



17 December 2020

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Chris Philp MP  
Parliamentary Under Secretary of State  
Minister for Immigration Compliance and the Courts  
Home Office  
2 Marsham Street  
London

Dear Minister

**Re: Statement of Changes in Immigration Rules (HC 1043) – changes to Part 11 (Asylum)**

We write concerning the effect and intent of these changes, which are scheduled to take effect at the moment the EU Withdrawal transitional period ends at 11.00pm on 31 December 2020.

We have copied this letter to the National Asylum Stakeholder Group (NASF).

**For reasons elaborated in this letter, we must ask that these rules – specifically paragraphs 345A to 345D – are not implemented before your department has consulted upon these rules and any guidance under which it is proposed to operate them and addressed concerns including those we express in this letter.**

We have noted your response at Home Office Questions to, former Immigration Minister, Rt Hon Caroline Nokes MP (*Hansard* HC, 14 December 2020 : Col 8):

*“In relation to my right hon. Friend’s question about the immigration rules, they are laying the foundations for our post-transition period system. As she knows, we are currently in the Dublin system, which provides for people who have claimed asylum elsewhere to be returned to those countries, including France, Germany and Spain. It is our intention to open discussions with those countries as soon as we are able to do so, in order to bring into force similar measures after the transition period ends.”*

We have similarly carefully considered your response to the Urgent Question from the Rt Hon Caroline Nokes MP on 16 December 2020 (*Hansard* HC, 16 December 2020 : Col 275). We must reiterate, in the light of your response, that there is no obligation upon a person seeking asylum to do so in any particular country. Relatively few people seek asylum in this country. It is, nonetheless, in principle wholly legitimate for people to do so, including but not only where they

have connection, such as family, in the UK. We also note, as the Home Office knows well, that people crossing the Channel overwhelmingly originate from countries known to be places where there are widespread human rights abuses from which people both need and are entitled to seek and receive asylum.

We have also noted what is said in the Explanatory Memorandum to HC 1043:

*“7.2 In broad terms, paragraphs 345AC-D, as will apply from 1 January 2021 if we make no changes, provide a means to treat as inadmissible to the UK asylum system the claim of someone who has travelled through or has a connection to a safe third country; this will include individuals coming from EU Member States.*

*“7.3. However, as currently drafted, they allow claims to be treated as inadmissible only if the asylum claimant is accepted for readmission by the third country through which they have travelled or have a connection. A stronger approach to disincentivise individuals is needed to deter claimants leaving safe third countries such as EU Member States, from making unnecessary and dangerous journeys to the UK.*

*“The changes separate the readmission requirement from the inadmissibility decision, allowing us to treat applicants as inadmissible based solely on whether they have passed through one or more safe countries in order to come to the UK as a matter of choice. They will allow us to pursue avenues for their removal not only to the particular third countries through which the applicant has travelled, but to any safe third country that may agree to receive them.”*

We note the statement in the Explanatory Memorandum that there has been no formal public consultation because, it is said, that this would have been “disproportionate” as, it is implied, the changes involve no significant change of policy or principle. We make clear that we were not consulted although we have remained a member of your department’s formal asylum stakeholder group – the National Asylum Stakeholder Forum (NASF)/Strategic Engagement Group (SEG) – throughout the group’s existence of nearly 15 years. Moreover, we consider the rules to make a very significant change, which risks doing considerable individual and systemic harm. We have had no opportunity to raise our concerns with you or your officials prior to these changes being laid in Parliament because of the absence of consultation.

In the circumstances, we have the following numbered questions. These are set out in bold below. We also provide further brief elaboration of our concerns in relation to each. Our questions generally concern implementation of the rules, by which we specifically mean not merely their taking effect as provided for by HC 1043 but the exercise of the discretion to treat someone’s asylum claim as inadmissible under them.



## **1. What assessment have you made of the impact on backlogs in the asylum system by any implementation of these new rules?**

We are gravely concerned that the new rules introduce wide scope for creating and exacerbating existing backlogs in the asylum system. As you acknowledged in your answer at the despatch box, any arrangements with EU Member States for the transfer of people seeking asylum from the UK remain to be discussed, still less agreed. Without such arrangements being formally agreed, these rules threaten to leave people seeking asylum in the UK in an indefinite limbo unless and until a new decision on admissibility is triggered under paragraph 345D. The delay up to that point may be substantial of itself. Moreover, the longer the Home Office declines to admit a claim into its asylum decision-making process, the greater may be the barriers to determining the claim in a safe and timely manner.

We have noted your response on 16 December 2020 (*Hansard* HC, 16 December 2020 : Cols 276 & 278) stating that there will be a point at which a person's claim will be admitted if the Home Office concludes it cannot return or send the person to another country. However, as things stand, there is no defined point by which any person whose claim is refused admission can know her, his or their claim will be admitted. To that point, unless another country agrees to accept and receives them, the person will be in limbo; and in the absence of any defined point by which that must end, that limbo will be indefinite.

## **2. What assessment have you made of the impact on individuals seeking asylum in the UK by any implementation of these new rules?**

We are gravely concerned about the impact upon women, men and children whose claims are not admitted into the Home Office asylum decision-making process under these rules. We are acutely aware that prolonged uncertainty can and does have a profoundly detrimental impact upon the physical and mental health of people in the asylum system. These rules will exacerbate that – delaying resolution of even the question of by whom, where, when or indeed whether the person's claim will be considered and determined.

As you will know, the physical and mental health of people seeking asylum is often impaired by such matters as torture and persecution they have previously suffered in their countries of origin, dangers and abuses they have suffered on journeys to seek asylum and their continued fear and uncertainty regarding their safety and futures. The Home Office should be very slow indeed to exacerbate these concerns; and should never do so without a clearly achievable and permissible objective that can and is pursued by means that provide all appropriate mitigation of such risks. Nothing that has been revealed about these new rules to date shows any such objective or mitigation.

In this regard, we draw attention to the revelation this week that 29 people have died in asylum accommodation so far this year. Has any assessment been made of the causes of those deaths and whether any of these causes relate to matters

that may be exacerbated by any uncertainty and distress the new rules are likely to cause people affected by them?

**3. Will there be operational guidance on these new rules prior to their implementation and, if so, will there be any consultation on that guidance?**

We are conscious that there has been no consultation on the new rules, their commencement is only two weeks away and during that two weeks period it is the Christmas recess.

Nonetheless, we emphasise that for the reasons very briefly explained in this letter, the Explanatory Memorandum is wrong to imply these rules give effect to no significant change. It is vital, therefore, that prior to their implementation there is every opportunity for the Home Office to reflect on the propriety of their operation or implementation.

**4. Do you intend to implement these new rules in respect of any third country or countries before you have reached any formal agreement with such country or countries setting out the circumstances in and process by which the particular country will accept the transfer from the UK of someone seeking asylum?**

Nothing that has been revealed concerning the new rules indicates any appreciation of the seriousness of implementing them without having concluded any formal agreement by which any particular return or removal that may be proposed can be achieved.

With respect, the UK cannot unilaterally secure anything akin to the Dublin Regulations. Amnesty has profound concerns as to the content and operation of those Regulations and nothing we say here is intended to, in any way, caveat all that we have said previously about the injustice and inadequacy of them. However, we note that their operation, insofar as it goes, is dependent upon not merely the general agreement of participating Member States about which of them is responsible for any particular asylum claim. It is also dependent upon the specific agreement as to the criteria for determining that responsibility and the process by which that is to be given effect. Even then, Dublin 'returns' can be protracted.

In the circumstances, it is irresponsible to implement general rules to achieve something (the removal of a person seeking asylum) to a third country without any concluded agreement between the UK and that country under which any such removal will be accepted. That is quite apart from any further considerations of the safety or propriety of such a removal. In this regard, we make clear that simply because a third country is generally safe for a number of people seeking asylum does not of itself demonstrate the country is safe for the individual whom it is proposed to remove. Contrary to your assertion on 16 December 2020 (*Hansard* HC, 16 December 2020 : Cols 275 & 277), several people are unable to



safely access asylum systems in other countries including the UK's nearest neighbours.

We also note that, for example, the countries to which you made reference at the despatch box are each currently host to very much larger populations of refugees and people seeking asylum than the UK. Seeking returns to countries in such circumstances may not merely prove to be futile. It calls into profound question whether the UK understands or recognises its shared responsibilities under the 1950 Refugee Convention to provide asylum. With respect, we are well aware of the significant increase in resettlement commitment by the UK from 2015. As you will know, that commitment has not displaced the UK's asylum system as the primary source of the UK's contribution towards providing refugee protection. Moreover, over the last five years of that commitment, the UK has increasingly become a lesser not greater provider of refugee protection in comparison to the countries you identify and indeed other of its EU neighbours.

#### **5. Why have you produced no reciprocal provisions for receiving the transfer to the UK of people in third countries, who are seeking asylum but have connections, including family, in this country?**

For reasons given in this letter, we are not supportive of these new rules. Nonetheless, we draw attention to the inconsistency inherent in making these new rules without any commensurate provisions for receiving people seeking asylum from third countries. We remain, for example, highly disappointed by the failure of the Home Office to make any formal arrangements to receive into its asylum system people who have family connection in this country, including unaccompanied children in the EU who under the Dublin Regulations have previously had the benefit of such arrangements.

We are aware of references that Ministers have made to various immigration rules concerning family migration (e.g. *Hansard* HL, 9 November 2020 : Col 819-820, during the passage of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020). We intend no general criticism of those rules here (though we have serious reservations as to the suitability of some of their criteria). However, those rules are not for the purpose of a person seeking asylum in the UK. If the Home Office intends to regard seeking or receiving asylum as a permitted purpose of any of the rules to which Ministers have referred, we should expect that to be made clear in the rules.

In any event, as matters stand, with the cessation of the UK's participation in the Dublin Regulations, there are to be no means by which the UK offers to receive from third countries people who are seeking asylum and have connection here. Given the rules that have been introduced appear to expect third countries to receive people from the UK in such circumstances, why has no reciprocal provision been made?

**6. Will you ensure that any person who wishes to make an asylum claim in the UK is able to do so and have that duly recorded whether or not you intend to implement or consider implementing these new rules?**

We understand that the current arrangements for provision of asylum support on the basis of receipt of a claim for asylum will not be affected by the new rules – i.e. that whether or not the Home Office decides to treat such a claim as inadmissible will not affect that the person is an asylum-seeker for the purpose of legislation, regulations and policy concerning provision of support. Please would you confirm this? If not, would you urgently please explain what the position will be and how a person in these circumstances who requires housing and support will be assisted?

Similarly, we understand that the 12 months period following which a person seeking asylum may request permission to work under paragraph 360 of the rules would include any period during which the person's claim was treated as inadmissible. Please would you confirm this? If not, would you also explain why not and your assessment of the impact of extending the period during which a person in the UK will be excluded from any employment opportunity?

**7. How will officials assess whether removal in accordance with new paragraph 345D of the rules is 'likely' within 'a reasonable period of time'?**

**8. How will officials assess whether removal in accordance with new paragraph 345D of the rules is 'inappropriate'?**

We ask these questions now in the absence of any operational guidance or commitment to consult as to that. These are critical questions. If they are not satisfactorily answered by the provision of the clearest criteria, the risks of harm to individuals and to the asylum system more generally, which we have identified in this letter, will be that much greater.

We note the decision not to include within the rules any more definitive restriction upon their implementation. There is included no, for example, maximum time-period. There are no groups of people, whether identifiable by age or other criteria, expressed as excluded from these rules. There are no other criteria provided regarding personal considerations that will make it inappropriate to refuse or continue to refuse someone admission to the UK asylum system; and no criteria stated as necessary (even if insufficient) for an official to consider that removal might be achievable within whatever may be intended as a reasonable period of time.

We look forward to hearing from you. We would ask that – given the absence of consultation prior to publication of HC 1043 on 10 December 2020 with a commencement date of 31 December 2020 – you provide a response as soon as possible and in any event before that commencement date.



Your sincerely,

*Kate Allen*

Kate Allen  
Director, Amnesty International UK

cc: National Asylum Stakeholder Group