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Immigration and Asylum

This paper is intended to provide background information to some of the issues in the *Immigration and Asylum Bill 1998-99*, Bill 42 which is to be debated on second reading on Monday, 22 February 1999.

Jane Fiddick

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Summary of main points

"The debate on asylum has been polarised between two extremes: those who oppose all immigration and those who oppose effective immigration controls. All asylum seekers are "bogus" to one group or almost all genuine to another".[1]

The explanatory notes set out the range and scope of the Immigration and Asylum Bill 1998/99:

> The Bill includes provisions which touch on all areas of the immigration and asylum system. There are provisions which address the conditions which will apply to persons before they come to the United Kingdom; provisions which will affect the way in which persons are dealt with at ports when arriving in the United Kingdom; and provisions which will affect how they are dealt with once they are here. The Bill contains provisions which are intended to contribute to genuine persons being dealt with more quickly and, on the other hand, provisions for combating illegal immigration and strengthening powers to deal with other persons not entitled to enter or remain in the country. The Bill contains new support arrangements for asylum seekers in genuine need and includes other safeguards in the form of the regulation of immigration advisers and new provisions for the grant of bail to persons detained under immigration legislation. The Bill also clarifies or strengthens some existing powers and offences.

This paper is intended to supplement the explanatory notes and offer some background information. It has not been possible to include discussion of the clauses on the regulation of immigration advisers, bail and detention. Consultation, in which key themes were fairness, integration and streamlining, preceded the Bill and this was welcomed by interested organisations, as were some parts of what is proposed. There have, however, been expressions of disappointment that the consultation has not resulted in the far reaching reform of attitudes and procedures for which they had hoped.

The Bill contains more than 50 order making powers and much of the fine tuning of proposals will be contained in them. As far as immigration is concerned, it makes changes to the *Immigration Act 1971*, the *Immigration (Carriers Liability) Act 1987*, the *Immigration Act 1988*, the *Asylum and Immigration Appeals Act 1993* and the *Asylum and Immigration Act 1996*.

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[1] Fairer, Faster And Firmer - A Modern Approach To Immigration And Asylum cm 4018, July 1998

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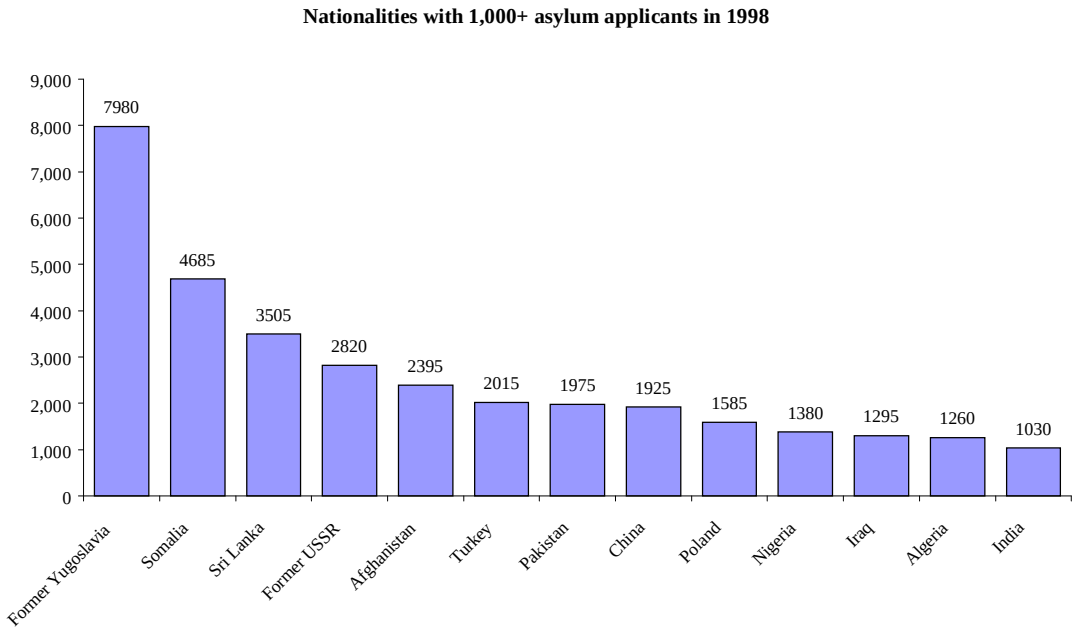
I The background - a general and statistical outline

A. Asylum Applications

In 1998, a total of 46,015 people applied for asylum in the United Kingdom, excluding dependants. Of those, 23,345 applied at a port of entry and 22,670 in country. This is the highest total ever for one year; the previous highest being 44,840 in 1991.[2] Three years earlier, in 1988, total applications numbered 3,998 (ibid).

Around three-quarters of new asylum applications received (excluding dependants) came from 13 nationalities. Each of these had more than 1,000 applications, with the former Yugoslavia accounting for the most applications (7,980) and Somalia the second highest (4,685). These figures are illustrated in the chart below.



Source: Home Office *Quarterly Asylum Statistics 1999*

The 1998 figures compare with 98,644 applications made in Germany; 45,217 in the Netherlands; 41,302 in Switzerland; 21,965 in Belgium and 15,948 in France. In a letter to the *Daily Telegraph* published on 21 January 1999, the Home Secretary, Jack Straw, drew attention to the fact that when figures were adjusted to take account of population and GDP, the UK fell to eleventh place among European countries. This was based on an estimated total for 1998 of 41,200; an updated table making this comparison is provided below and places the UK ninth in terms of population size.

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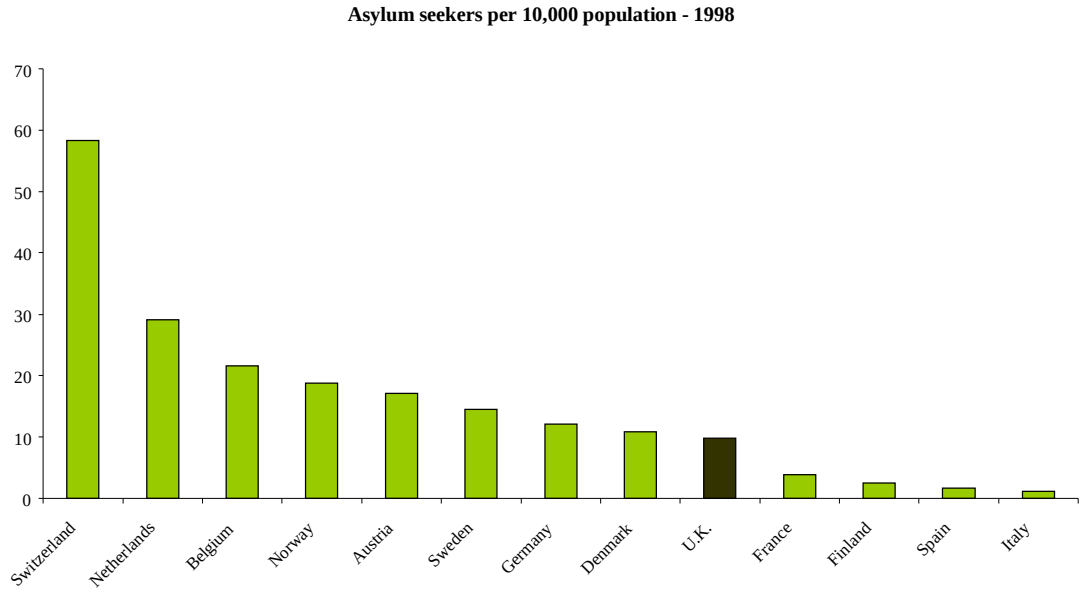
2 Control of Immigration: Statistics United Kingdom 1997, Cm 4033

The number of asylum seekers as a proportion of the UK population is similar to the average for Europe. Of 13 European countries the UK rate of asylum applications per head of population is 9.8 per 100,000 population compared with an average of 9.5 per 100,000.[3]



Source: derived from IGC data (updated to 15 Feb 1999)

In 1998, there were 31,570 initial decisions made on asylum applications. 5,345 (17%) were to recognise the applicant as a refugee and grant asylum. 44% of these cases were Somalis and 19% were nationals of the former Yugoslavia. In addition, 3,910 (12%) of initial decisions were not to recognise as a refugee but to grant exceptional leave to on humanitarian grounds. Afghans accounted for 38% of that category, Iraqis 13% and Somalis 9%. These decisions did not necessarily relate to applications made in the same period. The number of applications outstanding at the end of the year was 64,770. The average length of time elapsing between asylum application and initial decision from 1984 is as follows:[4]

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3 The statistical appendix, p 71, contains the latest international data on asylum seekers. This compares the number of asylum applications received in IGC-participating countries. These data differ from those produced routinely by the Home Office as the IGC series generally include principal applicants and dependants. In 1998, the number of applicants in the UK was second highest of the European countries shown. Only Germany had more applications. This same pattern has been apparent for the last few years

4 HC Deb 26 January 1999 vol 324 c 198W

Average decision times in months, 1984-1998[1]

Year of decision	*All applications* [2]	*Applications lodged pre-July 1993*	*Applications lodged post-July 1993*
1984	3	3	n/a
1985	9	9	n/a
1986	13	13	n/a
1987	14	14	n/a
1988	18	18	n/a
1989	13	13	n/a
1990	13	13	n/a
1991	16	16	n/a
1992	20	20	n/a
1993	20	20	2
1994	17	28	6
1995	18	42	9
1996	17	53	12
1997	22	65	15
1998	17	79	12

1 The average length of time (in months) relates to the year in which the decisions were made.
2 Excluding dependants

The Asylum and Immigration Appeals Act 1993 came into force on 26 July 1993 with the aim of completing initial decisions and appeals within three months.

B. Appeals

Waiting times for an appeal are "in excess of a year" in London.[5] In July 1998 the Chief Adjudicator announced plans to transfer selected appeal hearings from London. The decision was criticised on the grounds that it would incur substantial additional costs, but was explained on 19 November 1998 by the Minister of State, Lord Chancellor's Department, as follows:[6]

> **Mr. Hoon:** The Chief Adjudicator considers that it is in the appellant's best interest that a claim falling within the Refugee Convention is recognised as soon as possible, just as it is in the public interest that claims not falling within the Convention are similarly determined within a reasonable time. Therefore it was unreasonable for appellants to wait for up to a year for a hearing in London, when hearing dates were available in provincial centres within six to eight weeks.

Mr Hoon said on 3 November 1998 that the "key restraint" in reducing the backlog of asylum and immigration appeals was the shortage of adjudicators "which we are attacking vigorously".[7] He went on to report progress in the reduction of the backlog:[8]

5 Review of Appeals Consultation paper, July 1998, p 3
6 HC Deb vol 319 c 722W
7 HC Deb vol 318 c 676

> **Mr. Hoon:** The Government have put a great deal of effort into reducing the backlog of appeals. I can assist my hon. Friend by setting out the relevant statistics. In July 1997, the figure for outstanding appeals by adjudicators was 34,907 and by September 1998 that had been reduced to 22,298. We anticipate that by the end of March 1999, that figure will have been reduced again to some 16,000 cases.

He foresaw that numbers of adjudicators would increase:[9]

> **Mr. Hoon:** The Government have appointed new adjudicators since our election in May 1997. There are currently 34 full-time adjudicators and 212 part-time adjudicators. A recent recruitment board for full-time appointments is expected to result in the appointment of at least eight new adjudicators. A board for part-time appointments is due to commence shortly, to which 77 candidates have been called to interview. We shall continue to increase the number of adjudicators with a view to reducing the backlog.

On 1 October 1998, a total of 19,195 asylum appeals were waiting to be heard, of which 17,802 were at the adjudicator tier and 1,393 at the tribunal tier. On 1 May 1997 there had been 23,863 asylum appeals outstanding.[10]

In 1998, 2,750 or 11%, of determined asylum appeals were successful:[11]

Asylum appeals under the 1993 and 1996 Acts determined by adjudicators of the Immigration Appeals Authority, excluding dependants, 1994 to 1998

Year	*Appeals* determined[2]	*Appeals allowed*[3]	*Percentage of appeals allowed*
1993	n/a	n/a	n/a
1994	2,440	105	4
1995	7,035	230	3
1996	13,792	515	4
1997	21,090	1,180	6
1998[1]	25,320	2,750	11

[1] Provisional data
[2] Based on information collected by the Lord Chancellor's Department
[3] Estimates based on information collected by the Asylum Directorate

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[8] HC Deb vol 318 c 677
[9] ibid
[10] HC Deb 29 October 1998 vol 318 c 237W
[11] HC Deb 21 January 1999 vol c 249W

C. Enforcement

In the 12 months ending 30 June 1998, 6,400 failed asylum applicants were removed or deported voluntarily from the UK.[12] That a backlog exists was acknowledged by Home Office Minister Mike O'Brien when he gave evidence to the Home Affairs Committee on 12 May 1998:[13]

> The problem in terms of asylum issues is clear. We need a human rights policy. We also need to have firmer immigration rules. There are 51,000 applications in the asylum backlog. There are a further 23,000 in the appeals backlog. There are about 19,000 cases in the removals backlog. We think about 17,000 people have absconded, at some stage, from the asylum system. That is a snapshot approach. We did one a few months ago and we thought about 14,000 at that stage. However, we have revised that figure upwards to about 17,000 now. In terms of removing people from the country, the figure we are probably looking at by the year 2002 is about 110,000 people, who will have been due in some way for removal from the United Kingdom. This is a 747 a day, out of the United Kingdom, for a year, which is clearly a very big problem.

The Immigration and Nationality Department's Annual Report for 1997 states that in 1995, 56% of all immigration offenders claimed asylum but this rose to 70% in 1996: "Staff resources are limited. A choice has to be made about how to use those resources more effectively". The report presents a case study - "The removal of Mr A - example of a "typical removal". In this case, authority to remove was obtained on 11 March 1997 and removal was effected on 27 April 1997 at an estimated cost of 47.5 staff-hours. On 28 January 1999, Mike O'Brien provided further information on numbers against whom enforcement action had been initiated but not completed:[14]

> The latest snapshot, taken on 4 January 1999, indicates that the number of persons against whom deportation or illegal entry action has been initiated but not yet completed stands at approximately 67,000. In the great majority of these cases, however, there exists at least one legal or similar barrier to immediate removal, such as: an outstanding application for asylum or for leave to remain on another basis; appeals; further representations; Judicial Review; documentation problems; custodial sentences; and absconding. These factors serve to limit the rate at which removals can be effected and, in some cases, may result in the granting of leave to remain rather than removal.

He reported on an earlier 'snapshot' of the estimated backlog of failed asylum seekers on 8 July 1998, in which he referred to absconding as presenting a barrier to removal in about half of asylum removals cases:

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12 Home Office Statistical Bulletin 24/98, October 1998

13 1997-98 HC 734-i

14 HC Deb vol 324 c 354W

> **Mr Mike O'Brien:** The backlog of failed asylum seekers liable for removal, at May 1998, was approximately 19,500 persons. That figure represents a snapshot, taken from Immigration and Nationality Directorate (IND) port and enforcement databases, of those failed asylum seekers (excluding dependants) who have exhausted their rights of appeal (including any who did not submit an appeal against the refusal of asylum) and who are liable for removal.
>
> The above figure needs to be qualified. Firstly, it does not cover failed after-entry asylum seekers whose appeal rights have been exhausted, who have no right to remain, but against whom enforcement action has not yet been initiated.
>
> Secondly, the figure of 19,500 includes a large proportion of cases (estimated at around 90 per cent.) where there are one or more barriers to immediate removal-such as absconding, judicial review, representations by lion. Members and difficulties with removal documentation. Typically, absconding represents a barrier to removal in half of asylum removals backlog cases.
>
> Furthermore, the figure may include some persons who have actually left the United Kingdom voluntarily but whose departure is unknown to IND.

On 4 February 1999, Lord Williams of Mostyn confirmed that there are thought to be around 20,000 asylum absconders:[15]

> **Lord Williams of Mostyn:** There is no estimate of the total number of persons living in the United Kingdom who have no lawful right to do so.
>
> Information is available on the number of asylum absconders recorded on the Immigration and Nationality Directorate (M) port and enforcement databases at the end of 1998. That figure is around 20,000. This is a snapshot of those persons (excluding dependants) who have applied for asylum at some point and who have breached the conditions of their temporary admission, temporary release or restriction order, or are otherwise found to be out of contact with IND.

In a dissertation written in September 1998, Richard Dunstan, formerly Secretary of the Law Society's Immigration Law Sub-Committee, suggested that this figure seriously understates the number of rejected asylum seekers who have exhausted all rights of challenge, but so far avoided removal:[16]

> Between 1 January 1993 and 31 December 1997 a total of 93,165 asylum claims were substantively refused, while some 2,100 asylum appeals were allowed, and 18,435 rejected asylum-seekers were removed. And, as of 31 December 1997, some 25,000 appeals to a Special Adjudicator, and 2,100 further appeals to the IAT, were outstanding. This leaves a balance of 45,530.

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15 HL Deb vol 596 WA 227

16 Machiavellian implementation: the failure of the *Asylum & Immigration Appeals Act 1993*, p 50

Mr Dunstan attributes the growth of the backlog to the "inadequate level of resources in the Enforcement Division"; but also to advice given by senior officials against "more robust enforcement measures, most particularly after the death during removal - just days after the coming into force of the 1993 Act - of Joy Gardner."[17] Ms Gardner was not an asylum seeker. Three police officers were charged with manslaughter, but were acquitted in June 1995.

The Immigration Service Union (ISU), however, calculated that the total figure of people subject to immigration control who have 'disappeared' since 1989 stands at about 60,000. This calculation is based on a total of asylum applications for 1989-1997 of 268,595 and that only 209,397 can be accounted for, leaving a total of 59,198.

The Appeals consultation paper admits that, in a situation where people continue to stay be means of successive appeals, "It may even become impractical to remove them" (para 1.4).

In the report *Providing Protection*, 1997,[18] the inability to enforce refusals is identified as one of the fundamental problems in the system:

> The large majority of rejected claimants are not in practice removed. Amnesty International has calculated that only one in seven refused claimants who were refused at the end of the asylum process were removed from the UK between 1992 and 1996 - in practice, such people either exist in limbo, outside state benefits and employment, or else are eventually granted some status due to the passage of time.

Other factors have presented problems in the case of asylum seekers. Removal to a safe third country has been hindered by legal other challenges where it has been held that EU countries are not safe because of the risk that the person would be returned to the country from which he sought refuge - by France and Germany, for example, because a strict interpretation of the 1951 Convention in those countries means that they grant asylum only when *state* authorities are the alleged persecutors. The Dublin Convention - "which was signed up to by the previous Administration, in a moment of madness" according to the Home Secretary,[19] came into force on 15 September 1997 and has caused further difficulties. The Convention establishes a hierarchy of criteria for determining which member state is responsible for determining a claim for asylum and was intended to stop the phenomenon of "refugees in orbit" being passed between member states and the problem of multiple claims for asylum. The basic principle is that asylum claims should be examined once in the country responsible for the presence of the asylum seeker in the EU whether he entered legally or otherwise. Lack of documentation and the requirement that the member state must accept responsibility before the applicant can be transferred

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17 ibid, p 51

18 by Justice, the Immigration Law Practitioners Association and the Asylum Rights Campaign

19 HC Deb 18 January 1999 vol 323 c 548

results in lengthy and bureaucratic negotiations. The Convention also means that an asylum seeker cannot simply be sent back to the country from which he embarked for the UK, as was the former practice in safe third country cases. The White paper Fairer, Faster And Firmer reports the Government's commitment to improve the operation of the Convention:[20]

> 11.28 The Government made the operation of the Convention a key priority for the UK's Presidency of the EU, which ended in June 1998. The Government secured agreement to a comprehensive programme of action designed to improve the operation of the Convention and is committed to continue work with our European partners in that task.

D. The cost

The official estimate of the cost of the asylum operation was provided by Mr O'Brien on 11 June 1998:[21]

> Costs directly attributable to asylum seekers are not separately identified within spending figures, hence only a broad estimate is available. This estimates that the costs to public funds of provision for asylum seekers is around £500 million for 1997-98. This cost includes processing costs of asylum applications and appeals, and costs for providing support to asylum seekers via Department of Social Security benefits, support provided by local authorities under the National Assistance Act 1948, legal aid and health and education.
>
> Recent claims that the total cost of asylum is in excess of £2 billion are wildly misleading.

The cost to the Home office of processing asylum applications, excluding most overheads in 1997-98 was about £14 million. In 1998-99, up to £15 million is available.[22]

The sum of £2 billion referred to in the above written answer was the cost of asylum applications as calculated by the Immigration Service Union (ISU). Their figures are based on an estimate contained in an unpublished document:[23]

> The Comprehensive Spending Review into the operation of Immigration Service controls at ports of arrival has thrown up a number of unpublished documents, one of which includes the first official estimate of the cost of asylum seekers:

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20 Cm 4018 para 11.28
21 HC Deb vol 313 c 643W
22 HC Deb 27 October 1998 vol 318 c 116W
23 ISU: The cost of asylum applications to the United Kingdom 1989-1998

> "Detailed costings of an asylum seeker are presently under examination, but if for example we assume that a principal applicant costs around £20,000 pa (and this seems a reasonable figure)…".

A simple calculation demonstrates that some 250,000 asylum seekers costing £20,000 per year would produce a figure of five billion pounds for the first year of each claim alone. It was this estimate which provided the stimulus for the present report. A request for further information on this estimate met with no response.

With some scaling down of this estimated figure, for example by reducing second and subsequent year costs and costs of those given asylum, the ISU concluded:

> Our calculations indicate that there are 143.000 asylum seekers remaining within recognised areas of the asylum system. In addition an estimated 68.600 people have been granted some form of asylum in the UK. Based upon our calculations and our scaling down of the official estimate of a cost of £20.000 per year for an asylum seeker, we estimate a total cost for 1998 of **£2.1 billion** and that the cost since 1989 has amounted to **£11.9 billion**.

II Previous Legislation

A. The *Asylum and Immigration Appeals Act 1993*

The 1993 Act was introduced to deal with a sharp increase in the number of those seeking asylum in the UK (from 3,998 in 1988 to 44,840 in 1991)[24] by streamlining procedures and ensuring "the rapid rejection of a large number of unfounded claims".[25]

The Act

- stated in s 2 the primacy of the 1951 Convention on the Status of Refugees
- provided in s 3 for the fingerprinting of asylum seekers to prevent multiple applications for asylum
- Limited in ss 4-5 the responsibilities of local authorities for providing accommodation for asylum seekers until their claim was determined
- provided in s 7 for the curtailment of leave to enter or remain with no appeal, where a claim for asylum by a person with limited leave was rejected

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[24] Control of Immigration: Statistics UK 1997, Cm 4033

[25] Home Secretary Kenneth Baker, 2 July 1991 HC Deb vol 194 c 167

- introduced in s 8 and sch 2 new in country rights of appeal to special adjudicators on asylum grounds. No appeal on asylum grounds may be made under the 1971 Act. S 8 provides a right of appeal against variation of or refusal to vary limited leave; against a decision to make or refuse to revoke a deportation order and against giving of directions for removal as an illegal entrant on the grounds that the appellant would be sent to a country where s/he would risk persecution for a Convention reason, *provided* the asylum claim is made before the decision in question. Schedule 2, para 5 provided accelerated appeal procedures for a claim certified as being without foundation either because it did not raise any issues as to the UK's obligations under the Convention or was "otherwise frivolous and vexatious". These were mostly third country cases where it was decided that since an applicant could be safely returned elsewhere, there was no obligation to consider his case. The procedure rules[26] imposed a time limit of two days for giving notice of appeal where the appellant was at a port, was personally served with notice of the decision and the claim was certified. The appeal to the special adjudicator against certification was to be determined within 7 days and there was no right of refusal to the Tribunal. In claims refused but not certified, the time limit for notice of appeal was 10 days and it was to be determined within 42 days. In the period January/March 1995 the average time taken to determine refusals of asylum in without foundation appeals was 40 days and 116 days for substantive appeals.[27] S 8 also provided a right of appeal on a point of law to the Court of Session or the Court of Appeal from the Tribunal.

- removed the right of appeal (usually exercisable only from abroad) of visitors and short term and prospective students against refusal of entry clearance or leave to enter - unless the person held a current entry clearance. During the passage of the Bill an amendment was agreed to that the Secretary of State should appoint an independent monitor to scrutinise refusals of entry clearance where there was to be no right of appeal.[28]
- removed the right of appeal against refusal of entry clearance or variation of leave to enter or remain where refusal was mandatory under the immigration rules because a relevant document (entry clearance, work permit or passport) was not held, or for example, the duration of the leave sought would exceed that allowed by the rules.

B. The *Asylum and Immigration Act 1996*

A Bill similar to the one which became the 1993 Act was introduced in 1991-92, but was lost at the General Election. For two years it would seem that the bill had a deterrent effect and in 1992 and 1993 asylum applications were considerably reduced - see

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[26] Asylum Appeals (Procedure) Rules 1993-SI 1993/1661
[27] HC Deb 263 5 July 1995 c 287W
[28] now 1971 Act s 13

statistical appendix. The effect was short-lived, however and on 20 November 1995, the Home Secretary, Michael Howard, described the scale of the problem as "alarming":[29]

> …only 4 per cent. of applicants are initially granted asylum, and only 4 per cent. of appeals against refusal are allowed by the independent adjudicators. Seventy per cent. of claims are made, not on arrival in this country-as one would expect of any genuine refugee but after gaining entry on another basis, and often only when leave is about to expire or removal about to take place.
>
> The Asylum and immigration Appeals Act 1993 initially helped us to bring down decision times dramatically, from 18 months to four for a new claim. But the relentless rise in claims has outstripped the improvements in our ability to process them. By claiming asylum, those who have no basis to remain here can not only substantially prolong their stay, but gain access to benefit and housing at public expense. The population of asylum applicants has now reached 75,000. The annual cost in benefit alone is more than £200 million.

The 1996 Act

- extended by s 1 the application of the accelerated appeal process so that all asylum seekers are potentially caught by it.

In addition to those defined by the 1993 Act, certification of a claim as being without foundation applies to:

- Applicants whose claim relates to a country which the Secretary of State has by order designated as one in which there is 'in general no serious risk of persecution' This is the "White List", which came into force on 20 October 1996[30] and designated Bulgaria, Cyprus, Ghana, India, Pakistan, Poland and Romania.

The draft Order was debated on 15 October 1996 when the Shadow Home Secretary, Jack Straw said:[31]

> The white list, and the country assessments on which the list is based, are partial, defective and profoundly unfair. They will hit the genuine applicant as hard as the bogus applicant and they will damage the United Kingdom's reputation as a defender of human rights.

The motion to approve the draft order was agreed to by 255 votes to 236.

- Applicants who have no fear of persecution for a 1951 Convention reason.

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29 HC Deb vol 267 c 335

30 The Asylum (Designated Countries of Destination and Designated Safe Third Countries Order 1996-SI 1996/2671

31 HC Deb vol 282 c 701

- Applicants who may have a fear of persecution but the fear is manifestly unfounded, or the circumstances which gave rise to the fear no longer exist.

- Applicants who have failed to produce a passport without reasonable explanation as to the failure to do so.

- Applicants who have produced a passport which was not valid and failed to inform the Immigration Officer of that fact.

- Applicants whose claim is manifestly fraudulent or any of the evidence adduced in support is manifestly false.

- Applicants whose claim is frivolous or vexatious.

S 1(5) however, exempts applicants who can establish a reasonable likelihood that they have been victims of torture in the countries or territories to which they are to be sent. The exception was made by a Government amendment agreed to in the House of Lords on 20 June 1996. Earlier proposals by David Alton in the House of Commons and the Bishop of Liverpool in the House of Lords had been rejected.

The Asylum Appeals (Procedure) Rules 1996[32] like those of 1993 require notice of appeal of two days where a claim has been certified and the person is detained, refused leave to enter and the decision has been personally notified. In other cases it is seven days. Time limits for deciding the appeal by special adjudicators are 42 days and 10 days for a certified claim. The 1996 Act dropped the power of the special adjudicator to refer back for full consideration a case which he does not agree to be without foundation.[33] Thus the merits of the claim as well as the certification have to be considered. The single tier appeal for certified claims of the 1993 Act is continued.

As under the 1993 Act there are rights of appeal to the Tribunal and the Court of Appeal or Court of Session in substantive appeals.

- provides in s 2 that the protection of an asylum claimant from deportation etc., shall not apply when the Secretary of State has certified that he will not be sent to a country of which he is a national, that his life and liberty would not be threatened for a Convention reason, and that he would not be sent on to another country otherwise than in accordance with the Convention.
- removes in s 3 the in-country right of appeal against this certificate if the proposed removal is to an EU member state, Canada, Norway, Switzerland or the USA, designated by the Asylum (Designated Countries of Destination and Designated Safe Third Countries Order 1996).[34]

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32 SI 1996/2070
33 1993 Act Sch 2 para 5(6)
34 SI 1996/2671

- creates in s 4 a new offence in s 24 of the 1971 Act of obtaining leave to enter or remain by means that include deception, or seeking to do so.
- amends by clauses 5 and 6 the 1971 provision about assisting illegal entry and harbouring by adding the offence of assisting, for gain, the entry of a person known or suspected of being an asylum seeker, or assisting people seeking to obtain leave by deception. Penalties were increased from level 4 (£2,500) to level 5 (£5,000).
- widened in s 7 powers of arrest and search so that immigration offences of illegal entry obtaining leave to enter or remain by deception and overstaying are serious arrestable offences.
- created in s 8 a new offence of employing a person not entitled to work in the UK. This is subject to certain defences - see p 43.
- made radical changes in ss 9-11 to the support of asylum seekers by the provision of housing and benefits. See Part VIII for discussion of these provisions.

The Bill of 1995-96 which became the 1996 Act was much criticised and concerned voluntary organisations and charities working in the fields of race relations and the protection of refugees set up the independent Glidewell Panel in January 1996 to report on the implications and possible effects of the Bill and to inform debate. The Chairman was Sir Iain Glidewell, a recently retired Lord Justice of Appeal. The panel took oral evidence from 30 organisations and written evidence was submitted by a further 68. It is summarised in the report, which was published on 16 April 1996 and was largely critical of the Bill's proposals and the social security regulations. The Panel considered that they would not meet the Government's stated intentions, were inconsistent with the UK's obligations under international law, would increase the "culture of disbelief" in the Home Office, did not recognise the 40% success rate of appeals against refusals on safe third country grounds and would do overall damage to race relations by applying search and arrest powers more appropriate to murder, rape or terrorism than immigration offences, while the employment restrictions could encourage discrimination. Most of the criticisms and reservations about the legislation were encapsulated in this report.

III Other asylum and immigration decisions and measures

Other measures have been adopted which have affected immigration or asylum applications, or both, and some of these changes have been made administratively rather than by legislation or the exercise of statutory powers

A. The Short Procedure in asylum cases

- A new 'short' procedure for considering asylum claims was first piloted for in country claims from a limited number of nationalities in 1995. The procedure dispensed with the completion after the first asylum interview of a Self Completion Questionnaire, which usually had to be returned within 4 weeks. In March 1996 the procedure - now

referred to as the "standard procedure" was extended to all in country and port cases except those coming from Iraq, Iran, Libya, Somalia, Liberia, Rwanda, Afghanistan, Palestine, the Gulf States (except Kuwait), Bosnia, Croatia and the former Yugoslavia. A bulletin from the Refugee Council's refugee advisers support unit in May 1996 describes the effect of the change:

Brief outline of previous practice

In-country cases:

Under the previous procedure asylum applicants would first be finger-printed and given a short (pro forma) interview to record details such as name, method of entry, address and the fact that they had applied for asylum. They would then be given a Self Completion Questionnaire (SCQ) on which the applicant would provide a written statement about their asylum claim. In some cases the Immigration and Nationality Department used this statement in order to make a decision on the asylum claim, in other cases it may have been used as the basis for an interview at a later date. The applicant was usually given four weeks in which to return the completed form.

Port cases:

In most cases the procedure at ports followed a similar pattern: asylum seekers were given an initial interview in order to record personal details such as name and nationality and the fact that they had applied for asylum and were then issued with a questionnaire to be returned at a later date.

In both in-country and port cases, further evidence or representations to support the claim could be submitted at any time after the initial application.

The Short Procedure

The Short Procedure (SP) differs from the previous practice in that all asylum applicants whose claims are dealt with under the procedure may be interviewed on their full asylum case as soon as they have stated their intention to apply for asylum. For in-country cases this may be within a few days of their arrival in the UK. In port cases this interview could take place at the point of entry within hours of arrival.

After the asylum interview, in cases where an applicant has been granted Temporary Admission, s/he will be given one month in which to submit further representations. In country applicants and asylum seekers who have been detained will be limited to only five working days to make further representations after the asylum interview.

There are no stated time scales for the decision, however a recent Home Office evaluation of the SP pilot showed that 70% of the decisions were made within just three weeks of the interview.

The Home Office has confirmed that unaccompanied refugee children will not be dealt with under the SP.

B. Application Forms

Since 25 November 1996, applications for extension of stay or indefinite leave to remain have to be made on official application forms. The only exceptions are for holders of work permits seeking extensions rather than settlement, asylum seekers and EEA nationals.

Forms had been prescribed for mandatory use from 3 June 1996 by a Statement of Changes In Immigration Rules contained in 1995-6 HC 329. Following a successful application for judicial review by the Immigration Law Practitioners' Association (ILPA), the Home Office withdrew the forms and undertook to revise them to provide that an application would not be invalidated if it could be shown that there was good reason for not enclosing a required document and to respond to ILPA's concern that some questions went beyond the strict requirements of the rules. A further application for judicial review failed shortly before the amended forms were required to be used. Paragraph 32 of the Immigration Rules[35] now states that "all applications for variation of leave to enter or remain must be made using the form prescribed for the purpose by the Secretary of State, which must be completed in the manner required by the form and be accompanied by the documents and photographs specified in the form. An application for such a variation made in any other way is not valid".

S 14 of the *Immigration Act 1971* provides that there is a right of appeal against the refusal of an application only if the applicant had limited leave at the time. Because it can take some time for the Home Office to make a decision, it is possible for a person's leave to expire before that decision is made. In such cases the Immigration (Variation of Leave) Order 1976 (SI 1976/1572) provides that where a person has limited leave and applies for a variation before it expires, the leave is extended until 28 days after the Home Secretary's decision is made. A right of appeal could, therefore, depend on all the requirements of the forms being met, including the right one being used, now that there is a definition of what constitutes a valid application in the immigration rules.

C. Visa régimes

It has been practice in recent years to impose visa régimes on nationals of countries who appear to be arriving in the UK in large numbers and failing to qualify for admission. In May 1985, for example, as a number of Tamils arrived from Sri Lanka seeking asylum, a visa requirement for Sir Lankan citizens was imposed. This means that a passenger's

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[35] 1993-94 HC 395

ability to meet the requirement of the immigration rules is investigated at a British diplomatic post before he leaves his own country. There is no provision under the rules for grant entry of clearance to seek asylum, and a visa requirement enforced by the provisions of the *Immigration (Carriers Liability) Act 1987*, by which carriers are fined for carrying passengers without the required documentation, makes it difficult for intending asylum seekers to travel. On 7 October 1998 it was announced that nationals of the Slovak republic would need visas. A Home Office press release of that date quoted the Home Secretary:

> "We are proposing this visa régime because of the abuse of the visa free arrangements by some passengers from the Slovak Republic. We must act to ensure the integrity of our asylum system".

Numbers of applications for asylum from nationals of Slovakia fell from 230 in August, 250 in September and 115 in October to 15 in each of November and December 1998.[36]

D. Abolition of the 'primary purpose' rule

On 5 June 1997, the Home Secretary fulfilled a manifesto pledge by announcing the abolition of the primary purpose rule - which placed the onus on an applicant for entry clearance from a spouse to show that the marriage did not have as its primary motive the wish to live in the UK. It was not a test of the genuineness of the marriage, which was a separate requirement, but of the main reason for it. It was not designed to catch "marriages of convenience". In a written answer Mr Straw said:[37]

> Following our manifesto commitment,. we are acting to end the primary purpose rule because it is arbitrary, unfair and ineffective and has penalised genuine marriages, divided families and unnecessarily increased the administrative burden on the immigration system. The rule has also placed British citizens resident here at a disadvantage compared with other European Union nationals resident in Britain-to whom no primary purpose rule has applied.

The change was made to the immigration rules by 1997-98 HC 26. Home Office statistical bulletin 24/98 covering the twelve months ending 30 June 1998, reported that in the Indian sub-continent, "applications (including re-applications from spouses and fiancé(e)s rose by 4,300 (a third) to 1,700 following the abolition on 5 June 1997 of the primary purpose rule… Some 19,600 applications were granted in the latest 12 months, nearly 7,800 more than in the previous 12 months. This mainly reflected rises in grants to husbands by 4,700 to 8,400 and to wives by 2,200 to 8,200. In total, grants to spouses and fiancé(e)s increased by 7,100 (70 per cent) to 17,100. Most of this rise was due to a

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[36] HC Deb 28 January 1999 vol 324 c 354W

[37] HC Deb vol 295 c 218-9W

decrease in the refusal rate, including an increase of over 400 to 1,600 in grants following a successful appeal, but over a third was due to an increase in decisions".

E. Unmarried partners concession

A concession for unmarried partners was announced on 10 October 1997 and came into effect on 13 October 1997. The requirements to be met are as follows - note that the parties must be legally unable to marry, rather than unwilling; and it applies both to heterosexual and same-sex partnerships:

> (i) the applicant is the unmarried partner of a person present and settled in the United Kingdom or who is on the same occasion being admitted for settlement; and
> (ii) any previous marriage (or similar relationship) by either partner has permanently broken down; and
> (iii) the parties are legally unable to marry under United Kingdom law (other than by reason of consanguineous relationships or age); and
> (iv) the parties have been living together in a relationship akin to marriage which has subsisted for four years or more; and
> (v) there will be adequate accommodation for the parties and any dependants without recourse to public funds in accommodation which they own or occupy exclusively; and
> (vi) the parties will be able to maintain themselves and any dependants adequately without recourse to public funds; and
> (vii) the parties intend to live together permanently; and
> (viii) the applicant holds a valid United Kingdom entry clearance for entry in this capacity.

The partner subject to immigration control is given leave for a year in the first instance and may be given indefinite leave at the end of that period if the relationship is subsisting - the concession is set out in very much the same format as the rules for spouses. The requirement that the relationship akin to marriage should have subsisted for four years has been criticised because of the difficulties experienced by people who are subject to immigration control and Stonewall has waged a vigorous campaign for its reduction on the grounds that if it had been accepted that a situation where no policy existed may have a breach of human rights, this would suggest that a policy which prevented most couples from qualifying would also be a breach of human rights. It also points out that the previous policy outside the rules for cohabitees accepted that a relationship was stable if it had subsisted for two years. In the 12 months ending September 1998 a provisional total of 383 people had been granted leave to enter or remain under the concession.[38]

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[38] HC Deb 9 November 1998 vol 319 c 46W

F. Domestic Workers

On 23 July 1998, Mike O'Brien announced changes to the concessionary policy on domestic workers. There is no provision under the immigration rules for such workers to come to the UK and work permits have not been issued for this type of work since 1980. Various measures had been put in place to protect people who were exploited or ill-treated by their employers because they had no possibility of changing employers or of remaining legally in the UK if they ran away. Under the policy formalised in 1991 a worker had to be at least 18, have already been employed by the employer for at least 12 months if the latter was coming as a visitor to the UK or for 24 months if for any other purpose. The new policy was described as follows[39] - note that what was a policy is to be incorporated into the rules, and also that it is proposed to regularise the position of those who no longer meet the requirements of the concession through no fault of their own.

> **Mr. Mike O'Brien:** We have been concerned for some time at reports of abuse of domestic workers accompanying their employers to the United Kingdom. We have been working with Kalayaan, the organisation which represents overseas domestic workers, to see what changes we could make to the conditions under which they are admitted, with a view to improving them and preventing abuse.
>
> With effect from today, only those domestic workers whose duties exceed those set down in the International Labour Organisation's International Standard Classification of Occupations will be allowed to accompany their employer to the United Kingdom. This means that those whose duties are only cleaning, washing and cooking will not qualify. Once in the United Kingdom, they will be allowed to change domestic employment to another employer, provided the nature of their duties meets the above criteria.
>
> These changes, which we shall include in the Immigration Rules at a suitable opportunity, will reduce the number of overseas domestic workers admitted to the United Kingdom. However, once here, they will be able to change to another employer if they suffer abuse from their original employer. We also propose to regularise the stay of those overseas domestic workers who, because of the shortcomings of the provisions in the past, find themselves in an irregular position through no fault of their own.

[39] HC Deb vol 316 c 610W

G. Embarkation control

On 16 March 1998, Mike O'Brien announced the end of embarkation checks for passengers leaving the UK.[40]

> **Mr. Mike O'Brien:** We have undertaken a detailed study of the residual embarkation control over persons leaving the United Kingdom. I have concluded, in the light of this, that the present arrangements are an inefficient use of resources and that they contribute little to the integrity of the immigration control. They will be replaced by a targeted, intelligence-led approach creating a more efficient and effective control.
>
> The revised and improved arrangements will be brought into operation as soon as practicable. We will employ appropriate technology and will build upon the existing co-operation between the border agencies, port operators and carriers.
>
> We conducted this study against the background of the decision, in 1994, by the previous administration to scrap the embarkation checks for passengers travelling from ferry ports and small ports to destinations within the European Union; so, for four years, 40 per cent. of departing passengers have not been seen by an immigration officer.
>
> In common with most comparable countries, the United Kingdom has never had a comprehensive check-out system because experience has shown that the use of intelligence and denunciatory information is the most effective tool against illegal immigration. This approach will continue and will be developed.
>
> Although it does not contribute to the overall effectiveness of the immigration control, the residual embarkation control is resource intensive. In 1997, 7 per cent. of the Immigration Service's operational duties were deployed on the embarkation control, compared with 11 per cent. on asylum related work. Estimated staffing costs were over £3 million.
>
> We inherited an embarkation control which serves little purpose in the tracking down of immigration offenders. Enhanced technology, such as closed circuit television, combined with close liaison between the border agencies, port operators and airlines, will create a stronger deterrent than the current immigration departure checks. We will also ensure that systems will be in place to mount comprehensive embarkation checks when required in the interests of national security. We are committed to the continued operation of the All Ports Warning System for child abduction cases.

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[40] HC Deb vol 308, c 506W

> Finally, by better use of technology and liaison, we will release Immigration Service resources to be re-deployed on more effective elements of the control. We will keep the revised arrangements under review.

The decision was criticised on the grounds that the lack of an embarkation stamp would create difficulties for those seeking to establish previous long residence in the UK for nationality purposes or for visitors who might need to show that they had not overstayed on previous occasions.

H. Changes in the Immigration and Nationality Directorate of the Home Office

Major changes to the organisation and working practices of IND are taking place with the creation of a new Integrated Casework Directorate (ICD) to handle casework currently dealt with by five separate directorates. Lunar House, IND's main building in Croydon is also being refurbished. A leaflet (Information about the Integrated Casework Directorate) describes how cases will be dealt with in future:

> The ICD will form the centrepiece of IND's new organisation in Croydon. It will incorporate a new Case Management Unit structure in which each unit will deal with the full range of immigration and asylum casework, rather than the present compartmentalised approach. Where possible, straightforward cases will be resolved on receipt by a fast track Initial Consideration Unit. The more complex cases will be allocated to a Case Management Unit team, who will then retain responsibility for that case until it has been completed. Each team will have a range of experience and skills with caseworkers encouraged to develop expertise in several areas of immigration and asylum casework. This means that we will not have to move cases between different parts of the organisation. The specialist expertise of IND staff, including asylum caseworkers, will be preserved; cases will only be allocated to staff who have the necessary knowledge and skills.

The White paper describes the Case Management Structure as a "move away from the present hierarchical system of decision making towards a more devolved structure. Under a Private Finance Initiative contract awarded in 1996, IND is working with private sector company Siemens Business Services to create IT support:[41]

> 7.3 To support these changes, we are planning to introduce a new computerised and integrated caseworking system which will replace the paper-based methods on which IND has relied until now. This will provide a single database of applicants' details and will mean that telephone enquiries can often be resolved without first having to obtain a paper file. Similarly, when action on a case passes from one part of the organisation to another it will no longer be necessary to transfer a paper file. This will offer substantial advantages in speed and security.

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[41] Fairer, Faster and Firmer, Cm 4018

> 7.4 A "fast track" system will enable straightforward immigration cases to be dealt with immediately: the majority of these will be completed on the date of receipt. The new computer system will support caseworkers by providing on-line access to relevant legislation, instructions and guidance and will allow improvements in the quality control of the decision-making process.
>
> 7.5 Like almost any large new IT system the rollout of this important programme has been delayed, but when the new system is available it and the new ways of working will improve considerably the efficiency of IND's casework operations and the standard of service which it provides. The team-based working methods and the computerisation of immigration records will provide a basis for improvements in identifying fraud and abuse of the immigration and nationality processes.

IV Consultation and the White Paper

The Comprehensive Spending Review, which sets out new public spending plans for 1999-2002, announced that there would be:[42]

> **Firmer, faster, fairer immigration controls.** There will be a new asylum and immigration strategy with a single budget for support for asylum seekers to ensure that the system is managed more effectively and is better able to respond to changing circumstances. There will also be reforms to reduce the overall costs to the taxpayer of our asylum procedures and immigration controls, and to deliver fairer decisions faster and more effectively.

Shortly after the last election, Mike O'Brien announced in August 1997 that as part of the review, the interdepartmental study of the asylum process would look at all aspects of the asylum process, including the provision of accommodation and support.

In January 1998, the Home Office and Lord Chancellor's Department issued a consultation paper on the control of unscrupulous immigration advisers and, just before the white paper in July 1998, another on appeals. This will be described later in this paper, with the discussion on the parts of the Immigration and Asylum Bill to which it relates.

The white paper was published on 27 July 1998 on which date the Home Secretary made a statement on its proposals.[43] Its alliterative title *Fairer, Faster And Firmer- a Modern Approach To Immigration and Asylum* reflects that of a policy statement issued before the election by the then shadow Home Secretary, Jack Straw and Doug Henderson.

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[42] Cm 4011, July 1998

[43] HC Deb vol 317 c 35ff

In the preface, the Home Secretary spells out the overall aims of the policies to be announced.

> Piecemeal and ill-considered changes over the last 20 years have left our immigration control struggling to meet those expectations. Despite the dedication and professionalism of immigration staff at all levels, the system has become too complex and too slow, and huge backlogs have developed. Perversely, it is often the genuine applicants who have suffered, whilst abusive claimants and racketeers have profited. The cost to the taxpayer has been substantial and is increasing.
>
> This White Paper sets out a comprehensive, integrated strategy to deliver a fairer, faster and firmer approach to immigration control as we promised in our manifesto.
> Fundamental to the whole strategy is the need to modernise procedures and deliver faster decisions. The Government believes that there are too many avenues of appeal in the course of a single case. There should be a single appeal right considering the case as a whole, including removal arrangements. We must also regulate unscrupulous advisers who exploit the vulnerable and profit from delays.

Some elements of the strategy to achieve these ends require legislation and will be dealt with in the context of the Bill, particularly those concerned with appeals and support for asylum seekers; others can or have been implemented administratively.

The opening chapter pays tribute to the contributions made to British society by those who have come to live here:

> 1.1 The contributions made by those who immigrated to Britain and their descendants are incredibly diverse. This year sees the 50th anniversary of the arrival of the SS Windrush at Tilbury Docks on 22 June 1948. The 492 passengers and all those who followed them have made an enormous contribution to today's British society. Every area of British life has been enriched by their presence. In politics and public life; the economy and public service; medicine, law, and teaching; and the cultural and sporting elements of our national life, individuals and communities have made a positive impact, helping Britain to develop. Part of that development is in our national identity, which now reflects our multi-cultural and multi-racial society.

It examines recent immigration trends and sets them in the context of the growth in numbers of passengers travelling to the UK:

> 1.4 The availability of rapid, mass communication means much better access to information about the opportunities and economic circumstances in other parts of the world. People living in countries with weaker economies receive daily images of the potential economic and other social benefits available in richer countries across the globe. The knowledge of such opportunities, as it has always done, provides an incentive to economic migration, but it is now available to a much

> larger population. And that population is better informed about the comparative benefits of different countries, whether it be in relation to the nature of job opportunities, or other factors such as distance, ease of entry, welfare facilities, family ties, chances of being removed and language and cultural or historical links. The desire to move is obviously strengthened where relative poverty is combined with political instability.
>
> 1.5 In recent years, the number of passengers travelling to the UK, including British citizens returning, has increased by an average of nearly 8% each year. Over the past five years, arrivals rose from 55 million in 1992/93 to 80 million in 1997/98
>
> 1.6 Most of this increase in travel stems from more people travelling abroad for legitimate purposes including business, study and holidays. As such, the growth in the number of passengers travelling to the UK is something which the Government welcomes and wishes to encourage. But access to cheap international travel has also provided a practical means by which economic migrants can seek to realise their desire for a better life. Rather than being confined to neighbouring countries within reach by more traditional forms of travel, economic migrants have a much wider range of choice about their country of destination.

Chapter 3 analyses failings of the current system:

> 3.1 Our current system of immigration control is too complex. In recent decades it has failed to keep pace with outside developments. Past attempts at change have been piecemeal. Typically solutions to a problem in one area have often created another elsewhere. Despite the professionalism and dedication of staff at all levels, the complexity of some rules, too many outdated procedures and chronic under-investment make it increasingly difficult for the system to deal quickly with those entitled to enter or remain and to deal firmly with those who are not. The Government does not underestimate the challenge which a complete overhaul of the immigration and asylum system presents. The issues are complex and, because of their impact on the lives of individual people and their families, extremely sensitive. Nevertheless, the Government is determined to undertake a comprehensive modernisation of our controls in order to deliver the fairer, faster and firmer policy to which it is committed.

The 'piecemeal' system is to be replaced by an integrated co-ordinated approach in which no aspect of immigration is treated separately. Chapter 5 looks at pre-entry controls and announces the intention to establish a single management structure in the UK to manage the entry clearance operation overseas - at present the responsibility of the Foreign and Commonwealth Office - and to provide more effective links between the on-entry and after-entry controls (para 5.6). In order to stem migratory pressures at source there will be increased liaison with ministerial counterparts abroad and use of radio and television networks abroad "to correct any misconceptions that the UK is a "soft touch"" (para 5.16). The number of airline liaison officers to advise and train airlines and carriers about how to prevent the movement of inadequately documented passengers is to be increased

from five to about 20 by the end of 1999 (para 5.20). The white paper shows a commitment to greater openness to sustain public confidence in the integrity of immigration control. It refers to the publication of the Immigration Directorate's and the Asylum Directorate's instructions to immigration officers and caseworkers which have been made available in disclosable form in a number of publicly listed places and on the Internet (para 7.11). Further instructions "on particular areas of control" are to be made available shortly (para 7.11).

It is foreseen in para 7(12), under the heading "fairer procedures" that a concession would be introduced to deal with problems which arise as a result of the so called "probationary year" in marriage cases. A spouse is admitted for a year in the first instance and may be given indefinite leave to remain at the end of that time provided, among other things, that the marriage is subsisting and the couple intend to live together. If during that time a spouse becomes the victim of domestic violence and leave the matrimonial home, s/he can become liable to deportation because the basis for his/her presence in the UK no longer exists (para 7.12(ii)):

> The Government has been concerned about the situation of those who, having been granted 12 months' leave to enter or remain on the basis of their marriage to a person settled here, become the victims of domestic violence during that period. If they leave the matrimonial home they become liable to deportation and therefore feel themselves trapped in a violent relationship. We believe that the probationary year must be retained as an important safeguard against abuse of the immigration control. But in recognition of the dilemma in which such victims find themselves we are finalising the details of a concession under which those who are able to produce satisfactory evidence, such as a relevant court order, conviction or police caution, showing that they had been the victims of domestic violence during the probationary year, will be granted indefinite leave to remain outside the Immigration Rules. This will also be extended to those in a similar situation who have been given leave to enter or remain for twelve months under the concession for unmarried partners and to those whose spouse or partner dies during the initial 12 month period.

The immigration rules require the Secretary of State, when considering whether to make a deportation order, to consider the compassionate factors in a case.[44] The white paper states the intention to look at the scope for giving such factors a higher profile at every stage in the caseworking process. Mike O'Brien has already stated that MPs' representations should be made before appeals were heard.[45]

Chapter 8 stresses the Government's commitment to the 1951 Convention and other human right instruments of international law. The revision of asylum procedures is to be based on a recognition of mutual obligations - a new convenant (para 8.5):

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44 HC 395 1993-94

45 at a Seminar for MPs, November 1998

> This will involve the Government in recognising and fulfilling obligations to:
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> - protect genuine refugees by scrupulous application of the 1951 Convention;
> - resolve applications quickly; and
> - ensure that no asylum seeker is left destitute while waiting for their application or appeal to be determined.
>
> In return applicants will be expected clearly to recognise their obligations, including to:
>
> - tell the truth about their circumstances;
> - obey the law;
> - keep in regular contact with the authorities considering their claims; and
> - leave the country if their application is ultimately rejected.

The Government's overall strategy is summarised thus (para 8.8):

> The Government will take strong and swift action to transform the asylum process:
>
> - through reorganisation and computerisation of immigration, asylum and nationality processes as a whole;
> - by investing more in the determination of cases to reduce the decision backlog to frictional levels by 2001;
> - by investing more to reduce the number of appeals waiting to be heard;
> - by streamlining the asylum and immigration appeals processes, consolidating multiple appeal rights into a single appeal right and strengthening the role of the Immigration Appeal Tribunal; and
> - by transferring budget responsibility for asylum support to the Home Office and creating a wholly new and much more flexible inter-departmental planning and monitoring process to manage the system more effectively.

The objective is to ensure that by April 2001 most initial asylum decisions will be made within two months of receipt and most appeals to adjudicators will be heard within a further four months.

On procedures, the White paper does not accept that it is necessary for legal representatives to be present at immigration interviews, which are described as a fact finding exercise. This decision is much criticised by organisations involved. The report *Providing Protection* by Justice, ILPA and ARC 1997, stressed that "front-loading" the procedure at the time of the initial decision was the most efficient and fair way to proceed. Responses to the White paper from these involved in the process - e.g. the Refugee Legal Centre, JCWI, Immigration Advisory Service, the United Nations High Commissioner for Refugees and the Law Society are critical of the initial decision making process, the country reports on which decisions are made and on the quality of explanations given for refusals. The response of ILPA (The Immigration Law Practitioners' Association) is typical of many:

> ILPA was a contributing organisation to the *Providing Protection* report. If there is one theme in that Report's analysis of the determination procedure, it is that front-loading the procedure is the most efficient and the fairest way forward. This means resourcing properly both the Home Office and the applicant, the latter through a representative. The Government's stated view that legal representatives are not necessary to enable an applicant to set out a case truthfully is breathtaking in its short-sightedness and insincerity. Of course, the issue is not just a matter of representatives at interview. The issue is also whether applicants will have a clear idea of the procedure which they are about to enter; whether they will understand the importance of establishing a correct chronology; and whether they can explain what has happened to them personally as well as the context of their narrative, and will know what is relevant to include in their case.
> The issue is also one of trust. The presence of a legal representative also helps procedures by giving applicants the confidence that they can generally rely on the *bona fides* of the official who is about to interview them. ILPA's view is that an applicant who is properly advised before an initial interview and represented at it, is far more likely to give the full and accurate account of his/her application, which is required for an early and correct decision, (including a decision which, if negative, is likely to be upheld on appeal).
>
> The Government seems obsessed by the subtext that good representation will result in people getting protection which they should not be getting, and that the transaction between an asylum seeker and the interviewer is a simple one which good legal advice obfuscates. ILPA would repeat: advice prior to interview is a matter of justice, and also a matter of efficiency. So is representation at interview. When the determination system is considered as a whole, the fastest decisions are the ones which are right first time, whether grants of status, or refusal for the right reasons. The statement that 'an asylum interview is essentially a fact-finding exercise' grossly underestimates its importance and is contradicted by statements made elsewhere by decision-makers that the interview is in fact about credibility.
>
> The failure to train immigration officers and caseworkers sufficiently in country of origin information is another aspect of the problem. It entirely ignores the cultural complexities of the event, the trauma involved in fleeing one's family, one's past, and one's commitments, the contrast between years spent hiding information and the sudden necessity for complete disclosure. That this section deals only with legal representation at interview, (as opposed to the broader issues around the provision of advice at this stage of the procedure), and then only to discount it, shows the failure of this section of the White Paper.

Also relevant to discussion of initial decision making is the announcement in the White paper that in port cases the opportunity for presenting further evidence after the interview was to be reduced to five days, with immediate effect (para 8.11):

> 8.11 In a fair asylum process where speed of decision-making remains an important element both in identifying the genuine refugee and countering abuse, the Government believes it is no longer justified in continuing to maintain the disparity in the time presently allowed after asylum interview for the submission

> of further material before a decision is made. At present this is 28 days for most port asylum claimants but five days for in-country applicants. The Government has decided with immediate effect to standardise the period allowed for all asylum seekers at five days. This will end the distinction between in-country and port asylum applicants; apply the same rule to all asylum seekers; contribute to the speeding up of the asylum consideration and decision-making process whilst allowing a reasonable period for further representations post-interview.

This was greeted with concern by many respondents to the white paper, on the grounds that the difference with in country applicants should be maintained because the latter would have had more chance to seek advice and collect evidence in advance. UNHCR expressed concern:

> UNHCR is concerned about the introduction of a five day limit for submitting representations after an asylum interview. For a sometimes traumatized and disoriented applicant to obtain documents from the home country, collect country of origin information, prepare complex representations and/or get medical certification of torture, five days is clearly insufficient. In our view, a minimum period of 14 days for in-country and port applicants is required, such period having to be applied with flexibility, especially for medical evidence.

Asylum Aid commented "If the Home Office wishes to abolish unfair distinctions between port and in country applicants, it should remove Immigration Officers from the information gathering process and ensure that all asylum applicants, regardless of where they happen to have claimed asylum, are interviewed by properly trained officials from the Home Office. A similar measure to speed up the decision making process in "abusive" asylum claims was announced on 27 October 1997, at a time when Czech and Slovak gypsies were arriving in some numbers at East Coast ports.

Quality standards are addressed in Chapter 9 of the white paper, which reports the setting up of a Consultation Group of practitioners, interest groups and officials, to consider the format and collection of country information (para 9.5). They are looking closely at the model of the Canadian Immigration and Refugee Board documentation centre, described in the *Providing Protection* report. It is recognised that decision takers need clear guidance on the 1951 Convention "in an organisational structure and culture that promotes personal responsibility, clear standards of performance, and a commitment to quality decision taking" (para 9.7). The new casework programme is to underpin this.

Perhaps the most far-reaching and controversial administrative action announced in the White paper is that proposed in Chapter 8 to deal with the asylum decision backlog:

> 8.28 In dealing with the backlog of cases it has inherited, the Government will adopt measures which are both firm and fair as well as promoting a faster process. There can be no question of an amnesty for those in the backlog. This would be unfair and would be seen as a reward for those who would abuse the system. Equally it would be unfair to ignore the consequences of very long delays, which are no fault of the applicant, in terms of the applicant's ties in this

> country or elsewhere. The Government will therefore adopt an approach in which the effects of long delays in reaching a decision will be taken into account and weighed with other considerations, but only in due proportion and in appropriate cases.

Applications still awaiting a decision which were made after 31 December 1995 are not affected. Earlier applications are to be considered in two groups:

> 8.29 Such delay will not normally be a factor at all in the consideration of applications in the backlog dating from after 1995. Applications from before that date will be considered broadly in two groups. In certain of the very oldest cases, where an asylum application was made before the coming into force on 1 July 1993 of the Asylum and Immigration Appeals Act 1993, delay in itself will normally be considered so serious as to justify, as a matter of fairness, the grant of indefinite leave to enter or remain. This will not apply, however, to applicants whose presence here is not conducive to the public good (for example, on the basis of their conviction for a serious criminal offence), nor to any application for asylum made after the commencement of removal or deportation action against the applicant. Such cases will continue to be assessed on their merits without any presumptive weight being given to the delay in reaching a decision. Altogether in the pre-1993 Act group there are estimated to be a total of around 10,000 cases still outstanding.
>
> 8.30 For applications made between 1 July 1993 and 31 December 1995, estimated at about 20,000 cases, delay will not normally of itself justify the grant of leave to enter or remain where asylum is refused, but in individual cases will be weighed up with other considerations and, if there are specific compassionate or other exceptional factors present which are linked to the delay or which compound its effects on the applicant's situation, a decision to grant limited leave to enter or remain may then be justified. The sort of factors, which might be relevant here, not otherwise by themselves sufficient to justify leave to enter or remain, could include such things as the presence of children attending school or a continuing record of voluntary or other work by the applicant in the local community.

Work has already begun on the backlogs, and consideration of pre 1993 cases will not usually require interviews:[46]

> It is unlikely that very many of these applicants will need to be interviewed. Some applicants will already have been interviewed and others will have provided full details of their asylum claim by way of a self-completion questionnaire commonly in use at the time these applications were made. The decision whether to interview will be taken individually as each case is examined.

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[46] HC Deb 31 July 1998 vol 317 c 838W

On 18 January 1999, Mike O'Brien reported progress:[47]

> Work is now starting on the applications lodged before July 1993 and we expect to have completed most of them by May 1999. Work is about to start on the outstanding applications lodged between July 1993 and December 1995 and it is our aim to have resolved these during the financial year 1999-2000.

Those granted ILR (indefinite leave to remain) exceptionally under the pre-1 July 1993 measures have not been granted asylum and do not enjoy those entitlements which attach to refugee status, such as family reunion and a UN travel document. Refugees can bring immediate family members to join them without the application of the maintenance and accommodation and "no recourse to public funds" rules: those with ILR will be entitled to bring family members to join them provided, like other settled persons in the UK they can meet the requirements of the immigration rules. If the asylum claim was made after service of a notice of intention to deport, or illegal entry papers, the applicant is excluded from the policy. Also excluded are those who have been convicted of a serious offence; it is not known with any certainty how many may be affected. Mike O'Brien explained on 8 December 1998:[48]

> The system we inherited for identifying asylum seekers who have offended requires the police and prison service to inform the Immigration and Nationality Directorate (IND) when someone subject to immigration control is convicted of any offence against the person, any drugs offence or any immigration offence or any other offence where a sentence of imprisonment of 12 months or more is imposed. In addition IND is notified where a court recommends that an offender should be deported. Other offences may be reported but there is no requirement for this to be done.
>
> This system produced records which showed that, in 1997, 14 persons who applied for asylum at some stage were recommended for deportation by a court and a further four were issued with notices of intention to deport on grounds conducive to the public good following conviction for a criminal offence. The current records are likely to under-estimate the numbers involved but it is difficult to assess by precisely how much. I have asked officials to re-examine and recommend improvements to the inherited process of collecting this data as part of our process of modernising the information systems in IND.

In the case of post 1 July 1993 applications lodged before 1 January 1996, the asylum application will be fully considered. The number of cases undecided in this category was set last month at 25,800:[49]

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47 HC Deb vol 323, c 332W
48 HC Deb vol 322 c 108W
49 HC Deb 26 January 1999 vol 324 c 198-9W

Asylum applications made between 1 July 1993 and 31 December 1995 by status as at the end of 1998[1]

Case status as at 31 December 1998

Granted asylum (%)	6
Granted exceptional leave (%)	13
Refused after full consideration (%)	69
Refused on 3rd Country grounds	4
Para 340 refusal[2] (%)	8

Case status as at 31 December 1998

Total with decisions[3]	62,000
Undecided[3]	25,800
Total applications[3]	87,700

[1] Percentages are estimates, rounded to the nearest whole number, based on cases for which information is recorded.

[2] Paragraph 340 of Immigration Rules. For failure to provide evidence to support the asylum claim within a reasonable period, including failure to respond to invitation to interview.

[3] Rounded to the nearest 100, excluding dependants.

A more recent question produced a reduced figure - discovered possibly, because work on dealing with the backlog has begun: Mike O'Brien said on 16 February 1999 that the estimate of 20,000 in the white paper is likely to be reduced following a recent count.[50]

On 19 March 1998, it was revealed that there had since the early 1990s been a practice of granting exceptional leave where an asylum claim had been outstanding for a long time:[51]

> **Mr. Mike O'Brien:** Whilst each asylum claim is considered on its individual merits, it has been a long-standing practice (since the early 1990s) to consider the grant of exceptional leave, on account of the length of stay here, in those asylum cases where a decision had not been taken seven years after the application was made. There are criteria for considering such cases and the grant of exceptional leave is not an automatic outcome. We will publish the relevant guidance to caseworkers shortly and a copy will be placed in the Library.

A table showing what percentage of decisions 1988-98 was to grant exceptional leave is given in the Statistical Appendix.

The July 1998 version of the Asylum Directorate Instructions on criteria for granting exceptional leave after refusal of asylum makes grant of ELR mandatory "where the 1951 convention requirements are not met in the individual case, but return to the country of origin would result in the applicants being subjected to torture or their cruel, inhuman or degrading treatment, or where the removal would result in an unjustifiable break up of family life". The previous criteria were not expressed in terminology which reflects the

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[50] HC Deb vol 325 c 649W

[51] HC Deb vol 308 c 682

European Convention on Human Rights and neither was there a requirement to grant ELR if they were satisfied. The 'seven year' policy is still there, but is a discretionary option: "exceptional leave *may* be granted in cases where a decision has not been taken seven years after the application was made".

The backlog proposals have on the whole been greeted as a pragmatic solution, though it is widely perceived as unfair that a distinction should be made between those claims on which a decision had been made and those not reached, when this was largely a matter of chance and the length of residence and 'close links' criteria may be the same.

Chapter 9 makes new provision with immediate effect for settlement for those granted refugee status or exception leave to remain (ELR). Before 27 July 1998 people recognised as refugees were given four years' leave to enter or remain and could qualify for settlement or indefinite leave (ILR) at the end of that time. Note that ILR is not the same as right of abode which can be acquired only by becoming a British citizen. Refugees are now to be granted immediate settlement, with a view to helping them "integrate more easily and quickly into society" (para 9.3). The change has implications for the acquisition of citizenship: in general a person can apply for naturalisation if he has been resident in the UK for 5 years and has been free of time limits on stay for the last of those 5 years.

People granted ELR were usually given one year's leave in the first instance followed by two renewals at three year intervals; after seven years residence they could be eligible and considered for settlement. This has now been reduced to four years. Grant of settlement is being done on a phased basis, so that all those granted exceptional leave before the change in practice are considered for settlement by 27 July 2002 (4 years after the change).

Chapter 10 is concerned with encouraging citizenship and the 'sharing of rights and responsibilities' as part of the integration process (para 10.1). Nationality casework is to be included in the Integrated Casework Directorate. The backlog of 96,000 cases, together with an average waiting time of around 18 months is seen as indefensible in view of the fee levels paid (they range from £120 to £150). The Government intends to apply more resources to nationality work and "Consideration will be given to denting financial mechanisms which would allow the fees received from applicants in future to be better related to the resources allocated to processing citizen cases". Para 10.7 announces the intention to create a more flexible approach to the residence requirements for naturalisation set out in the *British Nationality Act 1981*, which prescribes strict limits to the amount of time that may be spent abroad during the qualifying period. It is proposed to help those "who travel abroad on behalf of firms in this country to drum up business", who are ordinarily resident in the UK and pay taxes here, by taking into account the overall length of their residence and the reasons for their absences. It does not propose to relax the rules for the wives of British citizens working abroad who can find it difficult to spend the year in the UK with their husbands which is necessary to acquire ILR, a basic requirement for naturalisation.

V The Immigration and Asylum Bill 1998-99 Bill 42

The Bill is expected to go to a Special Standing Committee before Committee Stage. Erskine May explains the setting up and powers of such a committee, which are comparable to those of select committee except for the limitations on sittings:[52]

> **Special standing committees**
>
> Standing Order No 91 provides for the appointment of special standing committees to which bills may be committed after second reading under Standing Order No 63(2). Such committees have power under Standing Order No 91(1) for 28 days after committal (excluding periods when the House is adjourned for more than two days) to send for persons, papers and records, to hold one morning sitting in private and to hold up to three morning sittings in public, each of not more than three hours' length, for the purpose of taking oral evidence. Unless the committee otherwise orders, evidence is given in public. It is printed in the Official Report of the committees' debates, together with any written evidence ordered by the committee to be printed.
>
> For these sittings the Speaker may appoint any Member other than a Minister to serve as chairman; the chairman so appointed is counted for the purpose of calculating the quorum. The chairman so appointed has normally been the chairman of the select committee relevant to the subject matter of the bill committed to the committee. After the sittings to take evidence have been concluded, a special standing committee proceeds to consider the bill in the same way as any other standing committee appointed to consider a bill.' For these latter proceedings the chair is taken by a chairman nominated by the Speaker from the Chairmen's Panel (cf p 695), although the remainder of the membership of the committee is unchanged

Despite the efforts of the then Opposition, the Bill which became the 1996 Act did not go to a special standing committee.

VI Part I - Immigration

Clauses 1-3 deal with leave to enter and remain and, in general implement the measures envisaged by the white paper to improve controls on entry at a time when the number of passengers arriving in the UK has increased by nearly 50%, while staffing levels have risen less than 10% (para 6.2). In order further to reduce pressure on immigration officers, para 6.6 proposed various changes:

> 6.6 The Government believes that greater operational flexibility is essential in a modern immigration control. Resources must be able to be deployed rapidly to

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[52] Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament, 22 ed., 1997

> areas of greater risk. Our current controls are based on the grant of written leave to enter or remain. The Government intends to retain the fundamental concept of leave and thus ensure all arriving passengers should continue to be seen by immigration staff. But there is scope to adapt the form and manner in which the control is carried out to improve its effectiveness. For example, there is no reason in principle, subject to safeguards (including data protection requirements) and availability of the appropriate technology, why there should not be an electronic record of leave to enter or remain rather than persist in every case with a system of stamps in passports which was designed for another age. Quite apart from new technology, there are also opportunities to operate the controls more effectively by integrating the procedures so that the issue of a visa or entry clearance may also be treated as leave to enter, or by allowing multiple visits within the validity of a visa or for the period of extant leave previously granted. This will enable staff to be deployed from more routine tasks into areas of highest risk.

Under s 4(1) of the 1971 Act, the power to grant or refuse leave to enter the United Kingdom (required by all arrivals except British citizens, EEA nationals and some others with right of abode and a certificate of entitlement) can be exercised only by an immigration officer, while the power to give or refuse leave to remain, or to vary a person's leave to enter or remain can be exercised only by the Secretary of State. Clause 1(7) enables the Secretary of State, in circumstances to be set out in an order, also to grant leave to enter.

The white paper stated that "The Government intends to retain the fundamental concept of leave and thus ensure all arriving passengers should be seen by immigration staff" (para 6.6). Visa nationals, people intending to settle in the UK and some others require entry clearance before travelling to the UK, and the issue of such documents at British diplomatic ports abroad is the responsibility of the Foreign and Commonwealth Office - though the white paper states in para 5.6 the intention to create a single management structure in the UK to manage the overseas operation. Possession of prior entry clearance at the moment does not necessarily guarantee that the immigration officer at the port of entry will automatically give leave to enter. The immigration rules set out the circumstances in which leave may be refused:[53]

> 321. A person seeking leave to enter the United Kingdom who holds an entry clearance which was duly issued to him and is still current may be refused leave to enter only where the Immigration Officer is satisfied that:
>
> > (i) whether or not to the holder's knowledge, false representations were employed or material facts were not disclosed, either in writing or orally, for the purpose of obtaining the entry clearance; or
> > (ii) a change of circumstances since it was issued has removed the basis of the holder's claim to admission, except where the change of circumstances amounts solely to the person becoming over age for entry in one of the

[53] 1993-94 HC 395

> categories contained in paragraphs 296-316 of these Rules since the issue of the entry clearance; or
> (iii) refusal is justified on grounds of restricted returnability; on medical grounds; on grounds of criminal record; because the person seeking leave to enter is the subject of a deportation order or because exclusion would be conducive to the public good.

Possession of an entry clearance in cases of refusal does, however, allow an in country appeal against the decision.

Clause 1(2) enables provision to be made allowing individuals to be granted or refused leave to enter before their arrival. S 8 of the 1988 Immigration Act provides for an examination by immigration officers of passengers before their arrival or in transit. It is not compulsory, but "the advantage of a pre-arrival stamp is that it saves passengers the bother and wait of the usual immigration examination".[54]

The possibility of electronic "smart cards" to replace written leave is envisaged. An electronic system, but without a card, is already in operation for visitors to Australia, which requires all nationalities except New Zealanders to have a visa, and effectively means that travel agencies or airlines can become a "one-stop travel shop" providing not only transport but also an immediate visa service. Migration Fact Sheet 54 by the Department of Immigration and Multicultural Affairs (DIMA) explains how the system works:

> The ETA system allows the visitor to obtain authority to enter Australia at the same time as the travel agent or airline makes the travel arrangements:
>
> - the travel agent enters the information contained in the applicant's passport into the ETA system via their existing travel or airline reservation system;
> - the ETA system performs an on-line check of DIMA warning records, and if no adverse record of the applicant is detected, the agent is advised that the ETA has been granted;
> - if a "referral" message is received, the agent refers the applicant to the nearest Australian Government office which then deals with the applicant; and
> - no evidence of the ETA is given; the authority is stored electronically.
>
> When the traveller arrives in Australia, Customs and Immigration clearance officers access the authority electronically to facilitate the traveller through the immigration clearance process.

By October 1998, more than 3 million ETAs had been issued, and this is seen as an effective way of processing high numbers of visitors while "maintaining the integrity of the visa system and avoiding significant increases in cost".

It remains to be seen how the orders under clause 2 will specify the form in which leave may be given or imposed and, in the case of electronic records and smart cards, how a passenger would be informed of the nature of the leave granted and by what means he could show a prospective employer for example, that he was allowed to work in the absence of a stamp in his passport.

By **clause 1** the new clause 3A(1)(d) to be inserted in the 1971 Act provides for an order to be made to the effect that a person's leave to enter will not lapse on his leaving the common travel area. A further order under clause 1(3) may allow an entry clearance to allow the holder to have effect as leave to enter for an unlimited or prescribed number of occasions. At present, S 3(3)(b) of the 1971 Act provides that persons who have been given limited leave to enter or remain, but for more than six months, can travel outside the common travel area and then return, providing they are seeking to resume the same leave, without having to submit to detailed questioning on return, though leave to enter is still required. Similarly visa nationals with more than six months leave to stay do not need a new visa if they return within the time allowed. However, visa national visitors need a new visa on their return because they will have a maximum of six months leave. Multiple entry visas are available for visa nationals who wish to come and go in this way and may be valid for six months, one, two or five years from the date of issue.[55] Again it remains to be seen whether the order will prescribe a minimum length of leave in order for the "no lapse" provision to operate.

Clause 3 provides that fees may be prescribed for the consideration of applications for leave to remain or variation of leave to enter or remain - for example, for grant of settlement for a spouse after the end of the "probationary" year. There is already a power to do so under S 9(1) of the 1998 Act, but it is restricted to applications for indefinite leave and S 9(2) allows exceptions and exemptions to be made by regulation. The power has not been exercised. ILPA comments that it is unjustifiable to ask people to pay for the level of service received at present from the Home Office. There is no indication of what the level of fees is likely to be, though the principle of full cost recovery will operate as it does for entry clearance and nationality fees. For entry clearances, the Consular Fees Order 1997[56] prescribes a fee of £33 for one entry in most temporary capacities, rising to £80 for a five year multiple entry visa. For settlement or marriage, the entry clearance fee is £240, and a certificate of entitlement to the right of abode costs £100. An application for naturalisation costs £150.[57] All fees must be paid with the application and are not refundable.

Clause 6 extends removal powers to those who have entered lawfully, but failed to observe conditions attached to their leave, overstayers and those who have leave to remain by deception. Under S 4 and schedule 2 of the 1971 Act, directions may be given for the removal of illegal entrants. The definition of a illegal entrant has developed

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54 Macdonald's Immigration Law and Practice, 4th ed., 1995, para 3.25
55 Consular Fees Order 1997 - SI 1997/1314
56 SI 1997/1314
57 British Nationality (Fees) Regulations 1996-97 - SI 1996/444

widely since the 1971 Act, S 33(1) of which defines an illegal entrant as "a person unlawfully entering or seeking to enter in breach of a deportation order or of the immigration laws… and includes a person who has so entered". Illegal entrants were first thought of as people entering clandestinely in small boats or hidden in container lorries, but case law has considerably extended the concept so that any deception of an immigration officer as to status or intentions could cause a person to be treated as an illegal entrant. However, what Macdonald refers to as the "shaky jurisprudential foundations for the doctrine of illegal entry"[58] have now been replaced by a statutory definition. Sch 2 para 4 of the 1996 Act added "entering or seeking to enter by means which include deception by another person". S 4 of the 1996 Act added a new offence to s 24(1) which is committed by a person "If by means which include deception by him he obtains or seeks to obtain leave to enter or remain in the United Kingdom". Thus any deception by himself, or by a third party may render a person an illegal entrant.

Clause 16 replaces and extends the offence by including a person who by deception seeks to obtain the avoidance, postponement or revocation of enforcement action against him. To the penalties for summary conviction under the 1971 Act as amended, clause 16 3(b) adds a penalty for conviction on indictment of imprisonment for up to two years, or an (unlimited) fine, or both.

People to whom **clause 6** applies would normally be subject to deportation procedure under ss 3(5)(a) and 3(5)(aa) of the 1971 Act, but will now be dealt with by administrative removal. Deportation attracts a right of appeal in the UK under s 15(1)(a) of the 1971 Act; a person may appeal against removal directions under s 16(1), but only after removal and only on the grounds that he was not an illegal entrant. The clause would, therefore remove completely deportation appeal rights from long term residents and their families who were found to have overstayed or breached another condition of their leave. Rights of appeal in such cases are already restricted by the 1998 Immigration Act, s 5(1) of which provides that a person may appeal only on the grounds that there is no power in law to make the deportation order for the reasons stated in the notice of the decision - ie that the Home Office had made some error. This restriction does not apply to a person last given leave to enter more than seven years before the date of the decision, so it is now long term residents who will lose the right of appeal.

The white paper states that "Those who are removed administratively rather than deported would not face the same barriers to readmission". This refers to the fact that a person may not return to the UK until the deportation order has been revoked and the immigration rules state that "…save in the most exceptional circumstances, the Secretary of State will not revoke the order unless the person has been absent from the United Kingdom for a period of at least 3 years since it was made".[59] The rules also, however, state that entry clearance to the United Kingdom should normally be refused on the

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58 op cit supplement to the 4th edition

59 1993-94 HC 395 para 391

grounds of failure to observe the time limit or conditions attached to any grant of leave to enter or remain, or the obtaining of previous leave to enter or remain by deception (para 320). When taking a decision to deport, the Home Secretary is required to balance the public interest against any compassionate circumstances of the case, and to take into account all relevant factors, including:[60]

(i) age;
(ii) length of residence in the United Kingdom;
(iii) strength of connections with the United Kingdom;
(iv) personal history, including character, conduct and employment record;
(v) domestic circumstances;
(vi) previous criminal record and the nature of any offence of which the person has been convicted;
(vii) compassionate circumstances;
(viii) any representations received on the person's behalf.

This mandatory protection will be lost with the removal of the power to deport. However, there may be an appeal in such circumstances under the new right of appeal under **clause 47** against decisions affecting a person's entitlement to enter or remain in the UK which are alleged to be unlawful under s 6(1) of the *Human Rights Act 1998*. The jurisprudence of the European Court is not, however, particularly helpful in that Article 8, for example, which proclaims the right to family life does not "guarantee the right to family life in a particular country, but only an effective family life as such, no matter where".[61] Much would depend on whether the family was able to move elsewhere.

Clause 13 of the Bill requires the Secretary of State to issue a code of practice as to the measures which an employer is to take so that, while avoiding the commission of an offence under S 8 of the 1996 Act, he also avoids unlawful discrimination under the *Race Relations Act 1976* and the *Race Relations (Northern Ireland) Order 1977*.

S 8 of the 1996 Act created a new offence for employers who employ persons who are subject to immigration control and are not entitled to work in the UK. The offence is triable summarily and the maximum fine is £5,000. There have been no prosecutions since the provision came into force on 27 January 1997.[62]

It had been anticipated by many that s 8 would be repealed in view of the criticism of it on race relations grounds by the opposition front bench during the passage of the Act and just before the election. However, both the white paper and the following statement on

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60 ibid, para 364
61 The European Convention on Human Rights, 2nd ed., 1996 by Francis G Jacobs and Robin C A White, p 183
62 HC Deb 16 February 1999 vol 325 c 655W

27 October 1998 make it clear that the intention is to enhance the protection against discrimination:[63]

> **Mr. Mike O'Brien:** To date, the approach of the immigration Service towards the enforcement of section 8 of the Asylum and Immigration Act 1996 has been that where, in the course of normal operational activity, an employer is found to have breached section 8, they will be advised of its provisions and issued with a warning letter. Among other things, this warns them that, if they continue to offend, consideration will be given to prosecution. There is no central record of the number of such letters which have been issued: and there have been no prosecutions to date.
>
> This will continue to be our normal approach. However, as we made clear in the White Paper "Fairer, Faster and Firmer-A Modern Approach to Immigration and Asylum", where there is evidence of organised racketeering and the exploitation of vulnerable groups of overseas workers, we will encourage the early referral of the case to the prosecuting authorities.

The offence is one of strict liability, so the prosecution does not have to prove that the employer had any knowledge of the employee's immigration status or conditions of stay. However, if such knowledge can be proved, it removes the employer's defence provided under s 8(2) that documentary evidence had been produced which appeared to show eligibility to work and a copy of it had been kept by him. The list of such documents is contained in the Immigration (Restriction on Employment) Order 1996, SI 1996/3225.
Guidance for employers was also issued by the Home Office about the sort of checks that could be made. It warns that "If you try to avoid prosecution by refusing to consider for a job anyone who looks or sounds foreign, you are likely to contravene the *Race Relations Act 1996*". The section on avoiding racial discrimination states that the best way to ensure that no discrimination takes place is to treat all applicants for a job in the same way. It exhorts "Remember that the population of the United Kingdom is ethnically diverse. Most people from ethnic minorities are British citizens. Many were born here. Most non-British citizens from the ethnic minorities are entitled to work here". It also warns that if a complaint of discrimination on racial grounds is upheld by a industrial tribunal, there is no limit on the compensation which may be ordered.

In their response to the white paper, the CRE suggest that guidance has not worked:

> Despite the publication of Home Office guidelines and the Commission's own guide to good practice for employers, we continue to receive enquiries from responsible and competent employers in both the private and public sectors which reveal widespread misunderstanding and the inadvertent application of unlawful discriminatory practices.

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[63] HC Deb 318 c 119W

They foresaw that in the context of the new support arrangements asylum seekers desperate for cash would have a powerful incentive to work illegally and would fall prey to the most unscrupulous and exploitative employers. They advocate repeal of the present provision and its replacement with a new offence:

> We understand that the Government's real target for use of Section 8 is the small number of employers directly linked to immigration racketeering. We therefore recommend that Section 8 should be repealed and instead that a new offence, committed by employers who deliberately and knowingly assist violation of immigration controls, should be added to the Immigration Act 1971. This would make clear the Government's intention to prevent exploitation and racketeering, and would return one important part of immigration control to immigration officers, relieving law-abiding employers of an inappropriate burden.

Clause 15 places a duty on superintendent registrars to report to the Home Office marriages which they reasonably suspect as 'sham' marriages - undertaken for the purpose of gaining an immigration advantage. The white paper does not provide statistics but states that "there is ample evidence to show that large numbers of bogus marriages are being contracted in the UK every year" (para 11.4). Superintendent registrars are advised that where they have good reason to suspect that a proposed marriage has been arranged for the sole purpose of evading statutory immigration controls, they should report the facts of the case to the General Register Officer. If there is sufficient evidence to support the view of the superintendent registrar, the matter is passed on to the Home Office for notice.
Some figures were provided in 1995:[64]

The number of marriages reported by the Registrar General to the Home Office were
1989: Nil
1990: Nil
1991: 19
1992: 94
1993: 304
1994:404
1995_1 90

$_1$ Relates to the first quarter only

It is believed that the figure has remained at about 400-500 per year.

A person already in the UK who marries a person settled here will be given an extension of stay for a year, at the end of which s/he may be granted indefinite leave if the marriage is seen to be genuine and subsisting. Marriage to a person settled here will not necessarily prevent removal or deportation. Marriage policy DP 3/96 states that where a

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[64] HC Deb 3 May 1995 vol 259 c 273W

person has a genuine and subsisting marriage with someone settled here and the people have lived together in country continuously since their marriage for at least two years *before* the commencement of enforcement action, and it is unreasonable (because of close ties with the UK, or health problems) to expect the settled spouse to accompany the other on removal, deportation or illegal entry action should not normally be initiated. When a person marries after the commencement of enforcement action removal is normally to be enforced and the subject can rely only on any compelling and compassionate factors that can be put forward.

The white paper suggests that registrars will be given a statutory power to call for documentary evidence of age, identity and marital status. These provisions of the Bill are described below, p 68.

VII Part II - Carriers' liability

This part of the Bill repeals in its entirety the *Immigration (Carriers' Liability) Act 1987* which enabled fines to be levied on carriers responsible for bringing passengers to the UK without adequate documentation. The immediate reason for its introduction was the arrival without visas of 64 Tamils on 13 February 1987, who then applied for asylum. The Act at first imposed a charge of £1000 per passenger and this was doubled to £2,000 by the Immigration (Carriers' Liability Prescribed Sum) Order 1991 (SI 1991/1497) which came into force on 1 August 1991. On 9 April 1998, the Channel Tunnel (Carriers' Liability) Order 1998 (SI 1998/1015) came into force and extended the provisions of the 1987 Act to passenger train services from Belgium using the Channel Tunnel. The White paper explains why it was not extended to Eurostar services from Paris (para 5.14):

> We still face difficulties with passengers arriving from Paris on Eurostar services where legal difficulties in France have prevented us from extending the provisions of the Act. These questions are being urgently discussed with the French Government. The Immigration (Carriers' Liability) Act 1987 is an important and effective deterrent, although there have been some practical difficulties in its operation, in particular late or non-payment of debt by a few carriers.

On 7 July 1998, Mike O'Brien revealed the amounts of charges imposed since 1987 and of those outstanding then:[65]

> Charges totalling £117.3 million had been levied to 31 May 1998. Of this sum, £78.3 million had been paid, and £28.7 million waived following representations from carriers. £10.3 million remained outstanding.

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[65] HC Deb vol 315 c 427W

This legislation has always been controversial and many respondents to the White paper advocated its repeal because it is argued that, combined with the activities of airline liaison officers, its existence increases the difficulties experienced by people wishing to seek asylum who are thus forced to seek alternative illegal means, often at the hands of exploitative racketeers.

Clauses 18-23 introduce a new civil penalty for persons responsible for the transport of clandestine entrants to the United Kingdom, separate from and in addition to, the 1987 Act provisions. This will apply to road hauliers, ferry companies, etc.

The White paper reports on the scale of clandestine entry (para 1.18):

> It is difficult to estimate the true scale of the problem, but in 1997 there were over 4,000 known incidents of clandestine entry compared with under 500 in 1992. This method of evading the immigration control is continuing to increase, with over 2,700 known cases in the first five months of 1998.

The regulatory impact assessment on the introduction of a civil penalty for carrying clandestine entrants, February 1999 states that the national figure for 1997 was 4043 while in 1998 it was in excess of 8,000: "The costs to the taxpayer of this illegal traffic runs into many millions of pounds". Proposals emerged in October 1998 for a system of fines for lorry duties carrying illegal entrants. On 2 January 1999 Mike O'Brien stated that a penalty of £2,000 per passenger would be imposed and that "those drivers who make no efforts to check their vehicles, or take adequate measures, risk paying the penalty".[66] This is in addition to the criminal offence under s 25 of the 1971 Act, the maximum penalty for which is a fine and/or up to 7 years imprisonment. **Clause 23 and 27** provide powers of seizure of 'transporters' (vehicles, ships or aircraft) as security for any penalty and also that they may be sold, but only with the leave of the High Court or Court of Session, if the penalty is not paid on the date by which it should have been paid.

The proposal was greeted with great hostility by the Road Haulage Association (RHA) and the Freighter Transport Association (FTA). It was pointed out that the risk of a fine could deter a driver from handing over clandestine passengers discovered only after arrival in the UK. The industry argued in a paper entitled *Industry proposals on illegal immigrants*, December 1998, that

- there is a fundamental difference between passenger carriers and their relationship to their passengers and a haulier pulling a trailer with no provision for human occupancy
- that supply to open up the back of a trailer would not allow the driver to see whether he had people on board, and the opening of sealed containers could have health and safety implications.

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[66] Home Office Press Notice 2 January 1999

They endorsed the use of sniffer dogs as an alternative to internal inspection and pointed out that their use in the vehicle parks in Zeebrugge and Cherbourg was a significant deterrent. However they pointed out that there was virtually no practical security at Calais. They concluded:

> The industry believes that there are a number of actions that, if taken, will help to address this issue. These can be summarised as follows:
>
> - Industry to issue guidelines to operators on checking vehicles;
> - Industry (and Government and business organisations) to issues guidance to consignors;
> - Analysis to be undertaken on locations, which represent the highest risk;
> - Enforcement activity to be targeted at vehicles/locations found to be most at risk;
> - Further investigation of the potential for the use of Carbon Dioxide samplers and other technological solutions as they become available, including the possibility of their use abroad and/or by haulage operators themselves.,
> - Investigation of practicability of conducting routine checks (utilising $C0_2$ samplers and search dogs) at points of embarkation;
> - Government to exert pressure within the FU to ensure security of EU external borders;
> - Government to negotiate with French/Calais authorities concerning security of Port of Calais.
>
> A system which incorporates all of these elements will, we believe, prove to be very effective in preventing illegal immigrants from entering the UK

The regulatory impact assessment points out that the statutory and policy safeguards will mean that the penalty is not pursued in all cases, but that it will have considerable deterrent value. On 15 February 1999, Mike O'Brien said:[67]

> 8,000 illegal immigrants were brought into Britain in the backs of lorries last year, at a cost to the taxpayer of tens of thousands of pounds. Lorry drivers are neglecting to check their loads. It is difficult to resist the idea that most drivers are either culpable, because they accept bribes, or, at best, negligent, because they do not check their loads. The civil penalties of £2,000 per illegal immigrant will concentrate their minds. We do not want to be forced to fine anyone. Indeed, the

[67] HC Deb vol 325 c 592

> best result would be that we never have to fine anyone because no illegal immigrants are being brought in.

The Bill provides in clause 19 for a code of practice to be drawn up, observance of which is one of the defences set out in clause 20, which includes that the carrier was acting under duress. The new penalty applies to all vehicles, ships or aircraft.

VIII Part IV - Appeals

This part replaces in its entirety Part II of the 1971 Act which provides for appeals. A consultation paper on appeals was published by the Home Office and Lord Chancellor's Department in July 1998. It identified two measures necessary to make the system more effective:

- replacing the current successive rights of appeal with a single right of appeal and
- restructuring the appellate authority.

The consultation paper indicated in para 4.10 that the controversial non-suspensive appeal right in third country cases provided by the 1996 Act would be retained. Commentators have been critical of this decision (implemented by **clause 180** of the Bill), because of what they saw as a pre-election commitment in the Labour Party document, *Fairer, Faster, Firmer* by Jack Straw and Doug Henderson: "Labour will restore the right of in country appeal to those who have travelled through a so-called 'safe' third country. Removing people before they appeal undermines justice". Justice, in their response to the white paper - which announced in para 9.9-10 that the "White List" (of countries where there is no risk of persecution) would be replaced by other arrangements - points out that by so doing, the Government recognised that categorisation by country of origin is inherently unsafe and that what is required is consideration on a case by case basis.

Clause 42 implements a manifesto commitment to re-introduce a "streamlined" right appeal for those who are refused entry for a family visit. The right to appeal was removed by the 1993 Act and its restoration is described as follows in the white paper:

> 5.8 An appeal against a refusal to issue a visa may need to be heard quickly if it is to serve any useful purpose. For example, some applicants may wish to visit the UK to attend a wedding or a funeral, or some other important family event. An appeal which was heard after the event for which a visa was sought would be unlikely to be of any practical value.
>
> 5.9 A right of appeal would also need to involve an independent judicial element if it is to be seen as fair. The Government proposes to offer a choice between an appeal based on written submissions which would be disposed of quickly or an oral hearing of an appeal which would take longer to arrange.

> 5.10 There is no new money to fund appeal rights for visitors. The Government therefore proposes that those who wish to appeal against a refusal to grant entry clearance as a visitor should pay for at least part of the costs of their appeal. The costs will vary depending on the way in which the appeal is disposed of. It will still be open to an applicant to make a fresh application for a visa at any time.

In 1990 and 1991, 19% and 17% respectively of appeals to adjudicators against refusal of entry clearance for temporary purposes were successful.[68] In 1997, the refusal rate for entry clearance for temporary purposes was 5.6% world wide, 11.7% for applications made in the Indian Sub-continent, 7.8% for applications made in Jamaica (not a visa-national country). Entry clearance for a visit is, of course, mandatory for visa nationals, and if a non-visa national is refused leave to enter, possession of entry clearance entitles him to an in country appeal. The pre-1993 appeal right against refusal of entry clearance was exercisable only from abroad.

In the report *A right to family life*, 1996 the National Association of Citizens Advice Bureaux described difficulties experienced by 'clients' families in obtaining entry clearance and identified the requirement to satisfy the ECO of this intention to leave the UK at the end of their visit as introducing "an unacceptable level of discretion into decisions". Because of the perception that a previous refusal would inevitably prejudice a future application, despite assurances given in 1992 NACAB concludes that the only effective redress was the restoration of an appeal right.

Dame Elizabeth Anson, appointed under the 1993 Act to monitor refusals in entry clearance cases where there is no right of appeal, has been concerned about refusals for family visits. In her 1996 Report she commented:

> I am very concerned about applications for family visits especially in the Indian sub-continent and West Africa. Most complaints from MPs and representations come over, refusals in such cases, and from letters in the files it appears there are misunderstandings of the law and practice in enforcing the Immigration Rules in such cases.
>
> Family visits, as I have said in my last report, should be encouraged. Families wish to keep in touch at all ages and custom demands that they or some of them should make financial sacrifices if necessary to enable certain family members to be present or involved. in major family occasions such as weddings, funerals, births etc.

In her 1998 report she notes that in the Indian Sub-continent "All posts now have a computer facility to check on previous applications".

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[68] Source: Control of Immigration Statistics 1991 Cm 2063

As indicated in the white paper, a person who appeals under the new provision will, under clause 42(5) have to pay, on application, a fee to be fixed by regulations, which will be refunded if the appeal is successful. While the restoration of an appeal right has been welcomed, there has been criticism of the requirement to pay.

A consultation paper on fee levels and charging points for civil actions by the Lord Chancellor's Department in November 1998 set out the principles which should underpin a fee structure:

- Fees should not prevent access to justice
- Protection must be provided for litigants of modest means
- Fees should match the costs of the service for which they are charged
- The pay-as-you-go system should be extended but without deterring access to justice
- Issue and enforcement fees should reflect the value of the claim
- Flat rate fees reflecting the cost of the stage or application should be applied at other charging points
- Fees should be set on the basis of average not actual costs
- Fees should be paid by the claimant or, where a specific application has been made, the party who made that application
- Fees should be paid in advance

Another solution for the difficulties experienced by some would-be visitors is the proposal in clause 7 to introduce a financial bond scheme under which a security would be forfeited if the applicant did not leave the UK at the end of their visit. The white paper announced a pilot scheme to try out such a scheme (paras 5-11-12).

The white paper endorsed the proposed reduction of the multiplicity of Immigration and asylum appeal rights afforded by the *Immigration Act 1971* and the 1993 and 1996 Acts. These are usefully set out in Annex D of the Consultation paper. The white paper, on page 19, presents a study of a case which began with entry in June 1985 and ended with deportation in February 1998 and in the course of which immigration and asylum rights of appeal were fully exploited. A single right of appeal is proposed for all lawfully in the UK. All matters relevant to the case, but considered at successive stages under the present system, will be taken into account by the Home Office when making a decision on an application to enter or remain (para 7.16):

> 7.16 The onus is on an applicant to make clear the grounds on which he or she seeks to enter or remain in the UK, including any compassionate factors. The Home Office would then consider whether the application met the requirements of the Immigration Rules and, if not, whether any compassionate factors, including claims on ECHR-related grounds merited an exercise of discretion in favour of the applicant. The intention is that this part of the process should normally be completed within two months. In the event of a refusal of the application there would, provided the applicant was lawfully present in the UK at the time of his application and in all asylum cases, be a single comprehensive right of appeal against the decision when these issues would be independently

> reviewed. The intention is that in most cases the appeal before the adjudicator should produce finality and that the entire process should be completed within six months. Where appropriate an applicant could be removed from the UK after this appeal.

If the applicant is lawfully in the UK, s/he will then have a "one-stop" appeal to an adjudicator in which the onus is on the appellant (in effect similar to the terms of a police caution) to state in answer to a notice from the Home Secretary all the grounds for the appeal so that all relevant issues - including an asylum or ECHR claim can be considered at the same time **(clause 55)**. **Clause 51** provides an appeal on asylum grounds where a person is refused leave to enter or remain or his leave is varied or the Secretary of State decides to make a deportation order against him or refuses to revoke such an order. **Clause 57** provides for "one-stop" appeals in asylum cases in which the special adjudicator is required to consider all aspects of the case - including an ECHR claim unless prevented from doing so because they were not mentioned in the applicant's statement.

The proposals for a single right of appeal were given a cautious welcome by respondents to the white paper and some, like the Immigration Advisory Service, expressed concern that it was impractical to consider ECHR and compassionate circumstances at the stage suggested. The Refugee Legal Centre in their response set out the possible advantages of a single comprehensive appeal, though they too had some concerns:

> The proposal to introduce the comprehensive appeal appeared to be an intelligent step to reducing judicial review. The more administrative decisions which are made subject to appeal lights before the adjudicator and reconstituted Tribunal, the less recourse asylum seekers will have to judicial review. Furthermore, the new framework will encourage participants to the determination process to deal with all relevant issues at a much earlier stage in the process. At present, compelling and compassionate circumstances are often only considered, and in some cases litigated, at the end of the process when asylum appeal rights have been exhausted. Timely consideration of compelling and compassionate circumstances may obviate the need for any appeal, and in any event will reduce delays in the determination process.

UNHCR wrote that "the consolidation of appeals is in our view a sensible proposal", but expressed concern about "the current inconsistent and in our view, sometimes erratic decision making by adjudicators. In order to address this problem, we suggest that the new appeal be reinforced through vigorous and continuous training of adjudicators in international human rights law, refugee law and procedural law".

The Law Society stated that only a "consolidation of the existing rights of appeal to create one genuinely universal and comprehensive right of appeal - that is, one available to *all* rejected applicants whatever the nature of the refusal and covering *all* the circumstances of the case - could make a positive contribution to both the fairness and the efficiency of the system as a whole". ILPA object to the 'one stop' procedure introduced by **clause 55** which they interpret as limiting the type of additional grounds which may be raised to

asylum, ECHR rights or any "prescribed concession". They point out that "good legal representation will be a necessary prerequisite in being able to comply with those complicated provisions" and express fears that the provisions "will exacerbate problems caused to innocent victims of bad representation".

Sch 4 para 11 provides for appeals from the adjudicator to the Tribunal and para 12 from the Tribunal to the Court of Appeal or Court of Session. As at present, however, no further right of appeal will be allowed from the special adjudicator in asylum cases where the Secretary of State has certified the claim (Sch 4 para 9).

The Bill provides that there is no right of appeal under Part IV where exclusion or deportation or leave to enter or refusal of a variation is "conducive to the public good as being in the interests of national security". Here any appeal is to the new commission created by the *Special Immigration Appeals Commission Act 1997*, to replace the non-statutory advisory panel which had considered such cases for the previous 25 years. These arrangements were found by the European Court of Human Rights not to comply with the Convention in the case of *Chahal* in 1996. The 1977 Act was passed to remedy the deficiencies identified by the ECHR particularly the requirement that entitles a person to have the basis of his detention reviewed by a court. The advisory panel was not considered to be a court in the Chahal case. The Act came fully into force in August 1998 and its rules of procedure are set out in the Special Immigration Appeals Commission (Procedure) Rules 1998 (SI 1998/1881).
Clause 59 of the Bill provides for a penalty to be imposed if the Tribunal considers that an appeal has no merit.

More information on appeals is to be made available by the Home Office and the Lord Chancellor's Department in time for the Special Standing Committee.

IX Part VI - Support for asylum seekers

A. Social security and social services

Existing support arrangements for asylum seekers are described as "messy, confusing and expensive" in the White paper (para 8.14). They came about as a result of the withdrawal of entitlement to benefits by the 1996 Act to all asylum seekers except those making their claim at a port, and also of a High Court judgment in October 1996 that local authorities have a duty under s 21 of the *National Assistance Act 1948*: *R v Hammersmith and Fulham London Borough Council ex parte M* (and others) *Times*, 10.10.96. Mr Justice Collins quoted from an 1803 judgment of Lord Ellenborough, Lord Chief Justice, and went on to confirm the duty imposed on local authorities to provide for the applicants who had no other means of support:

> That conclusion did not frustrate the will of Parliament in enacting the 1996 Act. His Lordship found it impossible to believe that Parliament intended that an

> asylum seeker, who was lawfully here and who could not lawfully be removed from the country, should be left destitute, starving and at risk of grave illness and even death because he could find no one to provide him with the bare necessities of life.
>
> If Parliament really did intend that in no circumstances should any assistance, other than hospital care, be available to those asylum seekers, it had to say so in terms.
>
> If it did, it would. almost certainly put itself in breach of the European Convention on Human Rights (1953) (Cmnd 8969) and of the Convention and Protocol relating to the Status of Refugees (1951) (Cmnd 9171) and (1967) (Cmnd 3906) and that was another reason why his Lordship found it unlikely that the safety net had removed.

[69]The previous Government made three Special grants available to local authorities in England and Wales as a contribution towards services for asylum seekers. These grants, which are still in existence are for:

- **Asylum seeking families with children:** that is towards expenditure incurred in providing services by virtue of local authorities' duties to children *in need*. The grant is payable where the duty to provide those services arises as a result of the cuts in social security benefits and help for homeless people introduced by section 11 of and schedule 1 to the *Asylum and Immigration Act 1996* and section 9 of the *Asylum and Immigration Act 1996 or section 185 of the Housing Act 1996.*)

  Under section 17 of the *Children Act 1989*, a local authority has a duty to

  "a) safeguard and promote the welfare of children within their area who are in need; and
  b) so far as is consistent with that duty to promote the upbringing of such children by their families, by providing a range and level of services appropriate to those needs"

  The help available to families under sections 17 of the Children Act is thus wide ranging. It can include assistance in kind and *"in exceptional circumstances"* cash. In addition, a local authority has a duty, under section 18 of the Act, to provide day care for children *in need* within its area.[70]

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[69] by Jo Roll, Social Policy Section

[70] A child is *in need* if: "a) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority under this Part; b) his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or c) he is disabled, and "family" in relation to such a child, includes any person who has parental responsibility for the child and any other person with whom he has been living." (The Children Act 1989 section 17(10).

- **Unaccompanied asylum-seeking children:** that is towards expenditure incurred in providing them with accommodation by virtue of local authorities' duty to provide accommodation for children *in need* under section 20 (1) of the *Children Act 1989* or where the child is subject of a care order under section 31(1) (a) of that Act. This grant is payable where a child is accommodated by placing him/her with a family or other suitable person (but not with a relative) under section 23 (2) (a) of the Children Act, or by maintaining him/her in a community home, voluntary home or registered children's home under section 23 (2) (b), (c) or (d) of that Act.
- **Adults without children**, that is for expenditure incurred in connection with providing accommodation for them by virtue of local authorities duty under section 21 of the National Assistance Act to provide residential accommodation for adults who *by reason of age, illness, disability or any other circumstances are in need of care and attention which is not otherwise available to them*. This also covers expectant and nursing mothers. The grant is payable where the asylum seekers would not have been provided with that accommodation but for the judgement of the Court of Appeal given on 17 February 1997 in *R v City of Westminster and the London Boroughs of Lambeth and Hammersmith and Fulham Ex Parte A P M and X*.

In Scotland a similar system of support for adults has been provided by local authorities under section 12 of the Social Work (Scotland) Act 1968. Unaccompanied children, and families with children, have been supported under the Children (Scotland) Act 1995.[71]

The present Government has continued the Special grants and announced that funding for 1998-99 would be increased by about 18 per cent to £165 to accommodate a single adult asylum seeker per week.[72]

Local authority services are provided in kind to people who apply for asylum in country. For those who apply on arrival at a port, some social security benefits are payable.

The white paper drew attention to the cost of support (para 8.14):

> 8.14 The result has been support arrangements which are messy, confusing and expensive, currently costing about £400 million a year and liable to rise to £800 million a year by 2001/02 if no action is taken to deal with the backlogs and delays in the process. The Court of Appeal judgment relating to the 1948 Act meant that, without warning or preparation, local authority social services departments were presented with a burden which is quite inappropriate, which has become increasingly intolerable and which is unsustainable in the long term, especially in London, where the pressure on accommodation and disruption to other services has been particularly acute.

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[71] *Fairer, Faster and Firmer: a Modern Approach to Immigration and Asylum*, CM4018 page 38, Home office, July 1998

[72] HL Deb 23 February 1998 vol 586 c 403

It went on to identify three objectives for a new support system:

> - to ensure that genuine asylum seekers cannot be left destitute, while containing costs through incentives to asylum seekers to look first to their own means or those of their communities for support;
> - to provide for asylum seekers separately from the main benefits system; and
> - to minimise the incentive to economic migration, particularly by minimising cash payments to asylum seekers.

The Government has decided to start from the position that people who have not established their right to be in the UK should not have access to welfare provision "on the same basis as those whose citizenship or status here gives them an entitlement to benefits when in need" (para 8.18):

> Any support for asylum seekers should operate on a separate basis, with provision offered as a last resort to those who have no other means including support from relatives or friends to which they can turn. The corollary of this is that asylum applications must be resolved much more quickly than at present, so that those who can establish an entitlement to remain in the UK are promptly distinguished from those who cannot.

While it is admitted that "cash based support is administratively convenient and usually less expensive to administer" the more cumbersome provision in kind is "less attractive and provides less of a financial inducement". Take up of provision in kind offered under the *National Assistance Act 1948* is estimated take up of cash benefits by the equivalent eligible group.

The Government concluded that cash payments should no longer be made and that they should explore further the extent to which support should be provided through volunteers or other non cash means.

[73]**Clause 95** of the Bill removes entitlement to all non-contributory social security benefits from persons "subject to immigration control" including asylum seekers. Other groups excluded from entitlement to benefit include illegal entrants and those who have overstayed their leave, persons with limited leave conditional upon having no recourse to public funds, persons in the UK subject to sponsorship undertakings and those whose leave has been extended pending an appeal. EEA nationals are not excluded from benefit and subsection (3) provides the Secretary of State with powers to specify other groups who may not be excluded from benefit.

The current rules which allow asylum seekers to claim Income Support, Housing Benefit and Council Tax benefit in limited circumstances became effective on 5 February 1996.[74]

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[73] by Kim Greener, Social Policy Section

[74] *The Social Security (Persons From Abroad) Miscellaneous Amendments Regulations* SI 1996/30

Prior to this asylum seekers had been able to claim "urgent cases" payments of Income Support (paid at 90% of the usual personal allowance rate for adults plus child rates and premiums) and other non-contributory benefits until their asylum applications had been decided, or pending an appeal. The Regulations introduced in February 1996 restricted entitlement for asylum seekers claiming Income Support and other non-contributory benefits but were successfully challenged in the Court of Appeal in June 1996 and were found to be *ultra vires.*[75] They were reinstated by the *Asylum and Immigration Act 1996.* [76]

The current rules for asylum seekers allow "urgent cases" payments of Income Support, Housing Benefit and Council Tax Benefit to be paid to people in the following categories:

- "port applicants" who applied for asylum immediately upon arrival in the UK
- those applying for asylum following a declaration by the Secretary of State that a country is subject to such a fundamental change in circumstances that a person would not normally be ordered to return there[77]
- those who were claiming prior to 5 February 1996.

Benefit is usually only paid until the Home Office makes and records an initial decision and will not be paid pending an appeal unless the decision was made prior to 5 February 1996.

The white paper foresaw that new national machinery administered by the Home Office would need to be set up to plan and administer the "safety net" scheme.

> 8.22 The administration of a new support scheme for asylum seekers, entirely separate from social security benefits, will require new national machinery to plan and co-ordinate provision, obtaining information from around the country and purchasing places either directly or by contracting with local agencies. Asylum seekers would be expected to take what was available, and would not be able to pick and choose where they were accommodated, but where possible placements would take account of the value of linking to existing communities and the support of voluntary and community groups. An advantage of a national scheme will be the ability to plan strategically for such factors and to do so in consultation with local authorities, voluntary organisations and other concerned parties. This nationwide approach will help to relieve the burden on provision in London, where the majority of asylum seekers are currently concentrated. The budget and the machinery for administering it will be operated by the Home Office. The body responsible for obtaining and allocating accommodation would also be responsible for assessing whether applicants were in genuine need either

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75 *R v Secretary of State for Social Security ex parte Re B and JCWI*

76 Section 11 and Schedule 1

77 Zaire was declared such a country in May 1997 and Sierra Leone in July 1997

> by doing so itself or by contracting out the process to another agency. Provision would be made for a speedy independent review of decisions to refuse support.

The White paper also stated that the 1948 Act would be amended to make clear that social services departments "should not carry the burden of looking after healthy and able bodied asylum seekers" (para 8.23).

It was foreseen that provision would continue to be made under the *Children Act 1989* and the *Children (Scotland) Act 1995* for unaccompanied children claiming asylum (para 8.24).

B. Housing provisions[78]

1. Background

Section 9(1) of the *Asylum & Immigration Act 1996* placed a positive duty on local authorities to secure that 'persons subject to immigration control' (PSICs) are not granted a licence or tenancy of council accommodation. Section 9(2) removed their eligibility for assistance as homeless under Part III of the *Housing Act 1985*. A PSIC could only qualify for housing if he or she fell within a class of persons specified by the Secretary of State.

The Secretary of State made an Order under section 9 of the 1996 Act on 29 July 1996 specifying the 'classes of person' who are subject to immigration control but who could still qualify for housing assistance under Part III of the 1985 Act; this Order came into force on 19 August 1996.[79] Part VII of the *1996 Housing Act*, which came into force on 20 January 1997, replaced Part III of the *1985 Housing Act* in respect of local authorities' duties to homeless people.

Parts VI and VII of the *1996 Housing Act* provide that local authorities have no duty provide accommodation for PSICs unless they fall into a class of persons specified by the Secretary of State. The *Homelessness Regulations 1996*[80] and the *Allocation of Housing Regulations*[81] (as amended) specify those categories of PSICs to whom local authorities *do* owe a duty to secure accommodation. Local authorities were initially prevented from using their own stock for housing asylum seekers to whom they owed a duty to provide accommodation; this restriction was removed on 4 February 1998.[82] The Minister for Housing, Hilary Armstrong, explained the reasons behind this relaxation in the regulations in December 1997:[83]

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78 by Wendy Wilson, Social Policy Section
79 SI 1996/1982
80 SI 1996/2754
81 SI 1996/2753
82 SI 1998/139
83 HC Deb 18 December 1997 c 273W

> **Mr. Hill**: To ask the Secretary of State for the Environment, Transport and the Regions what plans the Government have to allow local authorities to use their own housing stock for asylum seekers where the authority is under a statutory duty to provide accommodation.
>
> **Ms Armstrong**: The Government is currently undertaking a comprehensive spending review of asylum policy, including a review of the policy for providing support to asylum seekers. We recognise that some local authorities, particularly in London, are experiencing difficulties in accommodating asylum seekers to whom various statutory duties are owed.
>
> Consequently, in response to a request from the Association of London Government, the Government proposes to make an Order under section 9 of the Asylum and Immigration Act 1996 which will allow local housing authorities in England and Wales to grant non-secure tenancies and licences in their own housing stock to asylum seekers to whom they owe a statutory duty to provide accommodation.
>
> Authorities will also be able to let their housing stock to other landlords who intend to sub-let the accommodation, on a temporary basis, to asylum seekers who are owed a duty.
>
> Additionally, I intend to invite the Housing Corporation to consider relaxing its guidance, in respect of the use of registered social landlords' long-term stock, to allow them some flexibility in supporting local authorities which owe a statutory duty to accommodate asylum seekers.
>
> These proposals will form temporary arrangements only, and are without prejudice to the outcome of the comprehensive spending review.

The difficulties faced by London local authorities, referred to in the Minister's response, have already led many of them to attempt to accommodate these applicants in other parts of the country. Figures produced by the Association of London Government (ALG) at the end of August reportedly showed that, at that time, London local authorities were supporting the following asylum seekers: 11,266 single adults, 12, 636 people in families, 945 unaccompanied children and 154 young people between the ages of 17 and 19.[84] The ALG warned that accommodation in the capital had reached saturation point and that some authorities were being forced to place people in disused office accommodation and converted leisure centres.[85] The ALG has estimated that dealing with refugees costs the London boroughs around £5.5 million a week, two-thirds of which is repaid in grants by the Government.[86] Camden LBC predicted that supporting asylum seekers would cost them £4.9 million in 1998/99 after taking Government grants into account.[87]

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84 'Asylum seekers provision near to bursting point', *Housing Today*, 3 September 1998
85 'Near breaking point: the asylum crisis', *Housing Today*, 5 November 1998
86 ibid
87 ibid

On 23 November 1998 the Home Secretary announced that new arrangements would be put in place, ahead of the introduction of legislation, to support asylum seekers throughout the country in order to reduce pressure on areas such as London and Dover.[88] He invited the Local Government Association and the ALG to devise arrangements to allow asylum seekers to be relocated regionally; in exchange for the agreement of authorities to this approach he stated that grant arrangements would be revised and that authorities would receive an extra £30 million.[89]
In response to this announcement local authorities have started to develop regional consortia in order to allocate empty housing to asylum seekers.

While welcoming moves to relieve the pressure on certain authorities to accommodate asylum seekers, housing commentators are concerned that plans to disperse them throughout the country will mean that they are isolated from their communities and may lack adequate support.[90] Nick Hardwick of the Refugee Council has stressed the need to group asylum seekers together so that they can provide each other with support; he has also emphasised the desirability of placing them in areas where there is a prospect of employment.[91] There is concern that asylum seekers will be used to fill difficult-to-let homes on the worst estates and that this will result in a large group of multiply disadvantaged people accelerating the spiral of decline in these areas.[92]

The social policy officer of the ALG has reportedly commented that accommodation outside London offers better value for money and that it must be advantageous to have a single agency co-ordinating provision for asylum seekers.[93]

2. The Bill

Part VI of the Bill contains new provisions for the support of asylum seekers, including assistance with housing.

Subsection (3) of clause 97 will amend section 161 of the *1996 Housing Act* (allocation of housing accommodation only to qualifying persons) to provide that a PSIC may not, in future, be allowed to appear on a local authority housing register.[94] Subsections (4) and (5) of clause 97 will disqualify such a person from entitlement to assistance under the homeless provisions of Part VII of the *Housing Act 1996* by amending section 185 of that Act.

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88 Home Office press release 461/98, 23 November 1998
89 ibid
90 'Regional plan for refugees', *Inside Housing* , 27 November 1998
91 'Seeking sanctuary', *Housing Today*, 5 November 1998
92 ibid
93 'Fears over 'no choice' plan', *Housing Today*, 30 July 1998
94 This is the means by which applicants may be allocated long-term social housing.

Clause 74 of the Bill will confer power on the Secretary of State to arrange support for asylum seekers or their dependants who are destitute or who are likely to become destitute within a period to be prescribed by regulations. In housing terms destitution is defined as 'the lack of adequate accommodation or the means to obtain it'.[95] Regulations will set out matters that will be taken into account in determining whether or not a person's accommodation is adequate for these purposes. Subsection (5) of clause 74 sets out certain matters that will not be taken into account in reaching a decision over the adequacy of a person's accommodation, ie:

- The fact that the occupier has no enforceable right to occupy;
- The fact that the accommodation is shared;
- The fact that the accommodation is temporary;
- The location of the accommodation.

Regulations made under clause 74(2) may exclude certain persons from entitlement to support. The Explanatory Notes to the Bill cite an example of a person who had previously caused serious damage to property provided under the support arrangements.[96] The power to provide support will last only as long as destitution (or the threat of it) lasts.[97]

Support provided to an asylum seeker in the form of housing may be issued subject to certain conditions that must be notified to the applicant in writing. These conditions may cover such issues as the behaviour of the applicant and his or her responsibilities as an occupier.[98] Breach of these conditions may result in an applicant's eviction.[99] Schedule 12 to the Bill will remove entitlement to protection under the *Protection from Eviction Act 1977* from asylum seekers who are provided with accommodation under Part VI. This means that it will not be necessary to seek a court eviction order to secure the eviction of asylum seekers. Paragraphs 43 and 50 of Schedule 12 will remove the security of tenure provisions contained in Part IV of the *1985 Housing Act*[100] and Part I of the *1988 Housing Act*[101] from asylum seekers accommodated under Part VI. Corresponding provision is made for Scotland.

Clause 75 sets out the manner in which the Secretary of State may provide support for destitute asylum seekers. Clause 75(1) provides that support can include accommodation. Clause 76 provides for the Secretary of State to have regard to certain factors when arranging support in the form of accommodation. These factors include:[102]

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95 Clause 74(3)(a)
96 para 246
97 Explanatory Notes para 245
98 Clause 74(9) - (11) & Explanatory Notes para 249
99 Explanatory Notes para 249
100 Govern security of tenure for secure tenants.
101 Govern security of tenure for assured tenants.
102 Clause 76(1)

- The need for accommodation to be temporary;
- The desirability of providing accommodation in areas where there is a ready supply;
- Any other matters that may be prescribed (the Explanatory Notes to the Bill suggest that this might cover matters such as the condition of the property[103]).

The Secretary of State is to be specifically prevented from taking account of any preferences applicants may have expressed on the location of their accommodation (clause 76(2)); other expressed preferences may be specifically excluded by regulations. The Explanatory Notes on the Bill cite the example of preferences as to the type of accommodation offered (eg house as opposed to a flat).[104] Clause 76(7) will allow the Secretary of State to disregard any expressed preference over the manner in which support is provided.

The provision of accommodation may cease where the applicant leaves the address voluntarily; this will only apply to extended absences.[105]

The Secretary of State will be able to provide support (including housing) on an interim basis until a formal assessment is carried out by the Home Office to determine whether any entitlement arises under clause 74.[106] This may be necessary when an applicant arrives in the UK at a weekend and needs emergency assistance.[107]

Clause 80 will enable local authorities to provide accommodation for asylum seekers in accordance with arrangements made by the Secretary of State under clause 74. There is no provision for authorities to provide support in other circumstances.[108]

The Explanatory Notes to the Bill state that 'the Secretary of State will be looking to the providers of social housing (essentially local authorities and registered social landlords) for assistance in the provision and management of housing accommodation, and possibly in the provision of essential living needs where these are directly associated with the provision of accommodation'.[109] Clause 81 will require these landlords to co-operate, as far as is reasonable in the circumstances, with a request from the Secretary of State for assistance. The Explanatory Notes state that what is reasonable will depend on the circumstances of each case. It will be reasonable to co-operate providing that suitable spare accommodation is available that can be put at the Secretary of State's disposal in return for appropriate reimbursement.[110] It will not be reasonable to expect co-operation

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[103] para 253
[104] para 254
[105] Clause 77
[106] Clause 79
[107] Explanatory Notes para 262
[108] Explanatory Notes para 263
[109] Explanatory Notes para 264
[110] ibid

where the request gives rise to a conflict with a landlord's constitution or articles of association.[111]

Local authorities will be required to provide the Secretary of State with any information about their housing stock that he may request.[112] This information will inform his decisions on which landlords he will request assistance from; it may also act as a precursor to his designating a 'reception zone' under clause 82.

Clause 82 will give the Secretary of State power to designate an area consisting of the areas of one or more local authorities as a 'reception zone'. It is envisaged that this power will only be used if the Secretary of State is unable to secure sufficient accommodation for asylum seekers by voluntary agreement with local authorities in an area where he is of the view that there is spare housing. Once a reception zone is designated, the Secretary of State will be able to direct an affected local authority to make available to him (or to a person with whom he has contracted for providing support) a specified amount of housing accommodation. The Explanatory Notes state that authorities will be reimbursed the reasonable rent and other charges for property made available in this way.[113]

Subsection (1) of *clause 91* will give the Secretary of State power to make payments to local authorities in connection with expenditure incurred in relation to asylum seekers. The Explanatory Notes state that these payments might cover the cost of providing accommodation for use by asylum seekers (eg rents).[114]

Clause 101 will give a person acting on behalf of the Secretary of State the right to enter any accommodation provided under Part VI to ensure that it is being used by the people for whom it has been provided and is being kept in a reasonable condition. Clause 102 will require the owner or manager of property provided under Part VI to supply the Secretary of State with information about the premises and the persons in occupation. The Explanatory Notes state that this power may be used to require landlords to notify the Secretary of State when an asylum seeker has left or is sub-letting a property.[115]

C. Implementation of the support scheme

The implementation of the White paper proposals, the support power conferred on the Secretary of State and the core tests which will be applied are fully described in the explanatory notes, especially those on clause 74. Asylum seekers may be allowed to work if their claim has not been decided within six months. The object of the new procedures is to complete all stages in that time.

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111 Clause 81(3)
112 Clause 81(4)
113 para 267
114 para 279
115 para 102

These provisions have been much criticised. Many commentators do not accept that case benefits are an inducement to asylum seekers to choose the UK to make their claim. On 27 January Mike O'Brien said:[116]

> The evidence available suggests that the removal of access to benefits to those asylum seekers who do not make their claim at their port of entry leads to a significant reduction in the numbers of asylum seekers. The Government believe that cash is a strong factor in encouraging economic migrants and that the restoration of benefits would lead to a significantly higher number of asylum seekers thereby leading to a much greater cost than the current arrangements. These conclusions come from an examination of the publicly available data.

This view is shared by the Immigration Service Union who make the point that "The removal of entitlement to welfare benefits produced a marked effect in the first months of 1996. The average number of asylum applications in 1995 was 120.5 per day compared with 86 for Jan-May 196".[117] Mr Tincey also points out that genuine asylum seekers are not influenced by financial considerations. ILPA on the other hand point out that the absence of any decisive shift from in country applications to port applications shows that the existence of cash payments has no significant effect on asylum seekers behaviour - see chart in the Statistical Appendix.

Many respondents to the White paper advocate restoration of cash benefits or at least an element of cash - the Refugee Council comments:

> iv. The current voucher systems developed by local authorities for adults are failing to meet even some basic needs such as travel, clothing including underwear, shoes, laundry facilities, phone calls or postage stamps. It is difficult to envisage how a cashless system could meet some day-to-day living expenses even where accommodation is provided in hostels.

They also provide illustrations of the level of cash grants in other EU states:

> The following figures are weekly allowances paid to single adult asylum seekers out of which they are expected to pay for food, clothes, transport, toiletries, and other personal items. Housing is provided separately - most commonly through reception centres or state accommodation - unless stated otherwise.
>
> Sweden: £39.29 - Asylum seekers most take Swedish language classes and work placements to qualify for the allowance. They are allowed to work after four months.
>
> Switzerland: £41.07 - This is an average allowance in state accommodation in Bern. Allowances vary with asylum seekers receiving more if help out in the centres, obey the rules, etc.

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[116] HC Deb 324 c 248W

[117] John Tincey, ISU Information and Research Director in a briefing note dated 13 February 1999

Germany: £41.10 - This information relates to Berlin. Provisions for asylum seekers varies from one land to another. Can be paid in cash or coupons.

Denmark: £45.77 - An additional clothing allowance is available after 150 days.

Luxemburg: £48.00 - After three months asylum seekers are also given a monthly travel card.

Norway: £51.70 - Asylum seekers can also get temporary work permits if they have a job offer.

Finland: £53.47 - Asylum seekers receive the same living allowance as Finish nationals. Accommodation is provided free, normally in reception centres.

Ireland: £63.51 - Medical cards also cover most medical expenses. A rent allowance is provided separately.

Belgium: £99.00 - This is given to those who are not held in reception centres. It does not include accommodation, although a rent allowance is available in certain cases.

Britain currently gives destitute asylum seekers £45.30 if they apply at port. This figure is comparable with the other European countries listed above. However, in-country applicants in the UK are much worse off.

It is perceived that lack of cash could lead to the development of a 'black market' in supermarket vouchers being exchanged for cash - as reported in the *Times*, 11 February 1999 - "Asylo: a singular new currency". Also much criticised is the proposal to disperse asylum seekers with no choice of area, on the grounds that it would remove them from the rest of the community and, more especially, from specialist legal advice. ILPA comments that it is unfair on refugee communities to make them choose between feeding, clothing and housing a new arrival themselves, or having that person housed so far away that the community can provide no practical or initial support. The Immigration Advisory Services looked back at previous dispersal schemes and pointed out that their free advice would require an extra amount of grant-in-aid:

> 8. 22 IAS believes that the proposal to **accommodate asylum seekers** geographically more widely will have many adverse consequences and will prove to be counter-productive as far as cost to the public purse is concerned. First, removing people from their community roots and possible family ties will mean that they will be unable to access the community support networks available to them which may well mean that they will not have resort to linguistic assistance, family and child support and financial assistance from their communities. A policy of dispersal of the Vietnamese boat people (far fewer in number than current asylum seekers) throughout the UK twenty years ago was subsequently acknowledged by all to have caused misery and to have been misconceived. Secondly, IAS is concerned at the lack of availability of competent representation in the regions outside London. IAS is the only national organisation capable of providing coverage throughout the UK. Most immigration specialists are based in London. For IAS to be able to represent an increased proportion of claims in the

> regions an increased amount of grant-in-aid to meet this need will be required. A precursor to ascertaining the extra amount required would be for the Government to give an estimate of the numbers of asylum cases in which the asylum seeker will only be offered accommodation in a region outside London and indicate the regions to which they will be sent.

On 17 February 1999 the draft first version of the *Process Manual for the Asylum Support System*, ("not a statement of intent") produced by the IND Asylum Seekers Support Project was placed in the Library as deposited paper 99/357. It is envisaged that the Home Secretary will establish a new Asylum Support Directorate. Paragraph 7 states that "The overall policy aim is that subsistence support should, as far as possible be given in kind (for example by providing full board or vouchers redeemable at supermarkets or other retail outlets), although there may also be a small cash element for incidental expenses".

The criteria for deciding where to send asylum seekers are also set out:

> 14. Given their backgrounds, asylum seekers may need support and assistance of other kinds as well. So far as possible the aim will be to find locations where there is either an established ethnic community associated with a particular group of asylum seekers, or where appropriate support arrangements are in place or can be arranged. But equally the Home Secretary is alive to the need to avoid over-concentrating asylum seekers in such a way as to jeopardise good community relations. The aim will be to develop "clusters" of sufficient size to allow for mutual support and economies of scale, but not so large as to place undue pressure on local resources.

The expectation at present is that when the new arrangements are fully effective, they will provide accommodation for around 22,000 and subsistence only for around 14,000. Costs, under the old system and estimates for the next three years were described by the Chief Secretary to the Treasury on 4 February 1999:[118]

> **Mr. Milburn:** Asylum support costs are currently divided between the Department of Social Security and the Department of Health. In 1997-98, asylum support cost £374.6 million, of which £305 million was borne by the Department of Social Security. Figures for 1998-99 are not yet available on a comparable basis.
>
> From April 1999, the costs of support for adults and families will be funded from the new asylum seeker support budget managed by the Home Office. The sums of £350 million, £300 million and £250 million were allocated to this in the Comprehensive Spending Review on the basis of estimated costs for the period 1999-2002. Actual spend will depend on a number of factors, such as the number

[118] HC Deb vol 324, c 726W

> of asylum claims and the speed with which these can be handled. My right hon. Friend the Home Secretary may revise these cost estimates in due course.

Arrangements to shadow the new agency approach were announced on 23 November under a deal brokered with local authorities.[119] The Home Secretary said:

> Asylum seekers often choose to join communities of similar ethnic origin and so head for London or remain close to port areas such as Dover.
>
> The strain on those local councils most affected is unbearable and can no longer be sustained. We are intending to legislate as quickly as we can to provide a long term solution, but this is bound to time.
>
> Meanwhile, to relieve the pressure I have invited the Local Government Association and the Association of London Government to devise arrangements to allow asylum seekers to be relocated regionally.
>
> This system shadows our new agency approach set out in the White Paper on immigration. In exchange for an agreement on relocating asylum seekers, grant arrangements will be revised, injecting a further #30 million.
>
> Local authorities will then be able to recover the costs, from the Government, which fall to them in accommodating and supporting asylum seekers

Under the arrangement, local authorities will be able to claim £165 per single adult per week, £230 per week per family, £400 per week for unaccompanied children aged 15 and under (who will probably need to be located with foster parents), and £200 per week for children aged 16 and 17 who can be lodged in hostels.

A draft grant report and Department of Health circular were issued for consultation at the end of January. A Local Government Association circular to Chief Executives of 3 February 1999 anticipated that a total of £208m will be made available for 1998/9. It has been set at £208.2.

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[119] Home Office Press Notice 23.11.98

X Registration of Marriage[120]

Clauses 130 to 133 and Schedule 12 introduce provisions intended to tackle 'sham' civil marriages in England and Wales. Many of these provisions have been proposed before.

At present, there are two main procedures for civil preliminaries to marriage in England and Wales:

(i) certificate - one or other of the parties gives notice to the local registrar (or each local registrar if the parties live in different areas), which is then displayed for 21 days; or

(ii) certificate and licence - if one party has lived in the registration district for fifteen days (as opposed to seven) and the other is resident in England or Wales, for a slightly higher cost either party can give notice in that district; it is not displayed, and the waiting period is only one working day .

Clause 130 seeks instead to introduce a single procedure with a 15-day waiting period, although the Registrar General would be given the power to reduce this period in exceptional circumstances. Each party would have to give notice in their own district of residence, and a seven-day residential qualification for each party would be required. A very similar proposal was mooted by the Law Commission in 1973 in order to help prevent irregular marriages, as the Commission was of the opinion that the law as it stood did not provide a proper opportunity for investigation.[121] It was also suggested in the Green and White papers on registration published by the Conservative government, which pointed out that this would help to unify procedures in England and Wales with those in Scotland.[122]

The Working Paper which preceded the Law Commission's report had proposed a set of rules which was designed to ensure that only those with a sufficient connection with England would be allowed to give notice in England.[123] However, the final report concluded that this would be over-elaborate and unnecessary.[124]

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[120] by Arabella Thorp, Home Affairs Section

[121] *Report on solemnisation of marriage in England and Wales*, 8 May 1973 - Law Com No. 53 [HC 250, 1972-73]. This followed from the Report of a Joint Working Party of the Law Commission and the Registrar General, 8 January 1973.

[122] *Registration: a modern service* - Department of Health, December 1988 [CM 531]; and *Registration: proposals for change* - Department of Health, January 1990 [CM 939]. The law in Scotland was changed by the *Marriage (Scotland) Act 1977* following the Report of a Departmental Committee under the chairmanship of Lord Kilbrandon - (1969) Cmnd 4011.

[123] Law Commission Working Paper no. 35, *Solemnisation of Marriage in England and Wales*, June 1971, paras. 55-57

[124] Law Com No. 53, para. 58

Clause 131(b) adds to the list of statutory declarations a requirement for the parties to state their nationality rather than simply their place of residence.[125] The concept of 'nationality', however, is not always clear, as for example not everybody born in Britain since 1 January 1983 is a British citizen. To support this requirement, the registrar would be given (by **Clause 132)** the power to require evidence about a person's nationality, as well as his name, age and marital status. The lack of any power to call for documentary evidence of these latter matters was recognised by the Law Commission and the Green and White Papers referred to above. In the absence of any kind of certificate of capacity to marry (which are provided for in some countries) it would be extremely difficult for a person to prove he is free to marry. However, Clause 132(3) allows the Registrar General to issue guidance on the evidence he will accept.

Under the current law, the registrar can only refuse to issue a certificate where a person has shown the registrar a lawful impediment to the issue (or where a person whose consent is required has forbidden the issue of a certificate). Such impediments include non-age of one of the parties or the fact that one or other of the parties is already married; but not lack of intention to live together permanently, or the fact that one of the parties is subject to immigration control. **Clause 133** would amend this provision to allow the registrar to refuse to issue a certificate on the basis of his own information about lawful impediments, but would not alter or add to the impediments themselves.

These provisions would not affect the law relating to marriages celebrated according to the rites of the Church of England.

[125] The White Paper did not include such a proposal, but did suggest that the marriage register entry should include extra information, such as the date and place of birth of the bride and groom and the names and addresses of the witnesses - para. 3.37.

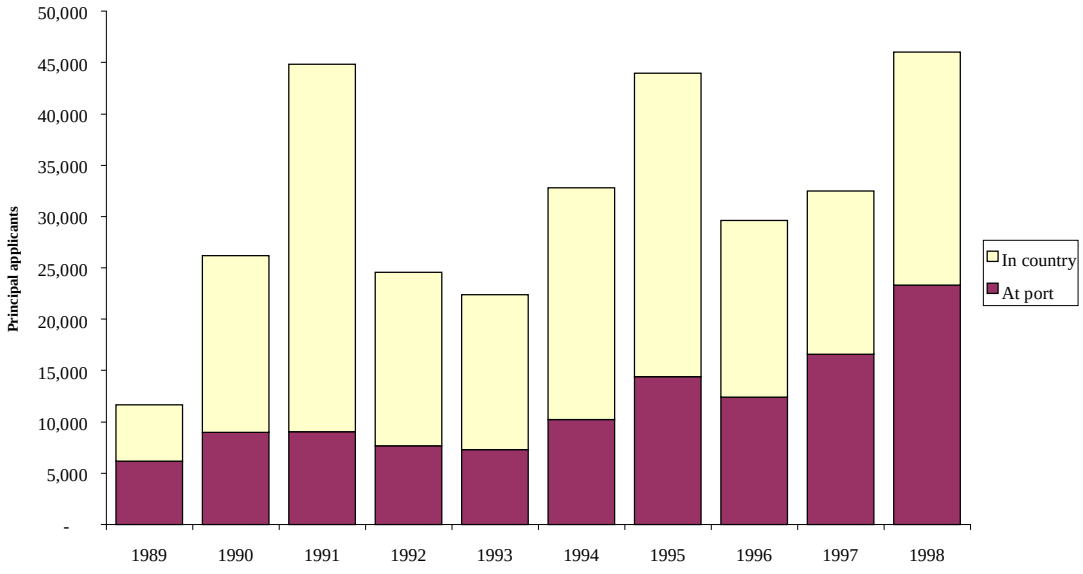
XI Statistical Appendix[126]

Asylum applications

From 1950 onwards only small numbers of people applied for asylum in the UK. Then in the late 1980s the total started to rise from around 4,000 a year during 1985 to 1988 to around 45,000 in 1991. The numbers fell back in 1992 and 1996 following the introduction of measures to deter multiple and fraudulent applications in 1992 and 1993 and the reduction of benefit entitlement in 1996. However, after each of these falls the numbers have continued to rise.

The provisional number of asylum applications in 1998 was 46,015 (excluding dependants). 51% of these were applications at port. The following chart shows the total for the last 10 years and the breakdown between in-county and at-port applications.

Asylum applications 1989 to 1998



Source: Home Office *Asylum Statistics 1997*; *Quarterly Asylum Statistics* January 1999

[126] by Richard Cracknell, Social and General Statistics

Applications received for asylum in the United Kingdom, excluding dependants, by location of application, and decisions, 1988-97

United Kingdom — Number of principal applicants

Year	Applications received			Decisions (1) (2) (3)								Applications withdrawn	Applications outstanding at end of period (7)
	Total applications	Applied at port	Applied in country	Total decisions	Recognised as a refugee and granted asylum (4)	Not recognised as a refugee but granted exceptional leave	Total refused	Refused asylum and exceptional leave after full consideration	Refused on safe third country grounds (5)	Refused on non-compliance grounds (6)			
				(%)	(%)	(%)	(%)	(%)	(%)				
1988	3,998	858	3,140	2,702 (100)	628 (23)	1,578 (58)	496 (18)	496 (18)	..	..		281	8,650
1989 (8)	11,640	6,200	5,440	6,955 (100)	2,210 (32)	3,860 (56)	890 (13)	890 (13)	..	..		350	12,240
1990 (8)	26,205	9,005	17,200	4,025 (100)	920 (23)	2,400 (60)	705 (18)	705 (18)	..	..		370	34,050
1991 (8)	44,840	9,030	35,815	6,075 (100)	505 (8)	2,190 (36)	3,380 (56)	2,325 (38)	270 (4)	785 (13)		745	72,070
1992 (8)	24,605	7,675	16,930	34,900 (100)	1,115 (3)	15,325 (44)	18,465 (53)	2,675 (8)	595 (2)	15,195 (44)		1,540	49,110
1993 (8)	22,370	7,320	15,050	23,405 (100)	1,590 (7)	11,125 (48)	10,690 (46)	4,705 (20)	745 (3)	5,240 (22)		1,925	45,805
1994 (8)	32,830	10,230	22,600	20,990 (100)	825 (4)	3,660 (17)	16,500 (79)	12,655 (60)	865 (4)	2,985 (14)		2,390	55,255
1995 (8)	43,965	14,410	29,555	27,005 (100)	1,295 (5)	4,410 (16)	21,300 (79)	17,705 (66)	1,515 (6)	2,085 (8)		2,565	69,650
1996 (8)	29,640	12,440	17,205	38,960 (100)	2,240 (6)	5,055 (13)	31,670 (81)	28,040 (72)	1,615 (4)	2,015 (5)		2,925	57,405
1997 (8)	32,500	16,590	15,915	36,045 (100)	3,985 (11)	3,115 (9)	28,945 (80)	22,780 (63)	2,065 (7)	3,615 (10)		2,065	51,795
1998 (8)	46,015	23,345	22,670	31,570 (100)	5,345 (17)	3,910 (12)	22,315 (71)	17,465 (55)	1,855 (6)	2,995 (9)		1,470	64,770

(1) Decisions do not necessarily relate to applications made in the same period.

(2) Figures in brackets show decisions by type as percentage of total decisions.

(3) Information is of initial determination decisions, excluding the outcome of appeals or other subsequent decisions.

(4) Excluding South East Asian refugees

(5) Figures from 1 January 1991 only. Prior to this, these refusals are included in the column "Refused asylum and exceptional leave after full consideration".

(6) Paragraph 340 (paragraph 180F prior to 1 October 1994) of the Immigration Rules, for failure to provide evidence to support the asylum claim within a reasonable period, including failure to respond to invitation to interview to establish identity. Figures from 1 December 1991 only. Prior to this, these refusals are included in the column "Refused asylum and exceptional leave after full consideration".

(7) Figures for 1991 and earlier years are maxima which overstate. They are not directly comparable with figures for later years which are more accurate estimates following full counts.

(8) Figures rounded to the nearest 5.

Source: Home Office *Control of Immigration Statistics 1997* Cm 4033
Home Office *Asylum Statistics December 1998 - www.homeoffice.gov.uk/rds/wnewf.htm*

ASYLUM APPLICATIONS IN IGC PARTICIPATING STATES 1983-1998

Europe	***1983***	***1984***	***1985***	***1986***	***1987***	***1988***	***1989***	***1990***	***1991***	***1992***	***1993***	***1994***	***1995***	***1996***	***1997***	***1998***	
																(month ending)	
Austria	5,900	7,200	6,724	8,639	11,406	15,790	21,882	22,789	27,306	16,238	4,744	5,082	5,920	6,991	6,719	13,805	(12/98)
Belgium	2,900	3,700	5,387	7,644	5,976	4,510	8,188	12,945	15,444	17,398	26,281	14,456	11,648	12,412	11,575	21,965	(12/98)
Denmark	800	4,300	8,698	9,299	2,726	4,668	4,588	5,292	4,609	13,884	14,347	6,651	5,104	5,893	5,100	5,699	(12/98)
Finland	N/A	N/A	18	23	49	64	179	2,743	2,137	3,634	2,023	836	854	711	973	1,272	(12/98)
France *	22,300	21,700	28,925	26,290	27,672	34,352	61,422	54,813	47,380	28,872	28,466	25,884	20,415	17,405	21,416	22,374	(12/98)
Germany**	19,700	35,300	73,832	99,650	57,379	103,076	121,318	193,063	256,112	438,191	322,599	127,210	127,937	116,367	104,353	98,644	(12/98)
Italy	3,000	4,500	5,400	6,500	11,000	1,300	2,240	3,570	24,490	2,589	1,571	1,844	1,752	681	1,712	6,939	(12/98)
Netherlands	2,000	2,600	5,644	5,865	13,460	7,486	13,898	21,208	21,615	20,346	35,399	52,576	29,258	22,857	34,443	45,217	(12/98)
Norway	200	300	829	2,722	8,613	6,602	4,433	3,962	4,569	5,238	12,876	3,379	1,460	1,778	2,277	8,277	(12/98)
Spain	1,400	1,100	2,300	2,300	2,500	4,516	4,077	8,647	8,138	11,712	12,645	11,901	5,678	4,730	4,975	6,639	(12/98)
Sweden	3,300	12,000	14,500	14,600	18,114	19,595	30,335	29,420	27,351	84,018	37,581	18,640	9,047	5,774	9,619	12,844	(12/98)
Switzerland	7,900	7,500	9,703	8,546	10,913	16,726	24,425	35,836	41,629	17,960	24,739	16,134	17,021	18,001	23,897	41,302	(12/98)
U.K.**	4,300	4,200	6,200	5,700	5,863	5,739	16,775	38,195	73,400	32,300	28,000	42,201	54,988	37,000	41,500	58,000	(12/98)
Sub-Total	73,700	104,400	168,160	197,778	175,671	224,424	313,760	432,483	554,180	692,380	551,271	326,794	291,082	250,600	268,559	342,977	

Overseas	***1983***	***1984***	***1985***	***1986***	***1987***	***1988***	***1989***	***1990***	***1991***	***1992***	***1993***	***1994***	***1995***	***1996***	***1997***	***1998***	
Australia	N/A	N/A	N/A	N/A	N/A	N/A	500	3,800	17,000	6,090	7,215	6,376	7,677	9,770	9,710	7,313	(11/98)
Canada	5,000	7,100	8,400	23,000	35,000	45,000	19,934	36,735	32,347	37,748	21,140	22,042	25,912	25,287	24,329	24,937	(12/98)
U.S.A.***	26,091	24,295	16,622	18,889	26,107	60,736	101,679	73,637	56,310	101,569	151,788	142,508	147,870	122,643	79,803	52,081	(12/98)
Sub-Total	31,091	31,395	25,022	41,889	61,107	105,736	122,113	114,172	105,657	145,407	180,143	170,926	181,459	157,700	113,842	84,331	

Grand Total	104,791	135,795	193,182	239,667	236,778	330,160	435,873	546,655	659,837	837,787	731,414	497,720	472,541	408,300	382,401	427,308	

**** data does not include accompanied minor dependants.***

***** yearly data for the UK have been adjusted to include dependants 1998 principal applicants have been grossed up by the ratio of applicants to applicants to dependants for the last 5 years***

****** data refers to principal applicants and do not include dependants.***

Source: IGC Inter Governmental Consultations on Asylum and Migration Policies in Europe, North America and Australia

http://www.igc.ch/frstatistics.htm

Special grants paid and amounts claimed for the support of asylum seekers in London, 1997-98

£

	Adult asylum seekers accommodation grant			Persons from abroad children's grant claims			Unaccompanied childrens' grant			Total		
Local Authority	Total grant due	Total grant claimed	Grant shortfall	Grant paid	Grant claimed	Grant shortfall	Total grant paid	Total grant claimed	Grant shortfall	Total amount paid	Total amount claimed	Shortfall
Barking and Dagenham	365,628	365,628	0	201,340	201,340	0				566,968	566,968	0
Barnet	792,668	792,668	0	990,504	990,504	0				1,783,172	1,783,172	0
Bexley	60,045	60,045	0	31,210	31,210	0				91,255	91,255	0
Brent	2,481,634	2,481,634	0	1,440,786	1,440,786	0				3,922,420	3,922,420	0
Bromley	133,420	148,062	14,642	129,941	129,941	0	0	159,184	159,184	263,361	437,187	173,826
Camden	2,921,840	3,592,120	670,280	1,589,314	1,589,314	0				4,511,154	5,181,434	670,280
Corporation of London	95,900	96,080	180	6,250	6,250	0	32,616	29,254	-3,362	134,766	131,584	-3,182
Croydon	628,314	628,314	0	233,470	233,470	0	741,569	1,584,569	843,000	1,603,353	2,446,353	843,000
Ealing	1,565,363	1,565,363	0	296,636	1,028,186[(a)]	731,550				1,861,999	2,593,549	731,550
Enfield	231,560	271,739	40,179	1,122,395	1,122,395	0				1,353,955	1,394,134	40,179
Greenwich	495,798	495,798	0	326,789	326,789	0				822,587	822,587	0
Hackney	3,027,990	3,027,990	0	1,013,572	1,013,572	0				4,041,562	4,041,562	0
Hammersmith and Fulham	1,406,618	1,406,618	0	1,366,848	1,366,848	0				2,773,466	2,773,466	0
Haringey	1,671,951	1,671,951	0	2,170,310	2,170,310	0				3,842,261	3,842,261	0
Harrow	748,971	748,971	0	433,119	433,119	0				1,182,090	1,182,090	0
Havering	25,900	33,125	7,225				0	12,426	12,426	25,900	45,551	19,651
Hillingdon	446,136	446,136	0	307,517	307,517	0	115,660	1,303,470	1,187,810	869,313	2,057,123	1,187,810
Hounslow	402,322	402,322	0	902,657	902,657	0				1,304,979	1,304,979	0
Islington	1,339,520	1,823,325	483,805	652,092	652,092	0				1,991,612	2,475,417	483,805
Kensington and Chelsea	2,177,140	2,249,217	72,077	1,312,224	1,312,224	0	255,613	805,731	550,118	3,744,977	4,367,172	622,195
Kingston	145,047	145,047	0	242,848	242,848	0				387,895	387,895	0
Lambeth	3,535,414	3,535,414	0	1,705,850	1,705,850	0				5,241,264	5,241,264	0
Lewisham	1,862,381	1,862,381	0	937,292	937,292	0				2,799,673	2,799,673	0
Merton	462,309	462,309	0	358,514	358,514	0	0	48,880	48,880	820,823	869,703	48,880
Newham	2,496,568	2,496,568	0	3,026,435	3,026,435	0				5,523,003	5,523,003	0
Redbridge	422,810	481,630	58,820	789,418	789,418	0				1,212,228	1,271,048	58,820
Richmond upon Thames	263,852	263,852	0	85,947	85,947	0				349,799	349,799	0
Southwark	1,198,810	1,605,882	407,072	1,377,908	1,377,908	0				2,576,718	2,983,790	407,072
Sutton	115,086	115,086	0	34,878	34,878	0				149,964	149,964	0
Tower Hamlets	**519,820**	**555,260**	**35,440**	**316,521**	**316,521**	**0**				**836,341**	**871,781**	**35,440**
Waltham Forest	623,276	623,276	0	764,363	764,363	0				1,387,639	1,387,639	0
Wandsworth	585,480	688,417	102,937	1,183,570	1,183,570	0				1,769,050	1,871,987	102,937
Westminster	3,838,660	4,623,193	784,533	2,752,307	2,752,307	0	441,179	897,163	455,984	7,032,146	8,272,663	1,240,517
London	37,088,231	39,765,421	2,677,190	28,102,825	28,834,375	731,550	1,586,637	4,840,677	3,254,040	66,777,693	73,440,473	6,662,780

(a) Ealing revised their claim too late in the last financial year 1997/8. The balance will be paid in the present financial year

Source: HC Deb 31 July 1998, c795-8w