

Key measures of the Act

Sect.	Title	Description
2	Entering UK without passport	New criminal offence, <i>arriving without documents, implemented 22nd September '04.</i> 80 people charged, 20 convicted in first month.
8	Claimant's credibility	Range of behaviour that could cast doubt on asylum claims. <i>Requires secondary legislation.</i>
9	Failed asylum seekers: withdrawal of support	Power to remove support from families refused asylum and who fail to co-operate with removal instructions. <i>Pilot scheme begins in England, December 2004.</i>
10	Failed asylum seekers: accommodation	Compulsory community work to secure 'hard case' support. <i>To be implemented 21st Dec '04, and begin February '05.</i>
11	Local connection	Establishes local connection to dispersal area, to prevent those granted status moving to social housing in south east England <i>Consultation expected before implementation.</i>
12	Back-dating of benefits	Removes right to reclaim 30% of income support withheld while claim is processed. <i>Due April 2005.</i>
13	Integration loan	Money saved from Section 12 will fund loan scheme. <i>Due April 2005.</i>
26	Unification of appeal system	Creates single appeals structure and limits further judicial review. <i>Consultation currently under way.</i>
33	Removal of asylum seeker to safe country	Power to extend 'safe third country' provisions. <i>Requires secondary legislation to be fully enacted.</i>
35	Deportation or removal: co-operation	New criminal offence, failing to comply with obtaining travel documents, <i>implemented 22nd September '04.</i>
36	Electronic monitoring	Allows tagging for people over 18. <i>Schemes currently being piloted.</i>



Asylum & Immigration (Treatment of Claimants, etc.) Act 2004

The Asylum & Immigration Act is the third major piece of asylum legislation in the last five years. It progressed through the Houses of Parliament in only 8 months, making it one of the fastest moving pieces of legislation ever. This rapid progress of the Act meant there was little time for scrutiny.

Haste often makes for bad law. The Government appeared to be more interested in getting the Act on the statute books than they were in getting the law right. As a consequence there are a number of sections that still require major clarification. Other sections could well contravene the UK's commitment to such international agreements as the UN Convention on Refugees and the European Convention on Human Rights.

The Scottish Refugee Council, together with other refugee agencies, fought hard to secure amendment and clarification to parts of the Act that could undermine the rights of people claiming asylum, all to no avail. The fight goes on to ensure that the implementation procedures and secondary legislation are as sensitive as possible to the needs of asylum seekers.

Introduction

Only 12 months after the last major Asylum Act, the government began to consult on a new Bill. The initial consultation period lasted less than 12 weeks. Within less than a month the Bill was having its first reading in the House of Commons.

The rapid passage of the Bill was halted only when the law lords in the House of Lords balked at the provisions relating to reform of the appeals system. Condemnation by Lord Woolf, the Lord Chief Justice, as well as a number of other lawyers and legal bodies, led to the only substantive change in the Bill.

In a government U-turn, judicial scrutiny of appeals by the higher courts was re-instated. However, as will be noted later, gaining access to the higher courts has been severely restricted.



Everyone pays lip-service to the notion that genuine refugees deserve protection. The reality is that Europe's asylum systems do not always afford refugees even the chance to state their claim.

Ruud Lubers, UNHCR

The Asylum & Immigration Act 2004 received Royal Assent in July 2004. In October the first arrests were made for violation of Section 2 of the Act, relating to arrival without a passport. Certain sections are still to be implemented. Some will be consulted upon before (such as appeal reform and tagging), others will not. The following pages outline the state of play to date.



If you wish further copies of the document or have any queries, please contact us at:

Scottish Refugee Council
5 Cadogan Square
(170 Blythswood Square)
Glasgow
G2 7PH
Tel: 0141248 9799

This document and other briefing papers can be viewed on the internet at:
<http://www.scottishrefugeecouncil.org.uk/news.htm>

The risks of arrival

Section 2 of the Act makes it a criminal offence to apply for asylum without valid immigration documents, unless a reasonable excuse can be provided. Although the government stated that they expected the section to be little used, the initial pilot scheme (operated at Gatwick, Heathrow and Croydon) resulted in 80 people being charged and 20 convicted in the first month.

Section 33 allows for the removal of asylum seekers from the UK to a third country (of which the asylum seeker is not a citizen). The Section provides the Secretary of State with sweeping powers to designate any country or part of a country as safe for an individual or group of people, even though the individual may have no links with it. There is no requirement for countries to respect UN Refugee and Human Rights Conventions. These country designations will be used by Immigration Officers when considering new claims.

Section 8 sets out behavioural criteria that can be used by Immigration Officials in the determination of an asylum seeker's credibility. Failure to answer official questions without reasonable explanation can now be taken into account in consideration of an asylum claim.

Scottish Refugee Council concerns

Judging an individual on the manner of flight rather than its cause is unacceptable. The United Nations High Commissioner for Refugees (UNHCR) states that in most cases, 'a person fleeing from persecution will have arrived with the barest necessities and very frequently without personal documents'. There is a serious risk that Section 2 will penalise refugees for fleeing. Since passports are issued by governments there is little prospect that those being persecuted by a government will be supplied with travel documents. The 1951 Refugee Convention specifically recognises that refugees will often travel without adequate documentation.

If in only the first month of the scheme some 80 individuals were charged then over the course of a year this figure will clearly increase substantially. This is in direct contradiction to the government's statement that Section 2 would have little impact.

The further development of the 'safe third country' list undermines the fundamental premise of asylum that each case be examined on its own merits. No country can be assumed to be safe for all its people all of the time. The government has offered no assurances that adherence to the 1951 Refugee Convention will be an essential criteria in designating a country as 'safe'.

Punishing people for failing to answer questions during the initial asylum interview is a dangerous precedent. The UN High Commissioner for Refugees 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'. The government have yet to publish their guidelines in this area. There must be no possible risk that the trauma experienced by an asylum seeker can undermine their claim for asylum.

Immigration & Asylum legislation in the last 35 years

Immigration Act	1971	Introduced power to detain asylum applicants. Originally envisaged detention of no more than few days.
Carriers' Liability Act	1987	Introduced fines on airlines and ferry operators for carrying undocumented passengers
Dublin Convention	1990	Introduced 'safe-third' country concept
Immigration & Asylum Appeals Act	1993	Incorporated UK's obligations under the 1951 UN Convention. Introduced appeals, fingerprinting and 'fast-track' removal procedures.
Asylum & Immigration Act	1996	Removed benefits to in-country applicants and introduced the 'white list' of so called safe countries.
Immigration & Asylum Act	1999	Removed remaining benefits from all asylum applicants. Introduced vouchers. Created the National Asylum Support Service (NASS).
Nationality, Asylum & Immigration Act	2002	Focused on control and removal of unsuccessful applicants, included the notorious Section 55 which refused all support to applicants deemed to have delayed their application.
Asylum & Immigration (Treatment of Claimants, etc) Act	2004	Introduces new criminal charges, a new appeals system and punitive measures for unsuccessful applicants.

Reform of the Appeal System

Section 26 creates a new single tier Asylum and Immigration Tribunal (AIT) to replace the present two-tier appeal system. The government is currently consulting on how this body will work in practice. The time to lodge an appeal with the AIT has been reduced to 5 days.

Further judicial scrutiny will be severely limited both on legal and financial grounds. In Scotland such cases will be heard by the Court of Session (Inner House).

Scottish Refugee Council concerns

A fair and transparent appeal process for people fleeing persecution should be a right not an option. Home Office figures (16th Nov '04) show that 20% of original decisions were overturned on appeal. The Government reforms will significantly increase the likelihood of people being returned to face persecution or even death.

The UK Parliament's Joint Committee on Human Rights has already dismissed the five day limit for appeal lodgement as, 'too short'.

What they said...



Lord Woolf, Lord Chief Justice

'In carrying out this scrutiny we have not had the benefit of a draft bill, nor—in common with other interested parties—were we given more than a few weeks' notice of the proposals even in outline'

Home Affairs Committee, House of Commons

'This [the separation of families] is not a situation which a decent government should bring about.'

Diane Abbot MP

'Ministers should imagine being in the House of Commons in two years' time when a number of wrong decisions have been taken and people have been deported to countries like Sierra Leone or the Congo and they are now dead'.

Stephen Irwin, Chairman of the Bar Council

'[The appeal system reform is] a blot on the reputation of ministers'

Lord Woolf, Lord Chief Justice

End of the process

Section 35 has made it a criminal offence not to comply with removal instructions, which carries a custodial sentence of up to 12 months. This section also applies to children under 18.

Section 9 introduces a measure allowing the government for the first time to withdraw support (housing, money, food, clothing and medical care) from families whose asylum claim has been rejected and who are judged not to be co-operating with removal. Local authorities must still support any children, under the Children (Scotland) Act 1995, but to do this the children will need to be taken into care. The parents will become destitute.

Section 10 allows the Secretary of State to make the provision of 'hard case' support for unsuccessful single men and women dependent upon undertaking community work.

Section 36 introduces electronic tagging of asylum seekers over the age of 18.

Scottish Refugee Council concerns

The introduction of Section 35, together with other elements of the Act, means that there is a real risk that individuals denied access to a fair asylum hearing will face return to a life-threatening situation.

Rendering families destitute or forcing the separation of children from parents would put the UK in breach of its humanitarian obligations towards children. As of November '04 some 500 families in Glasgow are under threat of the removal of their support when this part of the Act comes into force. Indications are that Section 9 will be piloted in three areas in England by December '04.

There are many practical and legal reasons why leaving the country is not straightforward *e.g.* ill health, foreign government refusal to issue new identity papers, none of which are acknowledged in the legislation.

The introduction of 'community work' may at first appear to be an affirmation of the right of asylum seekers to work. However, apart from the fact that *Community Service* is a punishment currently meted out to criminals (as indeed is tagging), there is also the serious risk that such activity could be considered 'forced labour'. The UK Parliament's Joint Committee on Human Rights believes that there is a 'serious risk' that this measure contravenes Articles 3 and 4 of the European Convention on Human Rights; the withdrawal of food and shelter if community activities are not performed may constitute inhuman and degrading treatment.

Since immigration officers have arbitrary powers to detain or demand reporting, there is every likelihood that tagging could become just as arbitrary.

'A political regime - even one supported or elected by a majority of the population - which sought to deny basic rights to those falling within its care would be in danger of forfeiting the right to call itself democratic.'

Cherie Booth QC