

# Guidance for completing the Government's immigration and asylum consultation

## Consultation on Government's "New Plan for Immigration"

On 24 March 2021, the Government published an immigration policy document called New Plan for Immigration. It sets out various proposals for changes to nationality, immigration and asylum law. It is available here:

<https://www.gov.uk/government/consultations/new-plan-for-immigration>

At the bottom of that page there is an invitation to sign up to take part in a public consultation on the proposals. To sign up, you click on "Respond online".

You will need to provide some basic information about yourself (e.g. name, email address). After signing up, you should receive an email confirmation from [BritainThinks](#) – the organisation running the consultation for the Home Office.

This email should provide a link for you to return to the Platform (webpages) where you can take part in the consultation. To do that, you click on "Go to the platform".

**Responses to the Consultation should be submitted before 5 May 2021 to ensure they are received. More information to help you to respond is provided by this Guidance.**

## The Platform and the Consultation

The Platform has several documents including the Government's plan with its proposals.

For members of the public, there are two separate Surveys. They are each online and quite long. They cover the same areas of the Government's plan but with different questions.

This Guidance addresses each of the two Surveys, Question by Question. However, it provides information to help you prioritise which Questions you may wish to answer. It also provides information about the answers Amnesty is making and why we are making these answers. This is to help you decide whether and how you may wish to answer.

**Not all Questions need to be answered.** There are several Questions, which Amnesty will not be answering; and you may wish to decline to answer these or other Questions. Amnesty will not be answering some Questions because their format does not allow a response that ensures our answer will be properly understood. This is briefly explained below where relevant.

**IMPORTANT:** You can always leave a Question without an answer and move on to the next Question. To do this, you use the Arrow at the bottom of the online page.

You should do this where either the Question is not relevant to what you want to say or if the Question does not allow you to provide an answer that will clearly be understood in the way you want.

## The two Surveys

The first Survey is called: **Public Core questionnaire**

The second Survey is called: **Public Technical questionnaire**

You can take each Survey by clicking on the relevant “Take the survey” link on the Home page; or by selecting the relevant link from the drop down options available from “Projects” at the top of the page.

The following guidance addresses the two Surveys one after the other. It starts with the **Public Core questionnaire**. **Where text is in red**, this is to indicate Questions, which Amnesty suggests you may want to prioritise.

### First Survey: Public Core questionnaire

#### Question 1

**Amnesty will be answering this Question “Strongly oppose”. This is because our overall assessment of the Home Secretary’s Foreword is that it lacks any real balance. While it includes some statements which are accurate, it does not provide a full picture and it makes several claims that the evidence does not support. It is an attempt to secure support for a set of harmful proposals rather than presenting a true context for making and assessing any proposals.**

Question 1 invites you to assess the Home Secretary’s Foreword to the Government’s plan. In view of how that Foreword is presented, however, the question allows you to pass a verdict on the Government’s proposals overall.

While there are some proposals that we support, our overall assessment of the proposals is that, if implemented, they will do considerable harms – to women, men and children in the asylum system, to other people affected by the immigration system and to the Home Office capacity to run these systems. We note that many of the proposals have been introduced by previous governments and led directly to long delays and large backlogs in the asylum and immigration system.

Given the scale of the harm these did before and the scale of harm we consider they would be likely to do again, it is our view that it is necessary to mark in the strongest possible terms our opposition to the proposals overall and the presentation of them and their context in the Home Secretary’s Foreword.

## QUESTIONS ON CHAPTER 2 OF THE GOVERNMENT'S PLAN

Chapter 2 concerns whether and how the UK will in future provide asylum to women, men and children fleeing conflict and persecution.

### Questions 2 to 5

**Amnesty will be declining to answer any of Questions 2 to 5. These Questions are presented in a way that makes it impossible for us to make clear our view on the proposals to which they relate.**

These Questions – like Question 1 – only allow you to tick pre-prepared boxes to indicate strength of agreement or disagreement with the various statements made.

There are basically two fundamental problems with these Questions. Firstly, they are based on premises about the Government's intentions or commitment, which are not supported by the evidence or the proposals. Secondly, some of the ways these Questions are put are very misleading.

For example, Question 2 includes an invitation to indicate whether certain steps would be likely to be effective or ineffective for achieving what the Government says are its aims. If the Government were to improve access to justice in the asylum system (which is a stated aim) that would increase the fairness of that system. But the proposals on access to justice will not improve access but rather deny it to many people who need that access. More broadly, the proposals indicate an intention to largely dismantle the asylum system making it very much less fair (fairness is also a stated aim). It is, however, impossible to answer this Question in a way that makes this point. It is, therefore, Amnesty's view that this is a Question that ought not to be answered to avoid your answer being misunderstood.

### Questions 6 to 10

**Amnesty will be answering these Questions to make the following points:**

- **The Government's policy confuses safe and legal routes for unaccompanied children seeking asylum to join family in the UK with immigration rules which are not designed or intended for this purpose.**
- **That confusion applies equally to children who are in the UK and children who are outside the EU. Previously, the UK's membership of the EU provided a possible safe and legal route for unaccompanied children in the EU to join family members in the UK for the purpose of claiming asylum here with their family. That was provided via the EU's Dublin Regulations.**
- **The Government refers to immigration rules that allow some children to join parents or some other family members in the UK. But these rules do not permit children to do this for the purpose of seeking asylum. If that (seeking asylum) is what the child wishes or needs to do, there is no provision made in the rules or**

outside them for the child to be formally permitted to come to the UK to be with the child's family.

- The Government's proposals make no provision for people – whether children or adults – who currently make dangerous journeys to the UK to make asylum claims here. The Government's policy position generally remains that nobody can claim asylum in the UK unless they get here first; and its rules make no provision to permit someone to travel to the UK for the purpose of making such a claim.
- While the Government, in presenting its proposals, has emphasised the many people who have been permitted to come to the UK by the safe and legal route of a refugee family reunion visa, the proposals, if implemented, would withdraw that possibility from many people. To receive a refugee family reunion visa, someone must be the family member of a refugee who has been given asylum in the UK. The proposals expressly intend to avoid or delay granting asylum to many refugees in the UK. Their family members will, therefore, only be able to reunite with them if they rely on dangerous journeys and smugglers.

These Questions are an opportunity to set out your views on the Government's proposals on safe and legal routes and how these particularly relate to refugee family reunion. You may wish to avoid the complexity of trying to break your answers down to address the important distinctions between Questions 6 to 10.

One option is to mark Questions 6 to 9 as "Please see Question 10" and then set out all that you want to say in answer to Question 10.

### **QUESTIONS ON CHAPTER 3 OF THE GOVERNMENT'S PLAN**

Chapter 3 concerns proposed changes to British nationality law – who is or is not a British national, including but not limited to who is or is not a British citizen (which is the particular type of British national who is at liberty to come and go, and stay, in the UK free of immigration controls).

#### **Questions 11 to 14**

**Amnesty will be responding to Questions 11, 12 and 14 with "Very effective". We strongly support these proposals. While we do not think the proposal in Question 14 goes far enough, it is important and we have decided it is better to emphasise strong support in circumstances where there is no option to explain what else is needed.**

**Amnesty will decline to answer Question 13 (on adult registration). This is not because we are necessarily opposed to the proposal in that Question. The information provided is, however, too vague for us to determine how effective the proposal could be.**

These Questions allow you to rate how effective each of four proposed changes to British nationality law will be to securing justice and equality in that law.

The format of the Questions is a problem because it does not permit you to explain your answer and your answer may be misunderstood.

For example, if you strongly support introducing a power to waive residence requirements for naturalisation because it may assist some people wronged by the Windrush scandal to secure the British citizenship that should have been theirs all along, you may want to answer “Very effective”. You may, however, recognise that this proposal, while necessary, is insufficient to assist everyone who should be assisted. But downgrading your answer appears to indicate less support for the proposal.

As regards Question 13, this is especially concerning as there is so little information provided as to what the Government intends by this proposal.

#### **QUESTIONS ON CHAPTER 4 OF THE GOVERNMENT’S PLAN**

Chapter 4 relates to the UK’s asylum system.

##### **Questions 15 to 19**

**Amnesty will be responding “Not at all effective” to all of these Questions.**

**These same or similar proposals have been implemented before. They did not make anyone safer. They did make the UK asylum system harsher causing much distress and anxiety to refugees in the UK, who were made more uncertain, less secure and less able to integrate and rebuild their lives. These proposals also caused substantial delays and backlogs in the asylum system, which took many years to resolve or reduce.**

**A further harmful consequence of these proposals is that reducing the UK’s commitment to asylum standards and providing protection, which these proposals would do, will only encourage others to do likewise. One of the reasons that relatively few people seek asylum in the UK is that many people do find safety elsewhere. If, however, others are encouraged to reduce their standards and commitment, fewer people will receive safety elsewhere. More people may, therefore, be compelled to attempt dangerous journeys looking for safety somewhere else, including in the UK.**

These Questions only permit you to tick boxes to indicate how effective you believe various proposals will be.

The premise of each Question includes assertions that are false or unproven. It is likely best to approach these Questions as if you are simply being asked whether you think these proposals would save lives and protect refugees. There is no evidence to support the notion that these proposals would save lives. It is clearly intended by the proposals that some

refugees would no longer receive protection in the UK or would have that protection delayed. In Amnesty's view (as explained above), these proposals would have the opposite effect and there is experience in the past that these or similar proposals did cause harm to refugees and the asylum system.

### **Questions 20**

**Amnesty will be responding "Not at all effective" to each of the three parts to this Question.**

**The proposal on revoking refugee status is not fundamentally new; and Amnesty does not support what was done previously which did not accord with the UK's asylum and human rights obligations.**

**The proposals on raising the standard for establishing whether someone is at risk of persecution appear designed to conflict with the UK's asylum and human rights obligations and would place the UK out of step with others. In practice, it is likely to achieve nothing more than leaving more refugees in limbo in the UK, unable to meet a unjustly higher test and unable to leave because of the persecution at which they remain at risk.**

**The proposals on age assessments are vague and repeat what Amnesty has heard from the Home Office many times over the years. There is nothing in these proposals which suggests the Home Office has any better plans or understanding of this matter, and we fear whatever may be intended is likely to do further harm to children who seek asylum in the UK**

This Question only permits you to tick boxes to indicate how effective you believe various proposals will be.

There are many problems with what is said in this Question and in relation to the proposals to which it relates. It is deeply unhelpful for the Government to be yet again seeking to draw a link between people seeking asylum and offending. This appears to be done for no better reason than to more broadly undermine support for asylum in the UK as there are already provisions in law about revoking refugee leave.

As for proposals to raise the bar for someone to establish they are a refugee, it is already very difficult for someone to prove their refugee status. There are several reasons for that. Some of these are to do with the circumstances in which refugees are often forced to flee (which tend not to permit collecting and bringing evidence). Some are to do with the torture and other trauma many refugees have experienced (which tends to make it more difficult to recall events and recount what has happened). Some are to do with the inadequacies of the asylum system, including inadequate provision of legally aided advice and representation.

Proposals on age assessments have been made by the Home Office at various times over the years. It is striking that the motivation is always said to be the concern that an adult

mistakenly treated as a child will be a risk to children. Yet the Home Office is, it seems, never concerned at the risk to a child who is wrongly treated as an adult. There is not an equivalence here. Unaccompanied and traumatised children in the asylum system are vulnerable to abuse; and it is the responsibility of all relevant authorities to take appropriate steps to mitigate that risk and prevent any abuse.

That can be done for children who are treated as children, who are therefore supported in settings that are, or are intended to be, designed to provide supervision and protect against abuse – whether from other children or adults. It cannot be done for children who are treated as adults, who are therefore placed in adult settings where no such supervision or protection is provided.

## **QUESTIONS ON CHAPTER 5 OF THE GOVERNMENT'S PLAN**

Chapter 5 relates to asylum claims and appeals against refusal of asylum.

### **Questions 21 and 22**

**Amnesty will be responding “Not at all effective” to each of these Questions.**

**Question 21 concerns a proposal that is little more than a ‘gimmick’. Legal representatives are already required to abide by codes of conduct; and people seeking asylum are penalised already if found not to be honest. However, the Home Office is itself at fault for failing to act in accordance with duties of candour and ‘good faith’ owed, for example, to courts.**

**Question 22 has been done before. A one-stop process was introduced by the Nationality, Immigration and Asylum Act 2002. It was followed by repeated attempts to revise and revise again the appeal process. The Home Office ought instead to get its own house in order. If its decision-making and conduct of appeals was clear, efficient and fair, it could greatly assist the appeal process.**

The Home Office ought to be made to understand and act in good faith in all that it does. Pointing fingers at others, who are already required to do so by formal codes of conduct or how the asylum and immigration system operates, is simply a distraction.

The Home Office could take steps to improve its own conduct, which would greatly assist the appeals process. There is no good purpose to returning to proposals from the past that merely introduced new complications into appeals systems that many individuals struggle to cope with.

### **Question 23**

**Amnesty will be answering “Don’t know” to this Question. It is not sufficiently clear what is proposed.**

Question 23 relates to a vague proposal to consider introducing a right of appeal against removal or deportation for people in what are said to be “certain Modern Slavery cases”. It is impossible to assess how effective would be the Government merely considering something, particularly where it is not clear what is the thing they propose to consider.

**Question 24**

**Amnesty will answer “Fairly effective” to the first part of this Question (concerning early legal advice). We support improved early access to legal advice but it is very far from clear what is in fact proposed.**

**Amnesty will answer “Don’t know” to the fourth part of this Question (concerning experts). We have real reservations about the Government’s proposal but it is too vague to pass judgment.**

**Amnesty will respond “Not at all effective” to the remaining parts of this Question. These are generally not new, would introduce complexity to the current system and seem designed to do no more than restrict access to justice for people in the asylum system.**

Question 24 relates to six proposals, which suffer to varying degrees from vagueness making it hard to assess what is truly intended and what its effect would be.

Of all of these proposals, the proposal to improve access to legal advice has real potential to assist people and improve the asylum and appeals processes. If people are able to access competent legal advice and representation as soon as they need it, they are more likely to be able to effectively engage in these processes; and it is more likely that these processes can identify more quickly people who are entitled to asylum or have other good claims to remain in the UK. That would be fairer and more efficient.

This would not remove the need for legal advice and representation at later stages because not everyone will be able to engage effectively – if, for example, they are too afraid or traumatised to do so.

**QUESTIONS ON CHAPTER 6 OF THE GOVERNMENT’S PLAN**

Chapter 6 concerns victims of human trafficking and other serious exploitation.

**Question 25**

**Amnesty will be declining to answer this Question because we do not consider there is sufficient information for us to assess the proposals to which it relates.**

The Question only permits you to tick boxes to indicate how effective you believe various proposals will be to improve the system for identifying and protecting victims of human trafficking and other exploitation. However, the information given about the proposals is too vague to be sure what is intended and what effect each would have.

Amnesty does, however, have serious reservations about what may be intended here. The proposals give the impression that the underlying intention is to make the system for providing protection and assistance to victims of trafficking, slavery and other exploitation less accessible to victims. Amnesty would not support that.

## **QUESTIONS ON CHAPTER 7 OF THE GOVERNMENT'S PLAN**

Chapter 7 concerns the journeys most people who receive asylum in the UK are forced to make.

### **Questions 26 to 31**

**Amnesty will be answering “Not at all effective” to all six of these Questions because we do not consider that any of these proposals will do anything other than increase the risks that are taken by and the harms, including lives lost, that are done to people who are compelled to make dangerous journeys (often relying on smugglers).**

Women, men and children compelled to make unsafe journeys assisted by smugglers are exposed to grave risks of harm and abuse. However, the proposals include nothing to assist these people to make journeys that are safer. The proposals continue the same approach that has long been pursued of increasing powers to punish smugglers. Currently, the people most at risk from these powers are the women, men and children making the journeys – several of whom have been prosecuted as ‘smugglers’. This approach is only adding to the risks and harms being done to people because these journeys are made no less necessary but significantly more dangerous.

### **Questions 32 and 33**

**Amnesty will be declining to answer these Questions.**

The proposals for an electronic travel authorisation scheme do not suggest these would make any positive contribution to assisting refugees and other people, who have good reason to come to the UK, to do so.

## **QUESTIONS ON CHAPTER 8 OF THE GOVERNMENT'S PLAN**

Chapter 8 concerns the UK's deportation system, which is used to expel from the country people who have committed criminal offences. Among the people this system is used against are people who have been born here and lived here all their lives, people who even though not born here were brought here at a young age and grew up here and lived here ever since and people who are long settled with family in the UK.

#### **Questions 34 to 38**

**Amnesty will be responding “Not at all effective” to each of these five Questions. None of these proposals is designed to ensure that people can access justice to ensure they are not facing unlawful detention, removal or deportation from the UK. Nor are they designed to ensure that people who may have no good claim to remain in the UK are enabled to make an informed decision about their futures.**

**Moreover, Amnesty opposes the use of destitution and homelessness to coerce people to leave the UK.**

Question 34 and the proposal to which it relates are again used here to suggest a false link between people seeking asylum and offending. Questions 35, 37 and 38 do the same or similar since the question of whether or not someone is liable to be removed from the UK concerns many people who have no offending history.

Proposals to use destitution and homelessness to coerce people seeking asylum to leave the UK have been frequently pursued and in various ways. This causes people real suffering. It also makes it much harder for people to engage with the Home Office or people assisting them. Home Office staff have, in previous consultations, opposed such proposals including because they make it much harder to operate an effective asylum or immigration system if people are forced into situations where they cannot or will not maintain contact with the Home Office.

More generally, the proposals discussed here appear designed to do no more than remove or reduce access to justice and independent judicial oversight of Home Office powers of detention, removal and deportation – even though these powers are far too often exercised against people wrongly, including British citizens and people born in the UK with rights to British citizenship.

#### **Question 39**

**Amnesty will answer “Disagree” because there is no good purpose to doing what is proposed.**

It is already the case that compliance with immigration processes is taken into consideration in relation to whether or not a person should be granted immigration bail.

## QUESTIONS ON PUBLIC SECTOR EQUALITY DUTY (AND OTHER GENERAL QUESTIONS)

### Questions 40 to 44

While Amnesty will make some brief response to these Questions, it is our view that these Questions are not suitable for a Consultation of this type. The Government is under a legal obligation to conduct proper equalities impact assessments of its proposals. Open consultation is not an appropriate, effective or lawful way to do that and we are highly sceptical about the purpose in this aspect of the consultation.

### Question 45

Amnesty will make some further general observations here about the proposals and what is missing that ought to be done instead or in addition to things that are proposed. We will include the following points:

- It is remarkable how consistently Governments, of differing political parties, introduce policies to remove rights from people seeking asylum or people who come to this country to work, study or join family; and how equally consistently they introduce legislation to increase the powers of the Home Office while removing or reducing opportunity for people to turn to a lawyer or a judge to help defend themselves against unjust and excessive exercise of those powers.
- It is also striking how the Home Office continues to act in ways that are dismissive of people and their rights and which are the opposite of straightforward and open.
- It is worth remembering that in 2006, a Labour Home Secretary described the Home Office as “unfit for purpose”. Seven years later, a Conservative Home Secretary described it as “closed, secretive and defensive”. Another Conservative Home Secretary said in 2018 that it did not have sight of the people who were subjected to its policies and powers.
- None of this has changed; and one dreadful omission from the Government’s Plan is anything to change this.

Question 45 allows you to add any further comments that you may wish to make about the asylum, immigration or nationality systems.

It is not necessary to answer this Question but if you would prefer to see real focus on reforming the Home Office rather than, once more, proposals to give it more power and make it subject to less oversight or constraint, you may wish to briefly say so.

It may be particularly useful for you to answer this Question if you are not answering other open Questions (as distinct from the Questions that ask you to pick from pre-selected answers). Even a sentence or two explaining what you think is most important – whether that is about a particular proposal or something else you think should be changed or done – would be a valuable contribution and also make clear this is your response with your views.

This Questionnaire finishes with several Questions seeking general information about you.

## Second Survey: Public Technical questionnaire

### Question 1

Amnesty will be answering this Question to make the following points:

- There is an urgent need for fundamental reform of the UK's immigration and asylum systems, which systems will only be further undermined by these proposals. That reform ought to prioritise the following principles and objectives.
- Sight should never be lost of the women, men and children affected by these systems; and all that is done by and in connection with these systems should be humane, humanising and human rights respecting.
- People's human dignity ought to be a priority. Their health and wellbeing must be protected rather than abandoned or threatened whether as a consequence of policy or even as a targeted means to achieve the aims of policy.
- Family life and family unity ought to be a priority.
- Systems and rules ought to be transparent and accessible. People need clarity and certainty so they can understand their situation, make informed decisions and know their lives will not be turned upside down by events outside their control.
- Powers – particular of detention and expulsion (but also to control and deprive people) – must be exercised sparingly and appropriately; and must be subject to real and effective judicial oversight and constraint. Appeal rights, access to lawyers and legal aid are critical.
- The UK ought to take pride in recognising and respecting its international asylum and human rights obligations, including specific duties owed to refugees and to children.
- So much of the current immigration and asylum systems fail in each of these respects. It is deeply concerning, however, that the proposals advanced by the Government are set, and appear intended, to exacerbate rather than fix that.

This is a potentially very broad Question and it may be difficult to do it justice. Nonetheless, it is an open invitation to pass comment on matters that are not in the proposals.

## QUESTIONS ON CHAPTER 2 OF THE GOVERNMENT'S PLAN

Chapter 2 concerns whether and how the UK will in future provide asylum to women, men and children fleeing conflict and persecution.

## Question 2

**Amnesty will decline to answer this Question. We do not consider the Question provides any balanced opportunity to respond to what is being proposed.**

Question 2 is about safe and legal routes. However, the proposals show that it is exclusively focused on two existing such routes – resettlement and, to a lesser extent, refugee family reunion. There is no opportunity to provide a balanced response to this Question. A balanced response would need to consider safe and legal routes and the asylum system more broadly.

## Question 3

**Amnesty will be responding “Strongly agree” to each of the three parts of this Question.**

The Government’s proposal do not show an intention to continue to provide support to all refugees given asylum in the UK and Amnesty is opposed to the proposals overall. Nonetheless, the statements in Question 3 about factors that would help refugees to be secure and integrate are not controversial.

## Question 4

**Amnesty will be answering this Question to make the following points:**

- **Careful review of the entirety of these proposals reveals that overall there is no true commitment to improving protection to refugees by the UK Government. Rather there is a current determination to largely dismantle the relatively modest system of protection that exists.**
- **Penalising refugees for arriving by unsafe journeys that are not specifically authorised is to penalise people in real need for doing no more than exercising their right to seek asylum in the UK. This is unlawful as it is contrary to the UK’s Refugee Convention specific and general obligations. It is more generally unjust and damaging.**
- **The harms that will be done are various. Those harms will be done to many people. There will also be harm done to the Home Office and, in turn, to many more people. In short, those harms are that excluding or delaying refugees’ protection will directly harm them, including by the anxiety caused and by the deprivation and exploitation to which they will be exposed. The impact on the Home Office will, as it has been in the past, be delays and backlogs, which ultimately will penalise everyone – both the people the proposals set out to harm and the people whom it is said the Home Office still wishes to protect (who will suffer from the increased incapacity and inefficiency of the department).**
- **Additionally, the Home Office proposals will undermine refugee family reunion. This is because greatly curtailing the provision of asylum to the great majority of refugees who must make unsafe journeys to the UK (because no safe and legal**

routes are made available to them) will mean there are many fewer people in a position to sponsor family to find safety in the UK by a family reunion visa.

- Accordingly, the Home Office proposals, if pursued, will undermine the means by which the majority of people are provided the protection to which they are entitled (i.e. via the asylum system) and also the means by which most of the minority of people who are provided protection by a safe and legal route can currently do so (i.e. via refugee family reunion).
- This will not be likely to reduce the relatively modest number of people who come to the UK to seek asylum. It may, however, compel many of these people to try to avoid the authorities; and it may cause many others to be left in situations of limbo and deprivation, more vulnerable to exploitation and abuse.
- The impact internationally will also be detrimental to many people and to the Home Office. If the UK goes further down the route of reneging on or avoiding its asylum responsibilities that will only increase the likelihood that others do so or go further. Fewer people will find safety elsewhere. The prospect that more people try finding safety in the UK (whether in the UK's asylum system or in the UK but hiding away from the Home Office) may increase.

The Question invites responses on how to 'improve' the proposals made about the UK asylum system. However, you may want to be cautious before suggesting that the proposals can or should be improved as distinct from being abandoned.

This Question is an opportunity to set out your views on the Government's proposals on safe and legal routes. If you choose to answer this, you may want to consider what the overall effect of the proposals will be rather than simply focusing on proposals on resettlement.

This is because – although the proposals on resettlement could be positive (depending on detail about whether the UK will increase or reduce its resettlement commitment) – overall the proposals signal a determination to significantly reduce the commitment made by the UK to providing asylum. It is important in this context to note that the UK is a relatively modest provider of asylum (even including its resettlement programme) compared to its European neighbours and many other countries elsewhere. It is also important to note that the UK is not currently experiencing any significant increase in asylum claims, which have remained relatively low and stable for many years. The number of claims fell in 2020 compared to the previous year.

### **QUESTIONS ON CHAPTER 3 OF THE GOVERNMENT'S PLAN**

Chapter 3 concerns changes to British nationality law – who is or is not a British national, including but not limited to who is or is not a British citizen (which is the particular type of British national who is at liberty to come and go, and stay, in the UK free of immigration controls).

#### **Question 5**

**Amnesty will respond “Strongly disagree” to this Question. The proposal threatens to remove citizenship rights to many children born stateless in the UK.**

Question 5 concerns a proposal to remove or significantly reduce the provision in British nationality law that is meant to ensure children born stateless in the UK are able to secure British citizenship in line with the UK’s obligations under the 1961 UN Convention on the Reduction of Statelessness.

The Government’s description of what is proposed is misconceived. The rights that it intends to remove from children are only available to children who are and have always been stateless. The children must have been born here and must have lived continuously for five years in this country up to the point of any application for British citizenship.

The Government says that parents are depriving their children of rights to other nationalities so as to secure British citizenship for their children. But the Government provides no evidence of this. Moreover, it is proposing to penalise children by leaving them without any citizenship because of something that it is entirely out of their control; and the children it proposes to do this to are, in every case, children born in this country who have lived in this country for several years.

#### **Question 6**

**Amnesty will respond “Agree” to this Question.**

**Amnesty supports the proposal to introduce the power of waiver to which this Question relates. However, the Question is badly framed. Amnesty considers this proposal is necessary but still insufficient. Strictly, therefore, Amnesty disagrees with the Question as it is put but we do not want our answer to be taken as unsupportive of the proposal.**

Question 6 concerns a proposal to introduce a power for the Home Secretary to waive a particular requirement for a person to be naturalised as a British citizen. It would, in particular, assist some victims of the Windrush scandal to finally secure the British citizenship that was meant to be theirs all along. However, Question 6 asks whether this proposal will be sufficient. It will not. There are other barriers facing victims including a requirement that now means a victim of that scandal must show they are of good character even though when the Home Office first falsely advised them against registering their right to register as a British citizen there was no such character requirement.

Question 7 below provides an opportunity to address this further.

#### **Question 7**

**Amnesty will be answering this Question to make the following points:**

- **As regards the Windrush scandal, people who were entitled to register as British citizens but wrongly and deliberately discouraged not to do so should not have to face any barriers now that they would not have faced in registering in the 1980s. We welcome the intention to introduce discretion to waive certain of the requirements of naturalisation. However, this does not go far enough. None of the requirements of naturalisation ought to apply as these were not requirements of registration (which was the right of the people affected) in the 1980s. That includes the requirement of good character, which was not a requirement then and should not be a requirement now.**
- **There are several further fundamental problems that it is within the Home Office power to correct now. Of especial importance is the failure of the Home Office to recognise and respect the rights of thousands of children born and grown up in the UK to British citizenship by registration. Most of the barriers to children registering their right to citizenship of the country of their home, connection, often all their memories and even their birth, do not require anything other than the Home Office to prioritise encouraging and enabling children to register. This should be done. It is appalling that many British children remain effectively deprived of the citizenship of this, their country.**

This is an open Question, which potentially raises several complex matters of British nationality law. Some care is required to avoid making unnecessary or harmful recommendations for changes to law when, at least in several important cases affecting children, what is required is understanding and implementation of existing law. Understanding distinctions between registration and naturalisation are important in this respect – including because it is part of the Windrush injustice that people who were deprived of registration rights have been made dependent on naturalisation to correct the harm that was done to them by loss of their British citizenship.

#### **QUESTIONS ON CHAPTER 4 OF THE GOVERNMENT’S PLAN**

Chapter 4 relates to the UK’s asylum system.

##### **Question 8**

**Amnesty will be answering this Question to make the following points:**

- **The Government’s intention to create a two-tier asylum system (differentiation) should be abandoned.**
- **The Government should be doing all that it can to ensure that every refugee in the UK is assisted as quickly and readily as possible to feel and be safe, integrate and settle and rebuild their lives with their loved ones.**
- **That would be to the advantage of everyone concerned including the Home Office, local communities and the people directly affected.**

This Question is an opportunity to set out your views on the Government’s proposals to create a two-tier asylum system. If you choose to answer this, you may want to consider what the overall effect of that would be – including the effect of seeking to exclude people who are refugees in the UK from asylum protection and to undermine and delay any prospect that they may reach a point where they can feel and be safe and the Home Office can end its control and management of their daily lives.

#### **Question 9**

**Amnesty will be answering this Question to make the following points:**

- **This proposal is an especially dangerous one. It is for the UK to adopt a different and more restrictive test by which to decide who is a refugee than that which is internationally acknowledged.**
- **It would be likely to profoundly undermine the UK’s commitment to asylum, necessitate litigation and license others to withdraw from their own asylum commitments.**

The subject matter of this Question is legally technical. Nonetheless, what is at stake is whether the UK continues to adopt a commitment to the 1951 Refugee Convention and the right to asylum that is long shared and understood internationally. It concerns how it is decided that a person is a refugee. The proposal is to deliberately adopt a different test so that it is significantly more difficult for refugees to satisfy the Home Office of their refugee status.

#### **Question 10**

**Amnesty will decline to respond to this Question. Ranking these proposals would appear to give support to one or more of them and Amnesty does not support any of them.**

This Question concerns various proposals, some of which have been introduced before and been harmful to people and to the asylum system.

The Nationality, Immigration and Asylum Act 2002 introduced powers to open asylum processing centres. These were opposed by many people who objected to people seeking asylum being isolated in detention-like centres and objected to such centres being opened in their local community.

Expediting procedures and fixed timescales for asylum claims and appeals of people in detention have both been done before. The Home Office consistently claimed that these were done with safeguards to ensure procedures were fair. They were not. The Home Office should cease trying to complicate procedures with different processes for some people and not others. It should simply focus on carrying out its functions as fairly, consistently and efficiently as possible.

The Home Office does not have a new approach to asylum. It is making various proposals to change the asylum system in ways that it has proposed or implemented before and which will do harm and injustice to many people while adding to chaos, delays and backlogs (as has happened before).

**Questions 11 to 14**

**Amnesty will respond “Not at all effective” to each of these four Questions.**

These Questions concern proposals about how it is assessed whether a person seeking asylum is or is not a child, and how it is assessed how old a child seeking asylum is. It is striking that nothing among the Government’s proposals, or anything it has said about them, recognises the very serious harm that is done to children by wrongly treating them as adults. There are several aspects to this. A child treated as an adult is placed in systems designed for adults, with which they are expected to be as able to engage with as adults. Those systems are not designed with support and supervision to protect children from abuse from adults or from the system because those system are based on the understanding that the people placed in those systems are not children. Amnesty is, therefore, strongly opposed to what the Government is proposing, which reflects years of the Home Office refusing or failing to properly recognise the particular vulnerabilities of children.

**Question 15**

**Amnesty will be answering this Question to supplement the points it intends to make in answer to Questions 8 and 9 (above).**

The Question invites responses on how to ‘improve’ the proposals made about the UK asylum system. However, you may want to be cautious before suggesting that the proposals can or should be improved as distinct from being abandoned.

A reason for clearly calling for the asylum proposals to be scrapped (as distinct from improved) is if you think the proposals will necessarily harm refugees or the UK’s commitment to its asylum duties or, more generally, the asylum system and the Home Office capacity to operate that system.

**QUESTIONS ON CHAPTER 5 OF THE GOVERNMENT’S PLAN**

Chapter 5 relates to asylum claims and appeals against refusal of asylum.

**Question 16**

**Amnesty will decline to answer this Question.**

Amnesty opposes the proposals to which this Question relates. The proposals lack any reasonable balance; and reflect years of the Home Office blaming the people in the asylum and immigration systems for failures of those systems – including instances of the Home Office not acting transparently or in good faith.

#### **Question 17**

**Amnesty will be answering this Question to make the following points:**

- **The Home Office introduced a ‘one-stop process’ as long ago as the Nationality, Immigration and Asylum Act 2002. Its stated aims were precisely the aims that are stated now.**
- **The introduction of this process was followed by successive revisions and complications of the appeals system over several years.**
- **The fundamental problem, as it has long been, lies with the Home Office. It could make the asylum system fairer, more consistent and efficient if it concentrated on ensuring that its decision-making was as fair, clear and reliable as possible.**
- **Too often, some refugees are not given the time they need to build trust with lawyers and disclose what has happened to them while others are simply left in limbo without progress on their claim at all.**
- **As for decisions to refuse asylum, the Home Office could greatly assist the appeals process. It could do so by making clear decisions (rather than wasting time and causing confusion by casting around for as many, often indefensible, reasons for refusing someone’s claim); and by being prepared to review and correct refusals when it is shown the decision was mistaken rather than requiring the appeal process to take its full course.**
- **It would also help if the Home Office stopped bringing up new reasons for refusing asylum simply because its original reasons have been shown to be mistaken.**

The Question invites responses on how to make decision-making more effective for people who make asylum or immigration claims and how to make the appeals system faster.

The proposals, however, focus upon trying to restrict the rights of people who make these claims rather than upon how the Home Office can improve the way it acts to, in turn, improve its decision-making. You may conclude that this focus is both unjust and likely to fail. It is not obvious how making the system more restrictive to the people making claims is likely to improve the outcomes they receive. If injustice is the result, there is a very real prospect that the system will become more inefficient because there will be a need to try and put right the errors being made.

#### **Question 18**

**Amnesty will be answering this Question to supplement the points we will make in answer to Question 17.**

**We will be clear in answer to part (a) of this Question that we have different proposals and oppose the proposals being made. As for the proposals the Government is making, we consider they are bad and should not be pursued.**

If you answer this Question, you may wish to be careful when answering part (a) of the Question to make clear whether you are:

- suggesting improvements to the proposals being made; or
- objecting to these proposals (you may be suggesting completely differently proposals or making no proposals).

Suggesting improvements implies that you consider there is some underlying merit in what the Government is proposing and that the proposals should be adopted. Objecting to the proposals indicates that you do not consider the proposals have merit. Objecting to proposals does not prevent putting forward different and better proposals.

## **QUESTIONS ON CHAPTER 6 OF THE GOVERNMENT'S PLAN**

Chapter 6 concerns victims of human trafficking and other serious exploitation.

### **Question 19**

**Amnesty will be answering this Question to make the following points:**

- **Local authorities, police and immigration officers – and many other people – would benefit from training to be able to better identify victims of trafficking, slavery or other exploitation. However, everything depends on the quality and purpose of the training. The key purpose of training for ‘first responders’ ought not to be to prepare them to make conclusive decisions but rather to identify potential victims and be able to engage with potential victims in an encouraging and supportive way that will assist a victim to seek and receive protection and assistance.**
- **There is a confusion in the proposal for a further consultation on ‘public order grounds exemption’. The ‘exception’ in the Convention on Action against Trafficking in Human Beings (ECAT) refers to two distinct matters. One concerns what are called ‘public order’ grounds. The other concerns improper claims. What is said in Chapter 6 appears to treat these as one and the same.**
- **The proposal for a further consultation on the test by which it is assessed whether someone is a victim of trafficking is unconvincing. It is suggested that the standard of proof needs to be raised. Amnesty is aware of no evidence to support that and fears the result will simply be to exclude more victims from the protection and assistance they need and the UK is legally required to provide.**
- **There are several other proposals made under the heading of ‘providing victims of modern slavery with increased support’. However, very little substance is given as to what is meant here. We would support increased support for victims but whether any proposals would achieve that depends on their substance.**

Much of what is proposed in Chapter 6 is difficult to assess because there is little detail given.

One option for responding to this Question, if you are supportive of the need to provide protection and assistance to victims of trafficking, slavery and exploitation, is to carefully express your support for improved protection and assistance without expressing a position on the Government's specific proposals.

If you do respond, you may need to be very careful to avoid expressing support for proposals that are not sufficiently clear. That might be done by suggesting 'improvements' as invited by part (a) of this Question. If you consider the proposals are not sufficiently clear to assess whether they can be improved or need to be abandoned (and perhaps different proposals made), you may need to specifically say this.

## **QUESTIONS ON CHAPTER 7 OF THE GOVERNMENT'S PLAN**

Chapter 7 concerns the journeys most people who receive asylum in the UK are forced to make.

### **Questions 20 to 22**

**Amnesty will decline to answer these Questions.**

These Questions concern proposals about civil penalties, including increased fines, for people and businesses in whose transportation people, who do not have permission to enter the UK, are found. The proposals here lack any balance.

There is no consideration of the impact such penalties have by increasing the risks people seeking asylum must face to reach the UK to make their claims. Increasing these risks costs lives and exposes people to other harms and abuses because the UK provides no safe and legal routes for people to come to the UK to seek asylum (not even for people with family here) but will not consider any asylum claim unless the person gets here first.

### **Question 23**

**Amnesty will be answering this Question to make the following points:**

- **It is discouraging and unhelpful that what is said in Chapter 7 continues to ignore the key effective cause of the smuggling that the Government wishes to reduce or end.**
- **Smuggling exists solely because people need to make journeys that are not authorised or which are unavailable to them for other reasons. That need arises from the harms people are experiencing and are escaping. Those harms include war, torture, violence, deprivation and family separation. People who make or attempt a dangerous journey, with or without the assistance of a smuggler, do**

so because these harms are so intolerable that it is better to risk exploitation, death or other harm to try to reach a place that will finally be safe.

- Ignoring this cause – either pretending it does not exist or simply choosing not to address it – has been the approach of the UK and other Governments for many years. This approach has empowered smugglers and made journeys more dangerous. It has done so because it has not removed the need for anyone to rely on a smuggler and instead has tended to increase the need for more people to do so.
- Taken together, the proposals in Chapter 7 repeat the same approach. They are likely to have the same results. The people who will suffer will be the people being harmed and exploited. The people who will gain will be smugglers, particularly the most organised, dangerous and exploitative smugglers.

This Question provides an opportunity to give a verdict on the overall approach of the UK Government to people smuggling now and for many years before now.

However, if you answer this Question, you may wish to be careful when answering part (a) of the Question to make clear whether you are:

- suggesting improvements to the proposals being made; or
- objecting to these proposals (you may be suggesting completely differently proposals or making no proposals).

Suggesting improvements implies that you consider there is some underlying merit in what the Government is proposing and that the proposals should be adopted. Objecting to the proposals indicates that you do not consider the proposals have merit. Objecting to proposals does not prevent putting forward different and better proposals.

## **QUESTIONS ON CHAPTER 8 OF THE GOVERNMENT'S PLAN**

Chapter 8 concerns the UK's deportation system, which is used to expel from the country people who have committed criminal offences. Among the people this system is used against are people who have been born here and lived here all their lives, people who even though not born here were brought here at a young age and grew up here and lived here ever since and people who are long settled with family in the UK.

### **Questions 24 and 25**

**Amnesty will be answering these Questions to make the following points:**

- People whom the Home Office intends to forcibly remove from the UK should be given notice of when this is going to happen and be given sufficient opportunity to obtain legal advice and representation.
- That can best be achieved by ensuring that notice is given of the date and time it is intended to remove the person as early as possible and no later than a fixed minimum period. That fixed minimum period ought to be measured in working

days so that it provides a common minimum number of days during which lawyers' offices and courts are ordinarily open.

- The minimum period ought to be calculated having regard to a careful evaluation of the availability of specialist legal advice and representation and of what is practically and procedurally required for a lawyer to be able to assess whether a person's removal is lawful and to be able to effectively challenge that removal where there are grounds to consider it is not.
- The evaluation that is called for must consider the experience and capacity of specialist legal advice and representation, including the impact of the legal aid system, and the steps that must or should reasonably be taken to assess lawfulness of removal, seek information or suspension of removal by the Home Office, issue proceedings in the High Court and secure an Order to prevent removal. If the minimum period will not provide sufficient time for all of this, it will be insufficient for the purpose for which it is needed (i.e. to ensure that people whose removal would be unlawful are protected against being removed).
- The evaluation must consider the circumstances of people who face removal. Those circumstances vary greatly but they include that some people are detained; some people are not currently legally represented (some of whom may never have had legal representation or not for a very long period of time); and some people have personal characteristics that reduce their capacity to engage with legal representatives and legal processes (including language and mental health barriers).

These Questions invite you to propose or endorse proposals about what minimum period of notice should be given to a person of the intention to remove them from the UK (and when). However, there is much information that anyone would need to be able to properly assess that. That information is not generally available. So, you may wish to be careful to avoid making or endorsing a particular proposal. You may, however, want to set out the considerations you think should be taken into account in assessing what that minimum period should be.

#### **Question 26**

**Amnesty will be answering this Question to make the following points:**

- The existing approach to removal of people, including people refused asylum, is flawed and the proposals in Chapter 8 and the plan more generally do not correct this flaw. The same is true of the approach to deportation of people who have committed criminal offences.
- Currently, many people are wrongly returned to places where they are not safe from torture and other persecution; many people are wrongly separated from their family in the UK; and many British people are wrongly deprived of their rights to British citizenship and exiled from their home country and family.
- The Home Office should focus its efforts on ensuring that people who have good claims to be and remain in the UK are recognised as quickly as possible and have their citizenship or immigration status confirmed as quickly as possible.

- **The Home Office ought to act consistently and transparently to ensure that people can understand why the decisions they receive are made and secure any legal assistance or judicial consideration they may require.**
- **These aims are not achieved by removing people's rights or reducing oversight or constraint upon the exercise by the Home Office of its powers.**
- **If, however, people's rights were respected and the Home Office welcomed oversight and constraint upon its exercise of power, this would help it to act properly, efficiently and in a manner that would secure wider trust and confidence.**
- **What is, therefore, required is reform of the existing system so that rights (including appeal rights and legal aid) are returned to people, so that harmful barriers in law and policy to recognition of people's rights are removed and so that the underlying culture at the Home Office is one of transparency, consistency, fairness and openness to scrutiny and challenge.**

If you answer this Question, you may wish to be careful when answering part (a) of the Question to make clear whether you are:

- suggesting improvements to the proposals being made; or
- objecting to these proposals (you may be suggesting completely differently proposals or making no proposals).

Suggesting improvements implies that you consider there is some underlying merit in what the Government is proposing and that the proposals should be adopted. Objecting to the proposals indicates that you do not consider the proposals have merit. Objecting to proposals does not prevent putting forward different and better proposals.