

Home Affairs Committee

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From the Committee Chair

Rt Hon Priti Patel MP
Secretary of State
Home Office
2 Marsham Street
SW1P 4DF

11 December 2020

Dear Home Secretary,

Statement of changes in the Immigration Rules laid before Parliament on 10 December 2020 (HC 1043)

We have noted the Statement of Changes in the Immigration Rules which was laid before Parliament on 10 December 2020.

As you will be aware, the proposed changes are relevant to the Committee's ongoing inquiry into *Channel crossings, migration and asylum-seeking routes through the EU*.

In view, also, of the intended coming into force of these changes when the UK completes its withdrawal from the EU at 11pm on 31 December 2020, we would be grateful for answers to the following questions:

1. Have you received legal advice about the compatibility of the changes in this Statement with the 1951 Refugee Convention, the 1950 European Convention on Human Rights, and other relevant laws and conventions?
 - a. If so, from whom was this advice sought and what assurances can you give to the Committee about the compatibility of these measures with those Conventions and laws?
 - b. If not, please explain whether you have sought legal advice and what barriers (if any) you have encountered in obtaining the necessary assurances of compatibility.

2. Have you received legal advice about the compatibility of new paragraph 327D with the 1951 Refugee Convention and with international maritime law?
 - a. If so, from whom was this advice sought and what assurances can you give to the Committee about the compatibility of this measure with the Convention and international maritime law?

- b. If not, please explain whether you have sought legal advice and what barriers (if any) you have encountered in obtaining the necessary assurances of compatibility.
3. What does “direct” mean for the purposes of Paragraph 327C?
 - a. What actions would be taken by an officer in circumstances where an individual seeks to claim asylum while in the territorial waters of the United Kingdom?
 - b. If an individual seeks to claim asylum while in the territorial waters of the United Kingdom and there is no officer present, what action must others present carry out in the context of these Rules and the wider obligations of international maritime law?
4. What discussions has the UK Government had with European states about the changes in this Statement, in the context of seeking bi- or multilateral agreements for the return of asylum seekers following completion of the UK’s exit from the EU?
 - a. What impact do you expect these changes to have upon the feasibility of securing agreements with European states for the return of asylum seekers? What evidence can you provide in support of your reply?
5. The Explanatory Memorandum to the Statement states, at paragraph 7.4, that applicants may be treated “as inadmissible based solely on whether they have passed through one or more safe countries in order to come to the UK”. How do the changes enable the UK to pursue removal of an applicant to “any safe third country that may agree to receive them” but through which the applicant has not travelled?
 - a. What sources of evidence will the Government draw upon for the purposes of determining the admissibility of an asylum application under revised paragraph 345A, in the absence of access to the EURODAC and DublinNet systems?
 - b. Paragraph 7.4 further indicates that inadmissibility may also be determined on whether the applicant has come to the UK “as a matter of choice”. What does “a matter of choice” mean for these purposes, and how will it be determined whether choice was a factor in the individual case?
6. The revised Paragraph 345A indicates that an asylum application “may be treated as inadmissible and not substantively considered” if the Secretary of State determines that the individual has been recognised as a refugee, otherwise enjoys sufficient protection or could enjoy sufficient protection in a safe third country. What does “substantively considered” mean in this context?
 - a. How will this determination be made without substantive consideration of the application?
 - b. What would be considered “exceptional circumstances” for the purposes of revised paragraph 345A(iii)(b)?
 - c. What would be considered “a connection to” a safe third country for the purposes of revised Paragraph 345A(iii)(c)?
 - d. Will the same definition of “a connection to” a country be taken into account when considering the admissibility of the applicant to the UK?

7. Will an individual assessment be carried out in advance of any proposed transfer to ensure that any vulnerability (for example, as a victim of trafficking or unaccompanied child) is identified and taken into account when considering the appropriateness of that transfer?
 - a. How will that individual assessment be conducted?
8. How long is “a reasonable period of time” for the purposes of paragraph 345D, beyond which an applicant’s claim which has been treated as inadmissible will be admitted for consideration in the UK?
9. Given that the UK currently has no agreements in place for 1 January to return applicants either to EU countries or to other safe countries, and we have heard evidence that there have been no recent transfers of asylum seekers to safe third countries on a case by case basis outside the Dublin process, are there any precedents for swift transfer of individual asylum seekers to safe third countries?. If so,
 - a. what are those precedents,
 - b. where were people transferred to,
 - c. how many cases were there, and
 - d. how long did they take to resolve?
10. Will an applicant who is being considered for removal to a safe third country be eligible for asylum accommodation and support while that consideration is taking place?
 - a. If not, what other support will there be for them if they not have independent support?
11. Does the Government intend to assess each case as to the likelihood of being able to transfer them before “a reasonable period of time”, or does the Government intend to refuse to consider any application until “a reasonable period of time has lapsed”?
 - a. What advice has the Government received on the compatibility of this approach with the 1951 Refugee Convention and other relevant conventions and laws?
12. How will the Government assess whether it is or is not likely to be possible to return someone within “a reasonable period of time” on first application?
 - a. While that assessment is being made, will the applicant be eligible for asylum accommodation and support?
 - b. If not what other support will there be for them?
13. Will an applicant admitted for consideration after “a reasonable period of time” under paragraph 345D be eligible for asylum accommodation and support at that point?
14. Will individuals whose claims are treated as inadmissible and who are awaiting removal to a safe third country be eligible for asylum accommodation and support?
15. In what circumstances would removal to a safe third country be “inappropriate” for the purposes of Paragraph 345D(ii)?

16. Will an applicant whose application is treated as inadmissible be accommodated in an Immigration Removal Centre during the “reasonable period of time” pending removal to a safe third country?
- a. If so, how will likelihood of removal be determined so that detention is lawful?

Since these changes are due to come into force in less than three weeks please provide an urgent response by Wednesday 16 December.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Yvette Cooper', written in a cursive style.

Yvette Cooper MP