Home Office

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Dear Ms Allen

Thank you for your letter of 17 December about the recent changes we made to the Immigration Rules regarding asylum inadmissibility. I have responded to the questions you have raised in turn.

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

The principle that an asylum seeker should claim asylum in the first safe country they reach is well established in international asylum procedures. Inadmissibility processes support this principle and have been an important part of our asylum system for a long time. In recent years, most inadmissibility action has been undertaken in an EU context, as part of the Dublin arrangements. Of course, the Dublin III Regulation ceased to apply to the UK on 31 December 2020, and so it was entirely appropriate for us to make technical changes to the Immigration Rules to ensure continuity and delivery in our inadmissibility processes.

Without a system to effectively treat as inadmissible the asylum claims made by those who have travelled to the UK after already having reached safety in countries such as France, we would take responsibility for those claims and thereby increase the number of cases entered into the asylum system for substantive consideration. I do not consider that appropriate or tolerable.

I have given consideration to the working of the overall system and the need to progress cases. The Dublin system worked with fixed timescales, which meant that where someone could not be removed to a Member State, their claim would in due course be considered by the UK. We have introduced a similar mechanism, set out in the policy guidance for the revised rules. In summary, a claimant's case will be entered into the UK system for substantive consideration if their return to a safe third country cannot be agreed within six months of their claim. Therefore, I do not foresee the changes we have made to the Immigration Rules leading to an adverse impact on asylum workflow; I consider that they mitigate such an impact.

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

As set out above, the principle and practice of inadmissibility is well established in the UK asylum system. In compliance with the Public Sector Equality Duty, we have undertaken an equality impact assessment in respect of the changes.

I note and agree with your point that prolonged uncertainty in the asylum system should be avoided. It will be avoided - there should be no uncertainty or delay. If a claimant is being considered for inadmissibility action, they will be notified of this. As I make clear above, where a claimant's return to a safe third country cannot be agreed within six months, they will be admitted to the asylum process for a substantive decision to be made. This is set out in guidance.

I also note your question about whether any assessment has been made of the causes of the deaths of supported asylum seekers. I am always saddened when I hear that an asylum seeker being supported in our accommodation has passed away and I offer my condolences to the loved ones of each person who has died.

The Home Office, through undertaking its statutory duties towards asylum seekers and working with other agencies and organisations, takes a great many steps to safeguard the health, safety and wellbeing of those whom we support. In the event of the death of a service user we work with other agencies to establish the cause of death.

In the majority of cases these deaths were as a result of natural causes (e.g. a long-term illness) or as an unintended consequence of individuals' own actions (e.g. accidental drug overdose). Some of the deaths are still the subject of processes overseen by a coroner and we await their determination of the cause of death.

I do not, however, accept your assertion that there is a causal link between these deaths and the actions of the Home Office. To put the figure into context, these deaths account for less than 0.05% of our current supported asylum seeker population, which is significantly lower than the mortality rate of the wider UK population.

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?

Operational guidance was already in place in respect of our inadmissibility processes. It has been updated to reflect the changes made to the Immigration Rules in December 2020. It can be found at: https://www.gov.uk/government/publications/inadmissibility-third-country-cases.

These were largely technical changes concerned with maintaining capability in the post-Dublin landscape and therefore we did not consult on them.

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?

Formal return agreements with key partners will be the most effective means by which to operate inadmissibility processes, and we will seek to negotiate those agreements in the coming months. However, return agreements, whilst beneficial to the administration of the system, are not a requirement, and are not themselves necessary in order for a country to

be properly regarded as a safe third country in line with paragraph 345B of the Immigration Rules.

Under the previous Immigration Rules, small numbers of inadmissibility returns were made outside of the Dublin arrangements, on the basis of case-by-case referrals to partner countries. Where appropriate, we will seek to do the same with EU Member States now that we have ceased to be party to the Dublin Regulation.

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?

The changes we made to the Immigration Rules in December were specifically about ensuring the effectiveness of our asylum inadmissibility processes when we ceased to be bound by the Dublin Regulation. These particular changes were not intended to address the legal routes available to people in other countries with connections to the UK, in respect of family reunion and human rights applications. The UK already provides routes for people to reunite with family members under the Immigration Rules and these are unchanged by the UK's exit from the EU or the end of the transition period.

Before the end of the transition period, the UK made a genuine and sincere offer to the EU on new arrangements for the family reunion of unaccompanied asylum-seeking children. While the Trade and Co-operation Agreement between the EU and the UK does not include provisions on family reunion for unaccompanied minors, the parties agreed a joint political declaration on asylum and returns. This declaration took note of the UK's intention to pursue bilateral negotiations on post-transition migration issues with key countries with whom we have a mutual interest, including on the family reunion of unaccompanied asylum-seeking children.

The Government is determined to continue our proud record of providing safety to those who need it, and supporting vulnerable children remains a fundamental tenet of this. During debates on the passage of the Act, which received Royal Assent on 11 November 2020, the Government made several other important commitments that demonstrate the priority it places on protecting vulnerable people, including unaccompanied children. We have committed to review safe and legal routes to the UK and have a statutory duty to conduct a public consultation on family reunion for unaccompanied asylum-seeking children in the EU. We will lay a statement before Parliament providing further details by 10 February 2021.

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?

Our position has not changed. Anyone who states they fear harm on return to their country of origin will have their asylum claim registered. The date of that claim remains relevant in terms of paragraph 360 of the Immigration Rules: anyone admitted to the asylum system who has not received a decision within 12 months of their claim may apply for permission to work.

Those requiring asylum support will, if they would otherwise be destitute, be entitled to it. Asylum seekers are provided with accommodation and support to meet their essential living needs, both before an inadmissibility decision is made and after the inadmissibility decision and before their removal, if they would otherwise be destitute. After a decision is made on their claim and before their removal they may be entitled to support as a failed asylum seeker.

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

The policy guidance states that someone's claim should be admitted into the UK asylum system for substantive consideration if it is clear that no safe country will agree their return, or within six months, whichever comes sooner. I am confident that this system will ensure that claimants' cases are promptly progressed either to inadmissibility and removal, or to substantive consideration.

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

The Immigration Rules provide a broad discretion for officials to admit to the substantive asylum process individuals who can otherwise be returned to a safe third country following an inadmissibility decision. The policy guidance does not constrain this discretion, and I believe that is appropriate, as it enables a fact-sensitive approach to be taken.

I do hope I have been able to answer the questions you have raised and that I have addressed some of the concerns you have.

Chris Philp MP