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a JUSTICE leaflet

# Refugees and asylum-seekers changes in the law

The law governing refugee and asylum policy is currently under review, both within the UK and at EU level. This leaflet explains the key changes to those who wish to contribute to, and seek to influence, these processes. It has been produced by JUSTICE, the all party human rights and law reform organisation.

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### Who are refugees?

The United Nations Convention on the Status of Refugees guarantees a right to refugee status. It defines refugees as people outside their country of nationality, who cannot return there due to 'a well-founded fear of persecution for reasons of their race, religion, nationality, or membership of a particular social group or political opinion'. The Convention has universal application and is the cornerstone of refugee protection. It is part of the law of the UK.

Different countries have their own systems of deciding whether a person fits the UN definition, and national courts may interpret the Convention differently. Not all people who have strong reasons to leave their countries necessarily fit this definition. Nevertheless, they may still be entitled to protection under international human rights law. They may therefore be allowed to remain under the laws of a particular country, and given a discretionary status: for example, exceptional leave to remain in the UK.

### Are the numbers of refugees and asylum-seekers increasing?

Yes, all over the world. The United Nations High Commission for Refugees estimates that nearly 22 million people world-wide come under its mandate. Of these, eight and a half million asylum-seekers and refugees are in Asia, six million in Africa, five and a half million in Europe, and one million in North America.

### Where do refugees go to seek protection?

The twentieth century saw people moving further away in search of safety, with refugees from Europe going to Mexico, South America and India. Currently, people are travelling from Asia and Africa to European countries, North America or Australia. But the majority of refugees still remain close to their country of origin rather than making the long, dangerous and complicated journey to Europe or other Western countries. For example, two million Afghans have lived for years in camps in Pakistan or Iran, and many Somalis and Sudanese live in Kenya.

### What barriers exist to seeking asylum?

Many countries of the world have put in place a series of barriers aimed at controlling people entering their territory. These can act as obstacles for people seeking asylum, making it as hard as possible for them to reach safety. The main obstacles in the UK are:

- **imposing visas** – making people from particular countries get permission in advance of travelling. This creates a Catch-22 situation, because there is no visa to claim asylum. In order to reach safety, refugees may therefore have to travel without visas, obtain forged visas or carry forged passports.
- **carriers' liability** – governments have enlisted airlines, hauliers and train operators into immigration control, by fining them for bringing in people without the correct documentation or visa. In the UK, the penalty is £2,000 per passenger. People suspected of needing asylum can therefore be prevented from travelling. They may then be forced to turn to people-smugglers and pay large amounts of money to 'agents' to help them, through providing forged documents, or by hiding them in lorries or under trains.
- **detention** – to retain control over applicants while their claims are processed, the UK has a policy of selective detention. This can have a deterrent effect on other asylum seekers.
- **support systems** – governments believe that differences in financial support to asylum-seekers are a pull-factor and therefore seek to limit support as much as possible.
- **governments working together** to unify their procedures and share information, so that people cannot try again in another EU country if one application is refused. The EU plans a series of measures to harmonise minimum standards in asylum and to create barriers around the whole EU.

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## What changes are talking place in UK law?

The legislative framework controlling asylum policy is currently under review. This is the fourth review in the last ten years. The 2002 White Paper, *Secure borders, safe haven* and the Nationality, Immigration and Asylum Bill, published on 12 April 2002, outline the following piecemeal changes:

- Increased control of asylum-seekers
- Increased support, in specific circumstances, for asylum seekers
- Proposals for a network of induction, reception, reporting and removal centres
- Re-designating detention centres as removal centres and removing more failed asylum-seekers
- Introducing an Application Registration Card, to provide asylum-seekers with evidence of identity and nationality
- Streamlining the appeals system to reduce rights of appeal
- More co-operation and sharing of information between government departments and between EU countries
- Preparing a resettlement programme with UNHCR to enable people in need of protection to come here legally
- Phasing out voucher support
- Enhancing refugee integration

### In the UK in 2001:

71,700 people (not counting dependent family members) applied for asylum

Countries where most people came from were Afghanistan (9190 people), Iraq (6805), Somalia (6500), Sri Lanka (5545), Turkey (3740) and Iran (3450).

118,195 decisions on people's cases were made; 26% were allowed to stay

10,960 people were recognised as refugees

19,510 people were given exceptional leave to remain

43,415 appeals were decided; 19% (8155) were successful

## The developing influence of the EU on asylum law, policy and practice

Asylum policy in the UK is no longer a matter exclusively for the UK government, The EU now plays a significant role in developing law, which

will eventually control asylum policy across all Member States, including the UK. Since the Maastricht Treaty in 1993, the EU has been working towards a Europe-wide 'area of freedom, security and justice'. Following the Amsterdam Treaty in 1999, this was extended to working towards harmonisation of asylum policies and practice.

The ultimate aim of EU asylum policy is that people should apply for asylum only once within the EU, and that their chances of being recognised as a refugee, and their treatment while applying for this, should be the same in each country. Governments hope this will mean a more equal distribution of asylum-seekers between countries.

The Amsterdam Treaty lists six areas of refugee policy on which minimum standards must be agreed. These are the areas on which EU Directives are now in force, or on which draft Directives or Regulations are under consideration. The target date for total agreement is December 2004. The key developments are explained below:

## Harmonisation provisions adopted at the EU level:

### • Directive on minimum standards for giving temporary protection

This was adopted in July 2001 and should be made part of UK law, and the law of other Member States, by the end of 2002. It provides mechanisms for protection in situations when large numbers of people need temporary refuge because of an emergency. These people are not recognised as refugees, but are given a temporary status for up to three years. After this time they may apply for asylum. The Directive has no immediate effect. It will only come into operation, by agreement between EU countries, should there be a mass movement of people following a particular emergency, such as civil war.

### • Directive on carriers' sanctions

This was agreed in June 2001 and came into force in August 2001. It unifies the fines which may be levied on carriers (between 3,000 and 5,000 Euro per

*'Asylum policy in the UK is no longer a matter exclusively for the UK government'*

person carried) and the penalties they may face for infringements.

- **A Regulation to set up EURODAC**, a central computer register of asylum-seekers' fingerprints, so that countries have a means of checking multiple applications, was agreed in December 2000 and will come into force before the end of 2002.
- **A 'balance of effort'** between Member States in dealing with refugees and displaced people. This process has been started through the establishment in September 2000 of a European Refugee Fund of 216 million Euro. This is to 'support and encourage the efforts made by member states in receiving and bearing the consequences of receiving refugees and displaced persons'.

#### Harmonisation proposals under discussion at the EU level:

- **Draft Directive on minimum standards for procedures in the asylum decision-making process**  
This draft Directive was published in September 2000 and has not yet been agreed. It includes fast-track procedures for dealing with 'manifestly unfounded

#### Recommendations

- Removing the barriers to people fleeing from danger
- Ensuring that the definition of a refugee is interpreted broadly
- Ensuring asylum-seekers have access to competent legal advice and representation
- Establishing an independent documentation centre
- Establishing an independent decision-making body
- Guaranteeing asylum-seekers qualify for welfare benefits at the same level as nationals
- Allowing asylum-seekers access to employment.
- Tackling the causes of asylum-seeking, by supporting democratic institutions and civil society in countries from which asylum-seekers come, by giving genuine help in overseas aid and trade, by isolating regimes which perpetuate human rights abuses.

asylum applications', and a suggested procedure for other applications and the criteria for appeals. Governments have suggested amendments to the current draft and it is expected that the next version, to be published in April 2002, will be much more general and less detailed.

- **Draft Directive on minimum standards on the reception of asylum-seekers**

This draft Directive was published in June 2001 and provides for the support of asylum-seekers while their applications are being considered. The areas of disagreement are mainly to do with the level of support, and when or whether asylum-seekers should be permitted to work.

- **Draft Directive on minimum standards for qualifying for refugee status**

This draft Directive was published in September 2001, the result of hard negotiations behind the scenes between countries which have developed different understandings of the definition of a refugee in the UN Convention. It is controversial. For example, Germany does not currently recognise non-state persecution as qualifying people for refugee status, while some countries do not recognise lesbians and gay men as a social group meriting asylum under the UN Convention.

- **Draft Regulation on the criteria and mechanisms for determining which Member State is responsible for considering an asylum application**

This follows from the 1990 Dublin Convention, and was published in July 2001. It repeats the principle that people should have only one chance of making an asylum application within the area of the EU, and that this should be in the first EU country they enter, or the country that played the largest part in their gaining entry to the EU. It creates penalties for governments tolerating illegal residents, without either trying to send them back or dealing with their asylum applications,

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and tightens up the timetable for people to be transferred between countries. It does not accept the right of asylum-seekers to pick the country in which they want to apply for asylum.

### What can be done to improve the asylum system?

Asylum and refugee policies raise complex issues. A principal area of concern is the decision-making process, and whether individual claims are being decided fairly and effectively. In 1997, JUSTICE, with the Immigration Law Practitioners' Association and the Asylum Rights Campaign, highlighted the need for improvements to the initial decision-making process, which would then inform and aid the whole of the rest of the asylum system. In *Providing protection*, we called for:

- Access to advice and representation from the beginning of the process;
- Better decision-making, by well-trained decision-makers, on the basis of improved access to information about countries of origin and about case law;
- Thorough reform, instead of the piecemeal changes which have happened over the past decade.

These concerns have not been addressed in the recent Nationality, Immigration and Asylum Bill. As debates and discussion continue, key issues for consideration include:

- Removing the barriers to people fleeing from danger from entering countries of refuge;
- Ensuring that the definition of a refugee is interpreted broadly, so that people are not sent back to face danger. This must include danger from non-state persecution, and have a widely drawn definition of a 'social group';
- Ensuring asylum-seekers have access to competent legal advice and representation from the beginning of the process;
- Establishing an independent documentation centre to provide verifiable information about countries of origin, accessible to applicants and to decision-makers

- Establishing an independent decision-making body to decide on asylum applications, instead of the Home Office. If the Home Office continues to make decisions, training for its staff must be improved, both in refugee law and in the situation of people's countries of origin, and in their ability to elicit relevant information from applicants;
- Guaranteeing that asylum-seekers qualify for welfare benefits at the same level as nationals, and are not supported through a different, stigmatising system;
- Allowing asylum-seekers access to employment;
- Tackling the causes of asylum-seeking, by supporting democratic institutions and civil society in countries from which asylum-seekers come, by giving genuine help in overseas aid and trade, by isolating regimes which perpetuate human rights abuses.

### Influencing the future

It is increasingly clear that asylum policy can only really proceed on an EU-wide basis. The European Commission's drafts are not yet set in stone. There are still opportunities to influence the final texts. Once agreed, the Directives must then be implemented into UK law by a specified date. Unlike Directives, Regulations become part of UK law once they have been adopted at the EU level.

The government has a certain degree of flexibility in how it makes the Directives part of UK law, it is therefore possible to affect this process. As the EU asylum measures only set out minimum standards, the government should be encouraged to exceed those standards and provide a higher level of protection.

Processes in the EU and UK can be influenced through lobbying the European institutions, through contacting MPs and MEPs, and by encouraging the UK government to promote the highest possible standards for asylum seekers and refugees in the European debates. The aim of this leaflet is to give readers the tools and information to engage in these debates at national and European level.

For more information on asylum, or for additional copies of this leaflet, please contact

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[www.justice.org.uk](http://www.justice.org.uk)

## Useful organisations

### *Non-Governmental Organisations:*

**Amnesty International**, 99-119 Rosebery Ave,  
London EC1R 4RE. Tel: 020 7814 6200.  
[www.amnesty.org.uk](http://www.amnesty.org.uk) \*

**Asylum Aid**, 28 Commercial Street, London E1  
6LS. Tel: 020 7377 5123 [www.asylumaid.org.uk](http://www.asylumaid.org.uk)

**Asylum Rights Campaign** is a network of  
refugee and anti-racist organisations coming  
together to campaign for justice for asylum-  
seekers. It is serviced by the Refugee Council,  
Bondway House, 3-9 Bondway, London SW8  
1SJ. Tel: 020 7582 6922 \*

**Bail for Immigration Detainees**,  
28 Commercial Street, London E1 6LS.  
Tel: 020 7247 3590, Fax: 020 7347 3550  
[www.ncadc.org.uk/letters/news22/bid.html](http://www.ncadc.org.uk/letters/news22/bid.html)

**Immigration Advisory Service**, 2nd Floor,  
County House, 190 Great Dover Street, London  
SE1 4YB. Tel: 020 7357 6917. [www.iasuk.org](http://www.iasuk.org)

**Immigration Law Practitioners' Association**,  
Lindsey House, 40/42 Charterhouse St, London  
EC1M 6JN. Tel: 020 7251 8383  
[www.ilpa.org.uk](http://www.ilpa.org.uk). \*

**Joint Council on the Welfare of Immigrants**,  
115 Old Street, London EC1V 9JT.  
Tel: 020 7251 8708. [www.jcwi.org.uk](http://www.jcwi.org.uk)

**JUSTICE**, 59 Carter Lane, London EC1V 5AQ.  
Tel: 020 7329 5100. [www.justice.org.uk](http://www.justice.org.uk) \*

**Medical Foundation for the Care and  
Resettlement of Torture Victims**, 96-98  
Grafton Rd, Kentish Town, London, NW5 3EJ.  
Tel: 020 7813 7777. [www.torturecare.org.uk](http://www.torturecare.org.uk)

**National Assembly Against Racism**,  
28 Commercial St, London E1 6LS.  
Tel: 020 7247 9907. \*

**National Coalition of Anti-Deportation  
Campaigns**, 110 Hamstead Road,  
Birmingham B20 2QS. Tel: 0121 554 6947.  
[www.ncadc.org.uk](http://www.ncadc.org.uk)

**Refugee Council**, Head Office, 3 Bondway,  
London SW8 1SJ. Tel: 020 7820 3000.  
[www.refugeecouncil.org.uk](http://www.refugeecouncil.org.uk)

**Refugee Legal Centre, Nelson House**, 153-157  
Commercial Road, London E1 2EB. Tel: 020  
7780 3200. [www.refugee-legal-centre.org.uk](http://www.refugee-legal-centre.org.uk)

**European Council on Refugees and Exiles**,  
Clifton Centre, 3rd floor, 110 Clifton St,  
London EC2A 4HT. Tel: 020 7729 5152.  
[www.ecre.org.uk](http://www.ecre.org.uk) \*

### *UK Government and Governmental Organisations:*

**UK Home Office**, Immigration and Nationality  
Directorate, Lunar House, 40 Wellesley Road,  
Croydon, CR9 2BY [www.ind.homeoffice.gov.uk](http://www.ind.homeoffice.gov.uk)

**Lord Chancellor's Department**, Human  
Rights Unit, Selborne House, 54-60 Victoria  
Street, London SW1E 6QW. Tel: 020 7273  
2166. [www.lcd.gov.uk](http://www.lcd.gov.uk)

**Commission for Racial Equality**, Elliot House,  
10-12 Allington Street, London SW1E 5EH. Tel:  
020 7828 7022. [www.cre.gov.uk](http://www.cre.gov.uk) \*

### *EU Institutions:*

**EU Commission**, Directorate-General Justice  
and Home Affairs, Rue du Luxembourg 46, B-  
100 Brussels. Tel: 00 32 2 296 67 46.  
[http://europa.eu.int/comm/index\\_en.htm](http://europa.eu.int/comm/index_en.htm)

**Council of EU**, Rue de la Loi 175, B-1048,  
Brussels. Tel: 00 32 2 285 6111.  
<http://ue.eu.int/en/summ.htm>

**EU Parliament**, Rue Wiertz 60, B-1047,  
Brussels. Tel: 00 32 2 284 20 25.  
[www.europarl.eu.int/home/default\\_en.htm](http://www.europarl.eu.int/home/default_en.htm)

### *International Organisations*

**Office of the United Nations High  
Commissioner for Refugees**, Millbank Tower,  
21-24 Millbank, London, SW1P 4PQ. Tel: 020  
7828 9191. [www.unhcr.ch](http://www.unhcr.ch)

**Office of the United Nations High  
Commissioner for Refugees**, Headquarters,  
94 Rue Montbrillant, CH - 1202, Geneva,  
Switzerland. Tel: 00 41 22 739 8111. Postal  
address: Case Postale 2500, CH - 1211,  
Geneve 2 Depot, Switzerland.

**Office of the United Nations High  
Commissioner for Refugees**, Bureau for  
Europe, address as above. Tel: 00 41 22 739  
8993.

\* Denotes that these organisations do not do casework or provide advice