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Rt Hon Yvette Cooper MP
Chair
Home Affairs Select Committee

By email: homeaffcom@parliament.uk

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Dear Chair,

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

I write in response to your letter of 11 December 2020. I have grouped your questions by theme and trust this is a convenient way to address them.

We continue to stand by our international obligations to protect the vulnerable. The technical changes to the Immigration Rules we laid on 10 December will send a strong message to those who could and should have claimed asylum in the first safe country they entered. They will not be able to make claims at sea and they may not have their claims decided in the UK if we can safely return them elsewhere. I am also determined to make it clear that migrants should not be making perilous journeys. This is firm and it is fair.

Legal

I am satisfied the new Rules are compatible with the 1951 Refugee Convention. The Rules are drafted to ensure that no individual is refouled; they are returned to a safe country, and for which there is no risk of onward refoulement. Further, to ensure that individuals are not left in limbo, they will be accepted into the UK asylum system for their asylum claims to be substantively considered after a reasonable period if no return agreement with another country has been possible.

International

You are aware, the UK has presented genuine and sincere offers to the EU for new arrangements for the return of asylum seekers and illegal migrants, and for the family reunion of unaccompanied asylum-seeking children. On 19 May we published draft legal text as a constructive contribution to negotiations. As the end of Transition negotiations with the EU are ongoing, it would not be appropriate to provide a running commentary.

In the event there is no negotiated outcome, we have made clear the UK will seek to pursue new bilateral negotiations on post-Transition migration issues with key countries with whom we have a mutual interest in preventing incentives for migrants to make secondary movements. I cannot share any further details at this stage.

We also set out the Government's commitments during the passage of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020. In the absence of bilateral agreements, returns can be sought on a case-by-case basis.

Operational

It is a long-standing principle that asylum seekers should claim at the earliest opportunity in the first safe country they reach. Too many people are risking their lives to get to the UK via unseaworthy vessels – putting not only their lives, but those of our Border Force and rescue services, in danger. I make no apology for my determination to make the use of small boats to cross the Channel an unviable option for reaching the UK. Furthermore, these journeys are unnecessary – France is a safe country with a well-managed asylum system, and it is vital we send a clear signal that it is unacceptable for individuals to travel through multiple safe countries to claim asylum in the UK.

Under Section 50 of the Immigration, Asylum and Nationality Act 2006, the Secretary of State has powers to specify the procedure to be followed in making a claim. The requirement to make an asylum claim in person has been in place since 7 February 2003, with applicants expected to make their claim for asylum at the port of entry on arrival in the UK, or at an asylum intake unit for in-country applicants. If a person does not claim on arrival, or their circumstances have changed since arriving in the UK, they should attend the Asylum Intake Unit to register their claim.

We have amended the Immigration Rules to define where and how asylum claims can be properly made. These specifically designate that asylum claims cannot be made at sea. Where an asylum claim is made at sea, a representative of the Secretary of State will advise the individual where a claim for asylum can be made. There are no changes to any of the obligations of international maritime law upon others that may encounter individuals in UK territorial waters.

These Rules changes will allow us to consider anyone that has travelled to the UK through a safe country to be inadmissible to our asylum process if they have made or could have made an application for protection there. The Rules allow an inadmissibility decision to be taken on the basis of a person's earlier presence in or connection to a safe third country (such as having previously spent time there), even if that particular country will not immediately agree to the person's return. If someone is considered inadmissible, the new provisions permit their removal to any safe third country that will take them (not just the specific country or countries through which they travelled or have a connection) and their asylum claim will not be considered in the UK if that can happen. A claimant's particular circumstances will be considered before removal, taking into consideration safeguarding, vulnerability, health and any other issues raised by the claimant, to ensure it is appropriate.

When an individual makes an asylum claim, screening officers must be alert to any evidence, verbal or documentary, of claimants having spent time in or having connections to a safe country. This could include biometric evidence, passports, legal papers, employment papers, bank statements, invoices, receipts and other similar documents (this list is not exhaustive). An account of the individual's immigration history will be taken as part of their asylum screening interview to fully understand the chronology and detail of how the person came to the UK. Evidence of a person's method and place of entry to the UK and their known or probable place of embarkation by Home Office officials or another person in an official capacity will be taken into consideration.

It may not be suitable for all cases to be treated as inadmissible; for example, unaccompanied asylum-seeking children will not be considered for third country inadmissibility action. Any oral or written representations from the claimant about why inadmissibility processes should not be applied in their case will be considered ahead of any removal to a safe third country.

A broad range of questions are asked in asylum screening interviews to establish a claimant's needs. Asylum seekers are provided with accommodation and support to meet their essential living needs, both before an inadmissibility decision is made and after the inadmissibility decision and

before their removal, if they would otherwise be destitute. After a decision is made on their claim and before their removal, they may be entitled to support as a failed asylum seeker.

Claimants may be detained for immigration purposes only in accordance with Home Office detention policy. Due to a complex range of factors involved, the suitability of detention must be appraised on a case-by-case basis, and detention is only lawful when there is a realistic prospect of removal within a reasonable timescale. If a decision to detain has been taken, the Home Office keeps all cases under ongoing review to ensure that decisions to detain, and maintain detention, are properly scrutinised. If at any time it is concluded that a particular individual's ongoing detention would not be appropriate, the individual must be granted temporary release on bail subject to reporting and/or residence conditions. Individuals are also able to apply to the courts for immigration bail at any time.

Guidance has been developed on these processes, which will provide more detail, and will be published shortly.

I trust this addresses your concerns.

Yours sincerely,

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