



Sacha Deshmukh
Interim CEO
Amnesty International

By email: Lucy.Wake@amnesty.org.uk

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19 July 2022

Dear Sacha,

Thank you for your letter of 1 June to the Minister for Safe and Legal Migration about the asylum-related provisions of the Nationality and Borders Act 2022 ('the 2022 Act'). I am replying as the newly appointed Minister for Justice and Tackling Illegal Migration. I am sorry for the delay in responding to your letter, and I am also sorry that your letter was not processed in time for a response before the provisions came into force on 28 June.

The 2022 Act is a landmark piece of legislation that will help to deliver a fair, but firm, asylum system; deterring illegal entry into the UK, breaking the business model of people-smuggling networks and speeding up the removal of those with no right to be here. In turn, this will free up the asylum system so the UK can better support those in genuine need of asylum through safe and legal routes. New measures from the Act include a suite of asylum reforms, which came into force on 28 June, and I thought it might be helpful if I start by summarising the main changes brought about by the 2022 Act that affect asylum decision making:

- First, it instructs decision makers to use the definitions which are set out in Part 2 of the 2022 Act when considering whether an individual meets the definition of refugee in accordance with Article 1(A)(2) of the Refugee Convention.
- Second, the 2022 Act defines what it means for a claimant to have a 'well-founded fear of persecution' and creates a new statutory framework for decision makers to follow when assessing whether a claimant has a well-founded fear of persecution in accordance with Article 1(A)(2) of the Refugee Convention.
- The 2022 Act and Part 11 of the Immigration Rules also provide the legal framework within which an individual claiming asylum and granted refugee status will be provided with permission to stay in the UK.

We have taken the fundamental terms of the Refugee Convention and ensured that the meaning of those terms is clearly laid out in domestic legislation so they can be applied consistently by decision makers and the Courts alike.

I have noted your concerns and I would like to reassure you that the provisions in the 2022 Act fully comply with all of our international obligations, including the UN Refugee Convention and the European Convention on Human Rights. Having a clear rubric against

which decisions are made gives claimants, Home Office decision makers and the Courts clarity about what tests to apply and will result in increased consistency in decision making. Having a clear and more consistent determination process assists everyone to have a better opportunity to engage meaningfully and fairly with the asylum system.

One of the asylum reforms your letter mentions in detail relates to the central principle that those seeking protection should claim asylum in the first safe country they reach. Our reforms introduce a new differentiated approach, whereby those who did not come to the UK directly, did not claim without delay, or did not show good cause for their illegal entry or presence, may be given lesser entitlements than those who have complied with these requirements, for example refugees who have come to the UK via safe and legal routes. The different entitlements include a shorter grant of permission to stay (a minimum of 30 months instead of five years), no automatic right to settlement and access to family reunion only where a refusal would breach our international obligations. Section 12 of the 2022 Act, taken together with section 37 of the 2022 Act, set out the grounds under which refugees may be treated differently in the UK.

The Permission to Stay on a Protection Route guidance was published on 28 June and includes guidance for decision makers on how to determine the duration of permission to stay granted to refugees under the differentiation policy. If you would like further details, the guidance is available on GOV.UK at: www.gov.uk/government/publications/permission-to-stay-on-a-protection-route-caseworker-guidance.

I would also like to provide you with some additional details regarding the transitional arrangements which have been put in place so that those who contacted the Home Office before 28 June and were, or still are, awaiting an appointment for screening, are not disadvantaged.

The 2022 Act (Commencement No. 1, Transitional and Saving Provisions) Regulations 2022 legislation is available at: www.legislation.gov.uk/ukxi/2022/590/made, and as you are aware from the response of the former Minister for Justice and Tackling Illegal Migration, Tom Pursglove MP, to PQ UIN 3781 on 24 May, he committed to setting out detailed advice in our guidance. I can confirm this has now been published. The guidance clarifies that for the purposes of the transitional arrangements, individuals who sought to register an asylum claim before the commencement date of 28 June, but who were provided with an appointment to attend a designated place to register their asylum application on or after 28 June, will be considered to have 'made an asylum claim' before the commencement date, but only if they attend their scheduled appointment (or, in the event that it is cancelled or rescheduled by the Home Office, the rescheduled appointment).

However, if the individual does not attend their appointment, but later wishes to register a claim for asylum on or after commencement, they will not be considered to have 'made an asylum claim' before the commencement date unless:

- a. There were circumstances beyond their control that made it impossible for them to attend the appointment scheduled for them;
- a. They contacted the Home Office as soon as reasonably practicable to warn/explain of the said circumstances and apply for a new appointment;
- a. They provided the Home Office, as soon as reasonably practicable, with evidence to demonstrate their inability to attend the scheduled appointment which they say they were unable to attend.

The 'Assessing credibility and refugee status' guidance is one of a number of Asylum Instructions containing details about transitional arrangements. This guidance also

provides advice about the asylum related provisions of the 2022 Act with regards to asylum decision making. It is available on GOV.UK at:

www.gov.uk/government/publications/considering-asylum-claims-and-assessing-credibility-instruction.

The 2022 Act is the cornerstone of the Government's New Plan for Immigration, delivering the most comprehensive reforms in decades. We are now working tirelessly to deliver these reforms to make the system fairer and more effective so that we can better protect and support those in genuine need of asylum.

Yours sincerely,

A handwritten signature in black ink that reads "Simon Baynes". The signature is written in a cursive, slightly slanted style.

Simon Baynes MP
Minister for Justice and Tackling Illegal Migration