- ⇒ The planned accommodation centres are to house some 750 asylum applicants in non-urban areas, with children's education and some health care provided on-site. Separate schooling will inhibit successful integration by children and their families and the isolated locations will provide few opportunities for community support while exacerbating the already difficult transition from NASS support to mainstream provision following a positive decision on the asylum claim.
- ⇒ Lack of access to NASS support for many in-country applicants will create widespread destitution and homelessness among asylum seekers, with a correspondingly negative effect on public attitudes. The measure will also increase pressure on refugee community organisations and other support groups who will have to divert scarce resources from activities to promote long term settlement.

## 8. Trafficking and illegal entry

### What are the changes?

The NIA Act introduces measures to tackle illegal working, increases the penalties for human smuggling and creates a new offence of human trafficking for prostitution. The Immigration and Nationality Directorate (IND) is given new powers to obtain information on individuals suspected of immigration offences, to enter premises and to arrest people.

The changes in detail are:

- Offence of traffic in prostitution – maximum penalty of 14 years (*WP*)
- Offence of assisting unlawful immigration - maximum penalty raised to 14 years (*WP*)
- Offence of helping an asylum seeker enter the UK - 14 years penalty
- Offence of assisting entry to the UK in breach of deportation or exclusion order - 14 years penalty
- Forfeiture of vehicle, ship or aircraft if convicted of assisting unlawful immigration, helping an asylum applicant enter the UK or assisting entry in breach of deportation order
- Requirements of employers to ensure that employees are entitled to work
- Immigration officers allowed to enter premises and arrest people suspected of immigration offences
- Public authorities, such as the Inland Revenue, police and medical inspectors allowed to supply information on individuals to IND
- IND allowed to ask employers, banks and others for information on individuals

### Implementation

Offence of traffic in prostitution	Not yet known
Offence of assisting unlawful immigration	Not yet known
Offence of helping an asylum seeker enter the UK	Not yet known
Offence of assisting entry to the UK in breach of deportation or exclusion order	Not yet known
Forfeiture of vehicle, ship or aircraft if convicted of assisting unlawful immigration, helping an asylum seeker enter the UK or assisting entry in breach of deportation order.	8 December 2002
Requirements of employers to ensure that employees are entitled to work.	Not yet known
Immigration officers allowed to enter premises and arrest people suspected of immigration offences	8 January 2003
Public authorities, such as the Inland Revenue, police and medical inspectors to supply information on individuals to IND.	Not yet known
IND allowed to ask employers and banks for information on individuals.	Not yet known

### **What do we think?**

The White Paper acknowledged that it was very difficult for people fleeing persecution to reach the UK legally. Recently, increasing numbers of people arriving from Zimbabwe were applying for asylum, having boarded flights perfectly legally, as Zimbabwean nationals did not need a visa. The Government's response was to impose a visa requirement on Zimbabwean nationals. As 'refugee visas' do not exist, victims of the Mugabe regime have no means of reaching the UK.

Faced with no legal route to sanctuary, many refugees are forced to resort to human smugglers. One inevitable consequence of measures aimed at tackling human smuggling is that people in need of protection will be unable to reach the UK; in desperation, they will search for other more dangerous routes. Similar initiatives on the US-Mexican border have simply driven up the prices charged by smugglers and resulted in more people dying as they cross the desert.

The measures to tackle illegal working will make employers more nervous about employing refugees, who are entitled to work, and they will find it harder to get jobs.

There is little evidence in the NIA Act of the Government's stated intention to reduce illegal immigration by supporting "the efforts of developing countries to promote economic growth and social development, eliminate poverty, improve governance and reduce conflict." (*WP*)

The White Paper recognised the important distinction between human smuggling and trafficking, where people are moved for the purpose of forced labour or sexual exploitation. The Refugee Council condemns the activities of traffickers and would have welcomed the introduction of a broader offence consistent with the first protocol to the Convention Against Transnational Crime, which deals with trafficking in persons, particularly women and children. We are particularly concerned about the victims of trafficking:

- ⇒ Victims of trafficking may find themselves at risk of serious harm when traffickers are arrested, particularly if they co-operate with any prosecution and subsequently have to return to their countries of origin.
- ⇒ Victims of trafficking need support and reflection period before they decide whether to co-operate with a criminal investigation (the Government defeated amendments proposing this).

## **9. Border controls**

### **What are the changes?**

The NIA Act introduces a number of measures aimed at reducing illegal immigration to the UK. Juxtaposed controls allow the UK to operate full immigration controls in any EEA port (the EU plus Norway, Iceland and Liechtenstein), but are specifically aimed at reducing the number of asylum seekers who have travelled on ferries from Calais. The Authority-to-Carry scheme and carriers liability provisions put further pressure on private companies to ensure that any passengers are entitled to enter the UK and that they are not carrying stowaways:

- Juxtaposed controls (*WP*)
- Authority-to-Carry scheme (*WP*)
- Provision of physical data (*'biometric registration' in the WP*)

- Carriers liability (Schedule 8 of the NIA Act, which amends Part I of the Immigration and Asylum Act 1999)

### Implementation

Juxtaposed controls	Agreement needed with French authorities; Secondary legislation expected Spring 2003 Implementation in Summer 2003
Authority-to-Carry scheme	Not yet known
Provision of physical data	Not yet known
Carriers liability	8 December 2002

### What do we think?

- ⇒ These measures effectively prevent people in need of protection from setting foot in the UK, where they would be entitled to protection under international law.
- ⇒ The Refugee Council is concerned that people in need of protection, who may have legitimate reasons for wishing to apply for asylum in the UK, such as family or community ties, will be prevented from doing so.

## Further information

We will issue further editions of this briefing to keep you up-to-date about how the changes to the asylum system mentioned are being implemented.

Please make sure you subscribe to our e-mail newsletter on our website at: [www.refugeecouncil.org.uk](http://www.refugeecouncil.org.uk) to be alerted to updates to this briefing as well as other news and information material.