

CONSULTATION – the New Plan for Immigration

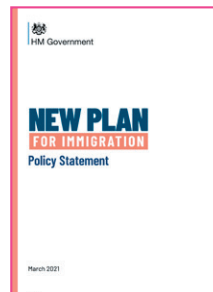
A guide from Amnesty International UK

Introduction

On 24 March, the government launched a six-week consultation on its **New Plan for Immigration**. The plan sets out proposals for changes to nationality, immigration and asylum law. It is available here:

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

This consultation is not fit for purpose. However it is important that organisations and members of the public take part in the consultation as the policy document proposes significant changes to the UK's immigration, asylum and nationality laws.



How to sign up to take part in the consultation:

- Visit www.gov.uk/government/consultations/new-plan-for-immigration and click on 'Respond online' at the bottom of the page. You will then be asked to provide basic information such as your name and email address.
- After signing up, you should receive an email confirmation from BritainThinks, the organisation running the consultation for the Home Office. In the email, click on 'Go to the platform'. This takes you to the website where you can take part in the consultation.
- The 'platform' has several documents, including the New Plan for Immigration, and two separate online surveys for the public consultation: one is called the **New Plan for Immigration: Main questionnaire**, the other is called **Further detailed questions on the New Plan for Immigration**.
- For each survey, click on the relevant 'Take the survey' link; or select the relevant link from the drop down options available in 'Projects' at the top of the page.
- **If you are short of time, we suggest you just focus on answering the priority questions highlighted in red. These should take about 15-20 minutes to complete.**

IMPORTANT: You don't need to answer every question – you can decline to answer and move on to the next question.

To do this, use the arrow at the bottom of the web page.

DEADLINE: Responses to the consultation must be submitted by 11.45pm on 6 May.

Amnesty's view of the consultation

The consultation's format and presentation are complex, confusing and tricky to access. For people who want to participate but are short of time, this guidance document outlines the topic of each question, and Amnesty's responses. This may help you to formulate your own answers. We explain where we declined to answer questions that did not allow us to respond in a way in which our answers would be clearly understood, or were not relevant to what we want to say. This is explained below where relevant.

PRIORITY QUESTIONS: If you don't have time to complete the surveys in full, please focus on answering the most important questions, which are highlighted red below.

AMNESTY
INTERNATIONAL



Survey 1: New Plan for Immigration – Main questionnaire

QUESTION 1: *The Foreword*

Amnesty's response: STRONGLY OPPOSE.

Our overall assessment of the Home Secretary's Foreword is that it lacks real balance. It includes some accurate statements, but it does not provide a full picture and makes claims not supported by the evidence. It attempts to secure support for a set of harmful proposals rather than presenting a true context for making and assessing any proposals.

Q1 invites you to assess the Home Secretary's Foreword to the government's plan. In view of how the Foreword is presented, however, the question allows you to pass a verdict on the government's proposals overall.

Although we support some proposals, our overall assessment of the proposals is that if implemented, they will do considerable harm – 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. Many of the proposals when introduced by previous governments led directly to long delays and large backlogs in the asylum and immigration system.

Given the scale of harm done previously and likely to be done again, our view is that it is necessary to express in the strongest possible terms our overall opposition to the proposals, their presentation and context.

CHAPTER 2: Whether and how the UK will in future provide asylum to women, men and children fleeing conflict and persecution

QUESTIONS 2-5:

Amnesty's response: DECLINE TO ANSWER.

The way these questions are presented makes it impossible for us to make clear our view on the proposals to which they relate.

These questions only allow you to tick pre-prepared boxes to indicate strength of agreement or disagreement with the statements made.

The main problems with these questions are that they are based on assumptions about government intentions which are not supported by the evidence or by the proposals, and some of the ways the questions are put are misleading.

For example, Q2 invites you to indicate whether certain steps would be likely to be effective or ineffective in achieving what the government says are its aims. If the government improved access to justice in the asylum system (a stated aim) that would increase the fairness of that system (also a stated aim). But the proposals on access to justice will deny, not improve, access to many people who need it. More broadly, the proposals indicate an intention to largely dismantle the asylum system making it much less fair. It is impossible to answer in a way that makes this point. It is Amnesty's view that this question should not be answered to avoid your answer being misunderstood.

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▶ Survey 1 (contd): Main questionnaire

QUESTIONS 6-10:

Q6-10 are an opportunity to set out your views on the government's proposals on safe and legal routes and how these relate to refugee family reunion. To avoid the complexity of trying to break your answers down to address the important distinctions between the questions you could mark Q6-9 as **'Please see Question 10'** – and then set out all you want to say in answer to Q10.

Amnesty's response: WE ANSWER THE QUESTIONS ON SAFE AND LEGAL ROUTES 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 that are not designed or intended for this purpose.
- This confusion applies equally to children who are in the EU and children who are outside the EU. Previously, UK membership of the EU provided a possible safe and legal route for unaccompanied children in the EU to join family members in the UK and claim asylum here with their family.
- The government refers to immigration rules that allow some children to join parents or other family members in the UK. But the rules do not permit this for the purpose of seeking asylum.
- The proposals make no provision for people who currently make dangerous journeys to claim asylum in the UK. 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.
- The government highlights those permitted to come to the UK safely and legally via refugee family reunion visas, but its proposals would withdraw this possibility from many people. 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.

CHAPTER 3 concerns proposed changes to British nationality law

QUESTIONS 11-14:

Amnesty's response to Q11, 12 and 14: VERY EFFECTIVE.

We strongly support these proposals. We do not think the proposal in Q14 goes far enough, but it is important. Our view is that it is better to emphasise strong support in circumstances where there is no option to explain what else is needed.

Amnesty's response to Q13: DECLINE TO ANSWER.

The information provided is too vague for us to determine how effective the proposal (on adult registration) could be.

These questions ask 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 does not permit you to explain your answer. If, for example, you strongly support introducing a power to waive residence requirements for naturalisation because it may assist 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 recognise that this proposal is insufficient to assist everyone who should be assisted – but downgrading your answer appears to indicate less support for the proposal.

Question 13 is of particular concern as there is so little information as to what is intended by this proposal.

► Survey 1 (contd): Main questionnaire

CHAPTER 4 relates to the UK's asylum system

QUESTIONS 15 TO 19:

Amnesty's response to all of these questions: NOT AT ALL EFFECTIVE

The 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.

Reducing the UK's commitment to asylum standards and providing protection, which these proposals would do, will encourage others to do likewise. Relatively few people currently seek asylum in the UK – because many find safety elsewhere. If, however, other countries are encouraged to reduce their standards and commitment, fewer people will be given safety and more may be compelled to attempt dangerous journeys seeking safety elsewhere, including in the UK.

The format of these questions only permits you to tick boxes to indicate how effective you believe various proposals will be. In each question, the premise includes assertions that are false or unproven. You could approach the questions as if you are simply being asked whether you think these proposals would save lives and protect refugees – and there is no evidence to indicate that they would do so. The proposals clearly intend that some refugees would no longer receive protection in the UK or would have that protection delayed.

QUESTION 20:

Amnesty's response: NOT AT ALL EFFECTIVE (TO EACH OF THE THREE PARTS TO Q20).

The proposal on revoking refugee status is not 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 leave more refugees in limbo in the UK, unable to meet an unjustly higher test and unable to leave because they remain at risk of persecution.

The proposals on age assessments are vague and repeat what Amnesty has heard from the Home Office many times. Nothing in these proposals suggests the Home Office has any better plans or understanding of this matter. We fear whatever is 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 problems with what is said and the proposals to which it relates. The government is again seeking to draw a link between people seeking asylum and offending, although there are already provisions in law about revoking refugee leave.

It is already difficult for someone to prove their refugee status. The circumstances in which refugees are often forced to flee tend not to permit collecting and bringing evidence. The torture and other trauma many refugees experienced tends to make it more difficult to recall and describe past events. And the asylum system's inadequate provision of legally aided advice and representation.

Proposals on age assessments have been made by the Home Office previously. The motivation is always said to be the concern that an adult mistakenly treated as a child will be a risk to children – but not, it seems, concern at the risk to a child who is wrongly treated as an adult. Unaccompanied and traumatised children in the asylum system are vulnerable to abuse; and it is the responsibility of all relevant authorities to mitigate that risk and prevent abuse.

This can be done where children are treated as children and supported in settings that provide supervision and protection against abuse. It cannot be done when children are treated as adults and placed in adult settings without such supervision or protection.

► Survey 1 (contd): Main questionnaire

CHAPTER 5 relates to asylum claims and appeals against refusal of asylum

QUESTIONS 21 AND 22:

Amnesty's response: NOT AT ALL EFFECTIVE (TO BOTH 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, and was followed by repeated attempts to revise the appeal process. The Home Office should instead work to get its own house in order. If its decision-making and conduct of appeals was clear, efficient and fair, this could greatly assist the appeal process.

QUESTION 23

It is not sufficiently clear what is proposed.

Amnesty's response: DON'T KNOW.

Q23 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 it would be for the government to merely consider something, particularly where it is not clear what it is that they propose to consider.

QUESTION 24 (SEVERAL PARTS):

Amnesty's response: TO THE FIRST PART ON EARLY LEGAL ADVICE 'FAIRLY EFFECTIVE'. TO THE FOURTH PART ON EXPERTS 'NOT AT ALL EFFECTIVE'. TO THE REMAINING PARTS 'DON'T KNOW'.

Regarding the first part of Q24, we support improved early access to legal advice. It is however far from clear what is actually proposed.

In the fourth part of the question, concerning experts, we have reservations about the government's proposal but it is too vague to judge.

The remaining parts of this question are generally not new, would introduce complexity to the current system, and seem to be designed only to restrict access to justice for people in the asylum system.

This question relates to six proposals with varying degrees of vagueness making it hard to assess what is truly intended and what the effect would be.

Of them all, 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.

► Survey 1 (contd): Main questionnaire

CHAPTER 6 concerns victims of human trafficking and other serious exploitation

QUESTION 25:

Amnesty's response: DECLINE TO ANSWER.

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.

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

QUESTIONS 26 TO 31:

Amnesty's response: NOT AT ALL EFFECTIVE (TO ALL SIX QUESTIONS)

We consider that these proposals will only increase the risks taken by and the harms, including lives lost, 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 long-standing approach 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 only adds to the risks and harms done to people: these journeys are made no less necessary but significantly more dangerous.

QUESTIONS 32 AND 33

Amnesty's response: DECLINE TO ANSWER.

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.

► Survey 1 (contd): Main questionnaire

CHAPTER 8 concerns the UK's deportation system, used to expel people who have committed criminal offences

QUESTIONS 34 TO 38:

Amnesty's response: NOT AT ALL EFFECTIVE (ALL 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.

Q34 and the proposal to which it relates are again used here to falsely suggest a 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 in various ways. This causes 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 which, among other things, make it 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, these proposals appear to be designed to remove or reduce access to justice and independent judicial oversight of Home Office powers of detention, removal and deportation – even though these powers are too often wrongly exercised against people, including British citizens and people born in the UK with rights to British citizenship.

QUESTION 39:

Amnesty's response: DISAGREE.

There is no good purpose in 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 40-44:

Amnesty's response: THESE ARE UNSUITABLE QUESTIONS FOR A CONSULTATION OF THIS TYPE.

These questions relate to public sector equality duty and other general questions, and it is Amnesty's view that these are not suitable questions 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. We are highly sceptical about the purpose of this aspect of the consultation.

► Survey 1 (contd): Main questionnaire

QUESTION 45:

Amnesty's response: WE MAKE FURTHER GENERAL OBSERVATIONS ABOUT THE PROPOSALS, WHAT IS MISSING, WHAT OUGHT TO BE DONE INSTEAD OR IN ADDITION TO WHAT IS BEING PROPOSED. WE 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. Equally consistently, they introduce legislation to increase the powers of the Home Office – and remove or reduce opportunity for people to turn to a lawyer or a judge to help defend themselves against unjust and excessive exercise of those powers.
- The Home Office continues to act in ways that are dismissive of people and their rights and are the opposite of straightforward and open.
- 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 the Home Office did not have sight of the people who were subjected to its policies and powers.
- None of this has changed. One dreadful omission from the government's New Plan for Immigration is anything that will change this.

This question allows you to add any further comments you may wish to make about the asylum, immigration or nationality systems.

It may be particularly useful for you to respond to Q45 if you are not answering other open questions (as distinct from picking 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 Survey 1 finishes with several questions seeking general information about you.

NOW GO TO [SURVEY 2](#) ►

► Survey 2: New Plan for Immigration – Further detailed questions

QUESTION 1:

Amnesty's response: WE MAKE THE FOLLOWING POINTS:

- There is an urgent need for fundamental reform of the UK's immigration and asylum systems, which will only be further undermined by these proposals. That reform should prioritise the following principles and objectives:
- Sight should never be lost of the people affected by these systems, which should be humane, humanising and human rights respecting.
- People's human dignity, health, wellbeing, family life and family unity should be prioritised and protected, not threatened in order to achieve policy aims.
- Systems and rules should be clear, transparent and accessible so people can understand their situation and make informed decisions.
- Powers, particularly detention and expulsion, must be exercised sparingly and appropriately; and must be subject to effective judicial oversight and constraint. Appeal rights, access to lawyers and legal aid are critical.
- The UK should take pride in recognising and respecting its international asylum and human rights obligations, including specific duties to refugees and children.
- So much of the current immigration and asylum systems fail in these respects. It is a matter of deep concern that the government's proposals are set – and appear intended – to exacerbate rather than fix the problems.

This is potentially a broad question and difficult to do justice to. Nevertheless it is an open invitation to comment on matters that are not in the proposals.

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's response: DECLINE TO ANSWER.

We do not consider the question provides a balanced opportunity to respond to what is being proposed.

This question 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's response: STRONGLY AGREE (TO EACH PART OF THE QUESTION)

The government's proposals 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 Q3 about factors that would help refugees to be secure and integrate are not controversial.

► Survey 2 (contd): Further detailed questions

QUESTION 4:

Amnesty's response: COMMENT TO MAKE THE FOLLOWING POINTS

- Careful review reveals there is no true commitment to improving protection to refugees in the proposals. Instead there is a determination to dismantle the existing, relatively modest system of protection.
- Penalising refugees for arriving by unsafe and unauthorised journeys would penalise people in real need for simply exercising their right to seek asylum. This is unlawful as it is contrary to the UK's Refugee Convention specific and general obligations. It is unjust and damaging.
- The harms that will be done are various and will affect many people, as well as the Home Office. Excluding or delaying refugees' protection will directly harm them, exposing them to deprivation and exploitation. Home Office delays and backlogs ultimately penalise everyone.
- The Home Office proposals would undermine refugee family reunion.
- The Home Office proposals would undermine the means by which most people are provided the protection to which they are entitled and by which most of the minority of people who are provided protection by a safe and legal route can currently do so (via family reunion).
- This is unlikely to reduce the relatively modest number of people who come to the UK to seek asylum. But it may compel many to try to avoid the authorities and leave others in limbo, deprivation and more vulnerable to exploitation and abuse.
- The impact internationally will also be detrimental. If the UK further reneges on or avoids its asylum responsibilities, others are likely to do the same. Fewer people will find safety elsewhere – and the number of people trying to find safety in the UK may increase.

The question invites responses on how to 'improve' the proposals for the UK asylum system. We advise caution before suggesting the proposals can 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, consider what the overall effect of the proposals, rather than focus on resettlement proposals.

This is because overall the proposals signal a determination to significantly reduce the UK commitment to providing asylum – although the proposals on resettlement could be positive, depending on whether the UK increases or reduces its resettlement commitment. In this context it is important 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. The UK asylum claims have remained relatively low and stable for many years. The number of claims fell in 2020 compared to the previous year.

► Survey 2 (contd): Further detailed questions

CHAPTER 3 concerns changes to British nationality law

QUESTION 5:

Amnesty's response: STRONGLY DISAGREE.

The proposal threatens to remove citizenship rights to many children born stateless in the UK.

This proposal will 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 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 here continuously for five years up to the point of application for British citizenship.

The government says parents are depriving their children of rights to other nationalities so as to secure British citizenship for them, but it provides no evidence of this. It proposes to penalise children by leaving them without any citizenship. In every case, these will be children born in this country who have lived here for several years.

QUESTION 6

Amnesty's response: AGREE.

This question is badly framed, but Amnesty supports the proposal to introduce the power of waiver. We consider this proposal is necessary but not sufficient. So strictly, we disagree with the question as it is put, but we do not want our answer to be taken as unsupportive of the proposal.

This proposal would 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, the question 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) is an opportunity to address this further.

► Survey 2 (contd): Further detailed questions

QUESTION 7:

Amnesty's response: OUR ANSWER MAKES THE FOLLOWING POINTS:

- **Regarding the Windrush scandal, people entitled to register as British citizens but wrongly and deliberately discouraged from doing so should not have to face any barriers now that they would not have faced in the 1980s. We welcome the intention to introduce discretion to waive certain of the requirements of naturalisation, but this does not go far enough.**
- **There are several further fundamental problems the Home Office has the power to correct now, including its failure to recognise and respect the rights of thousands of children born and grown up in the UK to British citizenship by registration. 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.

CHAPTER 4 relates to the UK's asylum system.

QUESTION 8:

Amnesty's response: WE MAKE THE FOLLOWING POINTS:

- **The government should abandon plans to create a two-tier asylum system (differentiation).**
- **The Government should do all that it can to ensure 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 advantage of all concerned, including 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, consider the overall effect – including that of excluding people who are refugees in the UK from asylum protection and to undermine and delay their prospect of reaching a point where they can feel and be safe – and the Home Office can end its control and management of their daily lives.

► Survey 2 (contd): Further detailed questions

QUESTION 9:

Amnesty's response: WE MAKE THE FOLLOWING POINTS:

- **This proposal is especially dangerous. It is for the UK to adopt a test to decide who is a refugee that is different to and more restrictive than the test that is acknowledged internationally.**
- **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 content of this question is legally technical. But what is at stake is whether the UK continues a commitment to the 1951 Refugee Convention and the right to asylum that is long shared and understood internationally. This concerns how it is decided that a person is a refugee. The proposal is to deliberately adopt a different test that would make it significantly more difficult for refugees to satisfy the Home Office of their refugee status.

QUESTION 10:

Amnesty's response: DECLINE TO RESPOND.

Ranking these proposals would appear to give support to one or more of them and Amnesty does not support any of them.

This concerns various proposals, some of which were introduced previously – and were 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 who objected to isolating people seeking asylum 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 claimed these were done with safeguards to ensure procedures were fair. They were not. The Home Office should cease trying to complicate procedures and should focus on carrying out its functions fairly, consistently and efficiently.

The Home Office does not have a new approach to asylum – it's proposing to change the asylum system in ways it has proposed or implemented before – ways which do harm and injustice to many people while adding to chaos, delays and backlogs.

QUESTION 11-14:

Amnesty's response: NOT AT ALL EFFECTIVE (TO EACH OF THE FOUR QUESTIONS).

These four 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 the person is. It is striking that nothing in the government's proposals, or what it has said about them, recognises the serious harm done to children by wrongly treating them as adults. This involves several aspects – a child treated as an adult is placed in a system designed for adults and is expected to be able to engage with this as an adult.

Those systems are not designed with support and supervision to protect children from abuse from adults or from a system based on the understanding that the people placed in it are not children. Amnesty is strongly opposed to the government proposals, which reflect years of Home Office refusal or failure to properly recognise the particular vulnerabilities of children.

► Survey 2 (contd): Further detailed questions

QUESTION 15:

Amnesty's response: SUPPLEMENTING POINTS MADE IN ANSWER TO QUESTIONS 8 AND 9 (ABOVE).

The question invites responses on how to 'improve' the proposals made for the UK asylum system. However, we advise caution 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.

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

QUESTION 16:

Amnesty's response: DECLINE TO ANSWER.

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's response: 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, with exactly the same stated aims as now. It was followed by years of revisions and complications of the appeals system.
- The fundamental problem lies with the Home Office, which could make the asylum system fairer, more consistent and efficient by ensuring its own decision-making is fair, clear and reliable.
- Refugees are often given insufficient time to build trust with lawyers and disclose what happened to them. Others are left in limbo without any progress on their claim.
- As for decisions to refuse asylum, the Home Office could greatly assist the appeals process by making clear decisions and being prepared to review and correct refusals when it is shown the decision was mistaken. It should also stop bringing up new reasons for refusing asylum simply because its original reasons have been shown to be mistaken.

Q17 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 on trying to restrict the rights of people who make these claims rather than how the Home Office can improve its performance by improving its decision-making. This focus, one can conclude, is both unjust and likely to fail. How is making the system more restrictive to the people making claims likely to improve the outcomes they receive? If injustice is the result, there is a real prospect the system will become more inefficient because there will be a need to try and put right the errors being made.

► Survey 2 (contd): Further detailed questions

QUESTION 18:

Amnesty's response: WE WILL SUPPLEMENT THE POINTS MADE IN RESPONSE TO QUESTION 17.

In answer to part (a), we clearly oppose these proposals and have different proposals to make. We consider the government proposals are bad and should not be pursued.

If you answer this question, we advise care when answering part (a) to make clear whether you are:

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

Suggesting improvements implies 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 you putting forward different and better proposals.

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

QUESTION 19:

Amnesty's response: MAKE THE FOLLOWING POINTS:

- Local authorities, the police, immigration officers and others would benefit from training to better identify victims of trafficking, slavery or other exploitation – but this depends on the quality and purpose of the training. The key purpose of training for ‘first responders’ should be to identify and engage with potential victims in an encouraging, supportive way that will help them 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 ‘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.
- Several proposals are made under the heading of ‘providing victims of modern slavery with increased support’. But very little substance is given as to what is meant. 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 too little detail. One option for responding to this question, if you support 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. You may need to be careful to avoid expressing support for proposals that are not clear – this might be done by suggesting ‘improvements’ as invited by part (a) of this question. If you consider proposals not clear enough to assess whether they can be improved or need to be abandoned (and perhaps different proposals made) you may need to say this specifically.

► Survey 2 (contd): Further detailed questions

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

QUESTIONS 20-22:

Amnesty's response: DECLINE TO ANSWER.

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. These proposals lack balance.

There is no consideration of the impact of such penalties in increasing the risks people seeking asylum must face to reach the UK to make their claims, costing lives and exposing people to other harms and abuses. This is because the UK provides no safe and legal routes for people to come to the UK to seek asylum – even people with family here – but will not consider an asylum claim unless the claimant has arrived here.

QUESTION 23:

Amnesty's response: MAKE THE FOLLOWING POINTS

- The proposals in Chapter 7 continue to ignore the key effective cause of the smuggling the government wishes to reduce or end. This is discouraging and unhelpful.
- Smuggling exists solely because people need to make journeys that are unauthorised or otherwise unavailable. That need arises from the harms they are experiencing and escaping – war, torture, violence, deprivation and family separation. People who attempt dangerous journeys do so because these harms are so intolerable it is preferable to risk exploitation or death to try to reach a place that will finally be safe.
- Ignoring this has been the approach of UK governments for many years. This approach has empowered smugglers and made journeys more dangerous.
- Together, the proposals in Chapter 7 repeat the same approach and are likely to have the same results. The people who will suffer will be those being harmed and exploited. The people who will gain will be smugglers, particularly the most organised, dangerous and exploitative.

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.

If you answer this question, you may wish to be careful when answering part (a) to make clear whether you are: suggesting improvements to the proposals, or objecting to these proposals (you may suggest completely different proposals or make no proposals).

Suggesting improvements implies you consider there is 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.

► Survey 2 (contd): Further detailed questions

CHAPTER 8 concerns the UK's deportation system, used to expel from the country people who have committed criminal offences.

QUESTIONS 24-25:

Amnesty's response: MAKING THE POINTS LISTED BELOW

- People whom the Home Office intends to forcibly remove from the UK should be given notice of when this is going to happen and sufficient opportunity to obtain legal advice and representation.
- That can best be achieved by ensuring 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.
- 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 assess whether a person's removal is lawful and effectively challenge unlawful removals.
- 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 High Court proceedings and secure an order to prevent removal. If the minimum period will not allow enough time for all of this, it will be insufficient for its purpose.
- The evaluation must consider the circumstances of people who face removal.

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.

► Survey 2 (contd): Further detailed questions

QUESTION 26:

Amnesty's response: WE MAKE THE FOLLOWING POINTS:

- The existing approaches to the removal of people are flawed. Chapter 8's proposals and the plan in general do not correct the flaws. 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 at risk of torture and 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 on ensuring people with good claims to be and remain in the UK are recognised and have their citizenship or immigration status confirmed as quickly as possible. It ought to act consistently and transparently to ensure people understand why decisions are made and secure any necessary legal assistance or judicial consideration. These aims are not achieved by removing people's rights or reducing oversight or constraint on the Home Office.
- If, however, people's rights were respected and the Home Office welcomed oversight and constraint, this would help it to act properly and efficiently and secure wider trust and confidence.
- What is required is reform of the existing system so: rights are returned to people; harmful barriers in law and policy to recognition of people's rights are removed; and the Home Office's underlying culture 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) to make clear whether you are:

- suggesting improvements to the proposals being made; or
- objecting to these proposals (you may be suggesting completely different 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 you putting forward different and better proposals.