

Written evidence submitted by The Refugee and Asylum Forum  
(MEM0016)

**The New Plan for Immigration**  
**Refugee & Asylum Forum’s analysis of impact on NI**

The **Refugee and Asylum Forum** is an informal network of organisations with direct experience of providing support and services to asylum seekers and refugees in Belfast. Our membership is diverse and includes small community organisations, national charities and some statutory agencies. Our collective expertise is wide and spans health and social care, accommodation, integration and participation, legal rights, welfare as well as policy development. The Refugee and Asylum Forum is regularly attended by officials from the Executive Office, the Health & Social Care Trust, the Education Authority, etc.

**Contents**

Summary.....	2
Positive elements of the proposals .....	3
Concerns about specific proposals .....	4
A differentiated approach to asylum claims.....	4
Temporary protection .....	5
Inadmissibility and safe country .....	6
Reception centres.....	7
Increased criminal penalties relating to irregular migration .....	8
Separated children and age assessment .....	9
Withholding modern slavery protections from some victims of trafficking.....	10
Working with local authorities and partners to seek returns.....	11
Changes to asylum legal process .....	12
i. Overview.....	12
ii. Requirement to make immediate disclosure .....	12
iii. Introduce an expedited process for claims and appeals made from detention .....	13
iv. Use of expert evidence .....	14
Conclusions and Forum endorsements .....	15

## Summary

Published for consultation in March 2021, the Home Office New Plan for Immigration proposes a significant overhaul of the immigration system and of the asylum system in particular. These proposals are likely to be introduced in legislative form in the Sovereign Borders Bill.

**Members of the Refugee & Asylum Forum are gravely concerned about the proposals and their potential for causing serious harm to individuals, communities and wider society in NI.** A number of these proposals tread on devolved competencies and will encroach on, and may restrict, devolved powers in a range of areas.

### *a) Potential impact on strategic priorities*

The proposals will undermine a number of strategic priorities for the NI Executive including:

- Together: Building United Communities (T:BUC)
- Racial Equality Strategy
- Refugee Integration Strategy (forthcoming)
- 2021/22 Modern Slavery Strategy for NI

### *b) Potential impact at operational level*

These proposals may create operational difficulties for the work of the Education Authority and the NI health service as well as PSNI efforts to reduce race hate crime.

Further, they will result in increased demands and expenditure felt by:

- The Executive Office Crisis Fund
- Emergency Services
- Voluntary and community sector

### *c) Contravention of law and policy*

In addition, the proposals run counter to:

- UN Refugee Convention 1951
- The Home Office's own policies on gender and on supporting victims of trafficking
- The mandatory duty on the Home Office to safeguard and promote the welfare of children under section 55 of the Borders, Citizenship and Immigration Act 2009.

Finally, there are unique circumstances in NI that need to be considered in relation to these proposals, which threaten principles contained in:

- The Belfast (Good Friday) Agreement.

Forum members are mindful that larger UK-wide organisations have prepared comprehensive analyses to the consultation that outline substantial opposition. Rather than rehearse their critiques, which we support, this paper concentrates on the potential adverse implications for NI.

**Forum members urge the NI Executive to adopt a robust position on these proposals, cognisant of the damage they may cause to refugee communities and beyond.**

## Positive elements of the proposals

The New Plan for Immigration contains a number of welcome commitments:

- To increase safe and legal routes for asylum seekers including increased support for refugee resettlement programmes, refugee community sponsorship and a commitment to explore humanitarian visas.
- To increase funding for refugee integration that will focus on progress to employment as well as wellbeing, language and social bonds.
- To address some of the anomalies in British nationality law causing injustice e.g. at present, some children cannot acquire their father's citizenship if their mother was married to someone else.

In addition, the following proposals are welcome:

- To expand the eligibility criteria for refugee family reunion by raising the age from 18 to 21 for unmarried dependent children to join both parents who are refugees in the UK (NB in practice, the 'both parents' requirement may be a high bar for eligibility).
- To grant Leave to Remain to survivors of human trafficking.
- To grant Indefinite Leave to Remain immediately to persons who arrive through refugee resettlement.

A number of categories of migrants will benefit from the above commitments and proposals. However, as outlined below, many of the Home Office's proposals will cause serious harm to individuals, their families and wider society.

## Concerns about specific proposals

The wording in italics is taken directly from the Home Office consultation.

### A differentiated approach to asylum claims

**Proposal:** *For the first time, whether you enter the UK legally or illegally will have an impact on how your asylum claim progresses, and on your status in the UK if that claim is successful. Those who prevail with claims having entered illegally will receive a new temporary protection status (see below).*

The term 'illegal' is repeatedly applied throughout the paper to anyone seeking asylum. Yet the right to claim asylum is protected in international law and is available to all of us:<sup>1</sup> claiming asylum should not be framed as an illegal act.

This year marks 70 years since the adoption of the UN Refugee Convention 1951, which was developed to address the horrors of the Holocaust and the mass displacement of people following World War II. The Nazi persecution of Jews, Roma, persons with disabilities, LGBT, political dissidents and others did not happen overnight. Many of the persecuted groups had sought to leave Nazi Germany in the 1930s. However, the imposition of strict immigration admission criteria and quotas meant emigration became impossible for many. Six million would lose their lives.

The Refugee Convention provides a mechanism whereby a person fleeing persecution can obtain protection in another country, without necessarily going through the usual (time consuming) immigration channels. Crucially, the Convention recognises that some refugees have no option but to resort to irregular means in order to flee. The Refugee Convention expressly states that countries should not penalise refugees who show "good cause for their illegal entry or presence".<sup>2</sup> This core principle, which has saved countless lives over seven decades, is now at risk if this proposal were to be implemented.

**Refugee status should be granted on the basis of need for protection.** Distinguishing between refugees based on their route of entry to the UK is a false distinction and will cause harm. Withholding refugee status from persons who enter the UK through irregular means is akin to penalising refugees and is contrary to the Refugee Convention.

Dividing refugees into the 'deserving/genuine' and those who are 'illegal' and the conflation with illegality risks creating misinformation and confusion. Worse, it may fuel hostility towards perceived 'illegal' people. The recent hate attack on a Syrian family with young children in Newry is a stark reminder of the stakes in play.<sup>3</sup> In T:BUC, the NI Executive recognises the need to ensure that minority ethnic persons are 'welcomed and protected from any form of prejudice, intolerance or hate crime'. This proposal will clearly undermine this strategic priority.<sup>4</sup>

**The Forum calls on the Home Office to ensure no departure in law or policy from full adherence of the Refugee Convention 1951. The Forum recommends that the NI Executive opposes any discriminatory treatment towards refugees based on their route of entry.**

## Temporary protection

**Proposal:** *Those who prevail with claims having entered illegally will receive a new temporary protection status rather than an automatic right to settle, will be regularly reassessed for removal from the UK, will have limited family reunion rights and will have no recourse to public funds except in cases of destitution.*

The Preamble to the Refugee Convention commits to assure refugees “the widest possible exercise of the fundamental rights and freedoms”. This proposal does the very opposite by stripping away the rights of persons who should be considered refugees under international law.

In the Racial Equality Strategy 2015 – 2025, Ministers outline their commitment to creating a better society based on the concept of cohesion and integration. As is the case in Scotland and Wales,<sup>5</sup> the forthcoming TEO Refugee Integration Strategy is anticipated to acknowledge that integration begins as soon as an asylum seeker arrives in Northern Ireland.<sup>6</sup> The proposed ‘temporary protection’ status will completely undermine this strategy and the work of the TEO to date.

Temporary protection will cause uncertainty and a sense of precarity and is not the basis on which the TEO policies of racial equality can be developed. Such uncertainty will affect integration initiatives across NI including the Schools of Sanctuary programme that seeks to foster a spirit of inclusion, which is backed by the EANI’s Intercultural Education Service and the Urban Villages Initiative.<sup>7</sup> Further, the uncertainty caused by temporary protection makes it difficult for strong bonds within communities to develop and thus runs counter to principles of community cohesion as per T:BUC.

Restricting access to public funds will result in costs shouldered locally by the TEO Crisis Fund, emergency services and the voluntary and community sector. The proposals also risk making more asylum seekers destitute and vulnerable to exploitation: this undermines the 2021/22 Modern Slavery Strategy for NI.

In addition to creating uncertainty and destitution, temporary status will cause many practical difficulties for individuals including in relation to obtaining finance, mortgages and to secure decent work. Economic and social rights will be further eroded.

**Example:** A QUB undergraduate refugee student was refused a work placement with an international IT company based in Belfast on the grounds that she could not provide evidence of permanent status. This is an example of how time-limited immigration status is already a barrier; a position which will be further weakened by the new temporary protection status.

**The Forum calls on the Home Office to ensure that refugee status remains available for all persons in need of protection. The proposal to grant Indefinite Leave to Remain immediately to resettlement-programme refugees is welcome and should be extended equally to all refugees.**

## Inadmissibility and safe country

**Proposal:** *Anyone who arrives into the UK illegally - where they could reasonably have claimed asylum in another safe country – will be considered inadmissible to the asylum system<sup>8</sup>... Contingent on securing returns agreements, we will seek to rapidly return inadmissible asylum seekers to the safe country of most recent embarkation... We will also pursue agreements to effect removals to alternative safe third countries.*

This proposal inserts an additional stage into an asylum process that is already long and complicated. As such, the asylum process will be lengthened for most.

Many asylum seekers will be in limbo whereby they are physically present in NI but unable to access the asylum determination procedure. Designing a system that puts a number of people *outside* of the standard asylum process and existing (limited) protections will create considerable difficulties for NI agencies and support organisations. It is possible to envisage a number of questions that would arise from this proposal:

- How will EANI deliver its statutory obligations to source school places for school age children?
- How will health needs be identified and addressed and vaccination programmes delivered?
- How will those people denied access to even the most basic of protections be protected from exploitation?

The Covid-19 pandemic has reminded us of the importance of linking vulnerable communities in with public services. **This proposal will place a wedge between asylum seekers and essential support services.** The cost of supporting people in this category is likely to fall to the TEO crisis fund, health service and voluntary and community sector.

**Example:** when a Zimbabwean asylum seeker's application for asylum was rejected, his asylum support was withdrawn. Entirely destitute, he turned to using drugs and lost contact with most support services. His physical and mental health deteriorated and he experienced breakdown. Following a number of interventions from emergency services, he was sectioned and spent the best part of a year in the Mater Hospital in detention under mental health powers. This case study highlights that destitution has a high human cost and results in significant costs to the public purse.

**The Forum recommends that the NI Executive seeks to reject the inadmissibility proposal. The Forum recommends the need for safeguards to ensure that transfers are only made to countries that have given transparent assurances that the rights of asylum seekers will be upheld.**

## Reception centres

**Proposal:** *Bring forward plans to expand the Government's asylum estate. These plans will include proposals for reception centres to provide basic accommodation while processing the claims of asylum seekers.*

The Home Office's own evidence on refugee integration highlights the importance of contact between the refugee and host communities.<sup>9</sup> Policies of exclusion permit misinformation, fear and hate to take hold. Confinement is particularly difficult for victims/survivors of modern slavery and of gender based violence. Detaining women who have already survived trauma and violence inflicts immense harm and retraumatises them.<sup>10</sup> Incidents of self harm have "risen substantially" across immigration detention centres 2019 – 2020.<sup>11</sup>

Many Forum members work closely with sister organisations based in Ireland that support asylum seekers in Direct Provision. In place for over 20 years, Direct Provision has been repeatedly criticised by international and national human rights organisations, including the Irish Human Rights and Equality Commission (IHREC), by people in the system and in a number of Oireachtas Committee and independent reports.<sup>12</sup> Eight years ago, the NI High Court found that returning a family from NI to Direct Provision would be unlawful as in contravention of the children's best interests.<sup>13</sup>

In its 2020 Programme for Government the Irish Government stated its commitment to ending the Direct Provision system and to replace it with a new international protection accommodation policy centred on a not-for-profit approach'.<sup>14</sup> In February 2021, the Irish Government issued a white paper outlining the steps to abolishing Direct Provision by 2024 and explicitly recognised the "shortcomings" of the existing model.<sup>15</sup> It would be extraordinary if NI were to adopt a model of reception centres at precisely the same time as other governments have recognised the flawed nature of this model.

Policies of administrative detention and incarceration are particularly sensitive in N. Ireland. and likely to be unacceptable to many.

A policy whereby asylum seekers are housed separately from everyone else in society will clearly run counter to the TEO Racial Equality Strategy's commitment to inclusion and the T:BUC commitment to shared spaces and embracing diversity.<sup>16</sup>

**Example:** Many asylum seekers make a significant contribution to their communities and to wider society that could not happen if required to stay in reception centres. E.g. through their involvement in initiatives such as the Schools of Sanctuary programme, asylum seekers have helped realise NI Executive strategic objectives relating to youth inclusion and diversity, etc.

**The Forum recommends that the NI Executive opposes the introduction of reception centres in NI. The NI Executive's strategic approach to integration and inclusion must be reflected in any new asylum arrangements in this jurisdiction.**

## Increased criminal penalties relating to irregular migration

**Proposal:** *Introduce tougher criminal offences for those attempting to enter the UK illegally including raising the penalty for illegal entry; Widen existing powers to tackle those facilitating illegal immigration, through acts like piloting small boats, including raising the maximum sentence for facilitation to life imprisonment; Provide Border Force with additional powers to search, seize/dispose, stop and redirect vessels; Overhaul the Clandestine Civil Penalty Regime and consult on new penalties, etc.*

Forum members deplore the activities of human traffickers who move people across borders for criminal exploitation and activities of smugglers who charge extortionate sums to transport people in dangerous conditions.

This proposal needs to be considered in the context of the unique circumstances of NI. It appears that this proposal is designed to stem the much-publicised boat crossings of the English Channel. It is difficult to see that any consideration has been given to what these proposals might mean in NI: indeed, it makes no reference to NI, the presence of a land border or the functioning of the Common Travel Area.

Crossing the border is an everyday reality for many people on this island. The proposed penalties could have serious implications for NI, including for hauliers, transport providers – e.g. Translink bus drivers – as well as for groups travelling across the island of Ireland for social, recreational, religious purposes, etc. The continued functioning of the Common Travel Area has been a significant area of focus for both UK and Irish governments post-Brexit, however, these proposals do not take into account the potential impact on same.

It is unclear whether the new Border Force search and seizure powers will apply in a land border context. If so, this would be contentious in the current NI context and inconsistent with the Belfast (Good Friday) Agreement as the UK government has committed to no checks whatsoever on the land border and no routine checks between NI and Great Britain. Despite this commitment, Forum members are aware of checks continuing to occur. Regrettably, the NI Human Rights Commission 2009 recommendation – “the practice of singling out particularly nationalities and people visibly from a minority ethnic background should be ceased immediately” – still stands a decade later.<sup>17</sup> **Forum members are concerned that any increase in checks within the Common Travel Area will inevitably lead to increased racial profiling and discrimination.**

**Example:** the rate of immigration checks in NI is already higher than in London due to the policing of the CTA. Racial profiling is an ongoing concern: in one incident a Black British citizen was stopped four times on a CTA journey – each time he was the only person subject to an immigration check.<sup>18</sup>

**The Forum recommends that the NI Executive opposes legislative change that will lead to increased immigration checks in NI. Further, the Forum recommends that:**

- **A thorough equality impact assessment is conducted to identify the implications of all persons who are checked or detained on entering NI with the Equality Commission for NI and the NI Assembly.**
- **The Home Office collects and publishes equality data on the impact of immigration enforcement activity on protected characteristics groups;**
- **Increased enforcement does not result in the prosecution of asylum seekers**

**and victims/survivors of modern slavery and human trafficking.**

## **Separated children and age assessment**

**Proposal:** *Bring forward plans to introduce a new National Age Assessment Board (NAAB) to set out the criteria, process and requirements to be followed to assess age, including using the most up to date scientific technology. Such new age assessment criteria, once proposed by the NAAB, will be set out in secondary legislation. NAAB functions may include acting as a first point of review for any Local Authority age assessment decision and carrying out direct age assessments itself where required or where invited to do so by a Local Authority.*

HSC Trust social work teams have developed specialisms and expertise in the care of separated children in NI. Social workers operate within a complex legal and policy framework developed by the NI Executive and the NI Assembly that is tailored to the particular needs of children and practitioners in NI. Social workers are regulated by the NI Social Care Council, which lays an Annual Report to the NI Assembly.

Forum members strongly oppose this proposal whereby aspects of NI social work in relation to their engagement with separated children would be undertaken by members of the new National Age Assessment Board as that would bypass NI accountability structures. This includes the role played by the NI Commissioner for Children and Young People, and ultimately risks a lesser standard of protection for this group of vulnerable children.

Age assessments are a sensitive matter and a complex process. Forum members consider that they should be conducted by social workers, whose practice is rooted in the NI Children's Order. It is not appropriate for age assessments to be conducted by Immigration Officers. Further, the existing legal process relating to age assessment is based on the common law and has developed to reflect the complex, nuanced issues of a process which has profound and potentially life-long implications for children and young people. Such complexities cannot be readily translated into legislation.

No reference is made to the role of the NI Independent Guardians. Forum members are proud that NI was the first jurisdiction in UK and Ireland to develop a statutory system of independent guardianship for all separated children.<sup>19</sup> Legislation provides for Independent Guardians to be consulted on and to input in all decisions relating to the child, which includes in relation to age assessments.

**Any reforms relating to unaccompanied asylum seeker children must recognise the integrity and authority of NI's social work teams and Independent Guardians.**

### **The Forum recommends:**

- **age assessments in NI are only conducted by NI Social workers who continue to operate within their regulatory body**
- **any new arrangements for age assessment must include NI representation and must take into account NI Social Work specialisms, Independent Guardianship and NI accountability structures.**

## **Withholding modern slavery protections from some victims of trafficking.**

**Proposal:** *Clarify the definition of “public order” to enable the UK to withhold protections afforded by the NRM where there is a link to serious criminality or a serious risk to UK national security;*

Repeated reference is made to “abuse” of the NRM system (the National Referral Mechanism being the process by which victims of trafficking are identified and supported).<sup>20</sup> Forum members do not recognise this description.

The identification and protection of victims of human trafficking in the UK is not an immigration process. Further, the identification, protection and prevention of modern slavery requires a range of efforts across criminal justice and specialist health and legal support for survivors. **These matters are devolved issues.** Whereas the Home Office makes an (unsubstantiated) assertion that “an alarming number” of Foreign National Offenders seek modern slavery referrals to frustrate immigration enforcement,<sup>21</sup> the Criminal Justice Inspectorate has recently recommended that the NI Prison Service increases staff awareness of the signs and indicators of modern slavery and human trafficking.<sup>22</sup>

The Independent Anti Slavery Commissioner, the Home Office and NI politicians have recognised the unsettling thought that what we currently know of modern slavery is the “tip of the iceberg” with regards to the scale of the problem in NI.<sup>23</sup> This is not the time to reduce protections for victims of modern slavery.

**The Forum recommends that NI should maintain its focus on identifying and supporting victims as set out in the 2021/22 Modern Slavery Strategy for NI.**

## Working with local authorities and partners to seek returns

**Proposal:** *Working with local authorities and partners we will seek to enforce returns – including removing asylum support for individuals who fail to comply with our attempts to return them. Primary legislation is already in place to achieve this. We will now move forward and use these powers to deliver a new fair but firm system.*

This proposal constitutes a significant encroachment on NI devolved powers. In NI, the functions of ‘local authorities’ are delivered by various agencies including Social Services, Councils and government departments. When a NI agency exercises its functions, it is doing so within a clearly defined legislative framework. These proposals could result in the Home Office directing a NI agency in the operation of its powers in a competency that falls within the devolution settlement.

The TEO Racial Equality Strategy 2015-25 states that ‘while immigration policy is made in Westminster, the Executive does have powers to address some of the problems faced by those living under immigration control here, including asylum seekers and refugees’.<sup>24</sup> The Home Office should not seek to fetter the Executive’s powers with regards to providing an appropriate response to persons subject to immigration control grounded in its assessment of community need. For example, Forum members recall that the ‘right to rent’ provisions of the Immigration Act 2014 have never been implemented in NI.

**Example:** During the first Covid-19 lockdown, NI agencies provided essential support for asylum seekers and refugees living in Belfast. The Department for Communities provided food parcels and Belfast City Council funding covered the provision of additional culturally appropriate food and baby essentials. This was a joint project by NICRAS, South Belfast Roundtable, Homeplus, Storehouse and South Belfast Foodbank and support was distributed by volunteers from Refugee Asylum Forum members and refugee community organisations. In Q3, more than 1,200 parcels were delivered.

**The Forum recommends that the devolved competencies of NI agencies to devise appropriate responses to community need are fully respected.**

## Changes to asylum legal process

### i. Overview

**Proposal:** *Develop a “good faith” requirement setting out principles for people and their representatives when dealing with public authorities and the courts, such as not providing misleading information or bringing evidence late where it was reasonable to do so earlier; Provide a quicker process for judges to take decisions on claims which the Home Office refuse without the right of appeal, reducing delays and costs from judicial reviews; We will also clarify in statute the definition of “persecution” to make clear the requirements for qualifying for protection, in line with the Refugee Convention, etc.*

**Forum members fear these proposals will lead to a significant regression in rights and limitations on access to justice in NI.** Access to justice and the functioning of NI courts and judiciary are devolved matters and efforts to constrict the application of the principle of access to justice in NI are likely to encroach on the proper functioning of those devolved powers which remain the responsibility of the Department of Justice.

Regrettably, this consultation paper repeatedly calls into question the integrity of the legal profession in terms of the legal support it affords to asylum seekers.<sup>25</sup> It is gross misinterpretation of the legal process to suggest that lawyers intend to frustrate lawful actions by the Home Office. Solicitors and barristers are Officers of the Court and are held to the highest standards of ethics with a duty to promote justice and the effective conduct of the judicial system as well as duties of candour. Their professional conduct in NI is rigorously overseen by the Law Society of NI and the Bar of NI.

Between 2016-2018, 46% of asylum decisions were overturned at appeal:<sup>26</sup> this high rate is an indicator of poor quality decision making. If the objective here is to effectively manage judicial resources and protect court time, the onus should be on the Home Office to develop measures that improve initial decision making rather than by reducing vulnerable persons’ access to justice. Timely access to quality immigration advice must lie at the heart of any new arrangements.

**Evidence:** a torture victim’s application for protection was refused by the Home Office on the grounds that it was believed she had inflicted the injuries on herself. There was no evidence for this assertion. The woman had to go through the appeal process and then submit further evidence, including expert medical evidence. It took five further years before the woman was granted asylum. This delay and her reliance on the appeals process can be attributed to the poor initial decision.

### ii. Requirement to make immediate disclosure

**Proposal:** *To tackle the practice of making multiple and sequential (often last minute and unmeritorious) claims and appeals which frequently frustrate removal from the UK, we will introduce a ‘one-stop’ process to require all rights-based claims to be brought and considered together in a single assessment upfront.*

There are many reasons why asylum seekers and victims of trafficking – especially children and those who have experienced gender based violence or persecution because of sexual

orientation- are unable to disclose all relevant information at the initial stage.<sup>27</sup> Disclosure is also severely impeded for persons in detention centres due to the prison-like settings. This difficulty is compounded for detainees at Larne House Short Term Holding Facility as the short time frames for detention prior to transfer/removal creates obstacles for accessing legal advice.<sup>28</sup>

The Home Office's own trafficking guidance acknowledges that 'a symptom of post-traumatic stress is avoidance of trauma triggers' (i.e. disclosure) and that 'because of these symptoms, a person may be unable to fully explain their experience until they have achieved a minimum level of psychological stability'.<sup>29</sup> In separate guidance, the Home Office states that late disclosure should not automatically prejudice a woman's credibility - this in recognition of a number of barriers to disclosure including guilt, shame, concerns about family 'honour' or fear of family members.<sup>30</sup> **Forum members are concerned that this proposal runs counter to the Home Office's own policy.**

The disclosure of sensitive and harrowing information requires trusted relationships to be built up between individuals and support organisations and /or legal representatives.<sup>31</sup> In NI there are no equivalent specialist services for victims of trauma or torture akin to the Helen Bamber Foundation (London), Freedom from Torture (GB) or Spirasi (Dublin). The Belfast HSCT Family Trauma Centre is highly regarded, however, it is unable to work with single adult asylum seekers, who comprise the majority of asylum claimants in NI. Without specialist treatment, it is inevitable that it will take longer for NI victims and survivors to make full disclosure. The Historical Abuse Inquiry is a powerful reminder of just how difficult the process of disclosure is for many affected by trauma.

The lack of specialist trauma / torture services in NI makes the 'one stop' proposal particularly unworkable in this jurisdiction.

### **iii. Introduce an expedited process for claims and appeals made from detention**

**Proposal:** *Introduce an expedited process for claims and appeals made from detention, providing access to justice while quickly disposing of any unmeritorious claims; Reinstate an accelerated appeal process and introduce clear timescales; Introduce a new fast-track appeal process. This will be for cases that are deemed to be manifestly unfounded or new claims, made late. This will include late referrals for modern slavery insofar as they prevent removal or deportation.*

It is unclear how the proposed accelerated process will differ from the Detained Fast Track system which was found to create an 'unacceptable risk of unfairness' and thus to be unlawful.<sup>32</sup>

This proposal assumes that being in immigration detention poses little or no challenges for detainees seeking to access immigration legal advice or medical evidence. This is not the experience of Forum members.<sup>33</sup> The Forum would be particularly concerned about adverse impacts on vulnerable persons including victims of trafficking or gender based violence due to the barriers to disclosure, as highlighted above.

#### iv. Use of expert evidence

**Proposal:** *Introduce a new system for creating a panel of pre-approved experts (e.g. medical experts) who report to the court, or require experts to be jointly agreed by parties.*

Given the great diversity within asylum claims, it is unlikely that a single panel of experts will be able to provide specialist commentary on all claims. At times, it is necessary to instruct an expert with very specific knowledge about a particular country or cultural practice. It is important that asylum seekers in NI are not placed at a disadvantage with regards to accessing experts, who are likely to be physically based in GB.

**The Forum recommends that the NI Executive opposes provisions that undermine devolved competencies. RAF further recommends that:**

- NI Executive liaises with the Law Society NI, Bar NI and NI immigration practitioners to fully assess the impact of the changes on legal practice and access to justice;
- The NI Executive and professional regulatory bodies defend the legal profession from attempts to undermine it and should express support for the work of immigration practitioners in NI;
- Specialist trauma / torture services are developed in NI;
- Asylum seekers living in NI have access to experts.

## Conclusions and Forum endorsements

Forum members urge NI policy makers and politicians to reject the bulk of these proposals and to adopt our recommendations.

This submission is endorsed by the following organisations:

- Barnardo's
- Belfast City Mission
- Belfast City of Sanctuary
- Belfast Unemployed Resource Centre
- Children's Law Centre
- Chinese Welfare Association (CWA)
- Committee on the Administration of Justice
- Extern
- Horn of Africa People's Aid NI (HAPANI)
- Housing Rights
- Law Centre NI
- NIACRO
- NI Community of Refugees & Asylum Seekers (NICRAS)
- NI Strategic Migration Partnership (NISMP)
- Participation and the Practice of Rights (PPR)
- Social Change Initiative
- South Belfast Roundtable
- Starling Collective
- Storehouse

---

<sup>1</sup> See: Universal Declaration of Human Rights (1948), Article 14; UN Refugee Convention (1951); UN Convention on Statelessness (1954); UN Convention on the Rights of the Child (1989), Article 22, etc. The right not to be returned '*non refoulement*' is also protected by UN Convention against Torture (1984), Article 3.

<sup>2</sup> [UN Convention Relating to the Status of Refugees 1951](#), Article 31.

<sup>3</sup> BBC NI News, '[Syrian family home attacked in Newry "hate crime"](#)' 18 April 2021.

<sup>4</sup> Office of First Minister and Deputy First Minister, '[Together: Building a United Community Strategy](#)' (2013) at para 4.11

<sup>5</sup> The Scottish Government commits to supporting asylum seekers to 'rebuild their lives from the day they arrive'. Scottish Government, '[New Scots: Refugee Integration Strategy 2018-22](#)' (2018). The Welsh Government states that integration begins from 'day one'. Welsh Government, '[Nation of Sanctuary Refugee and Asylum Seeker Plan \(gov.wales\)](#)' (2019).

<sup>6</sup> This was a key message by participants to the Innovation Lab 2020 event on the Refugee Integration Strategy and Forum members trust that it will be reflected in the forthcoming publication.

<sup>7</sup> By June 2021, it is planned that 52 schools across NI will be recognised as Schools of Sanctuary. See: [Schools of Sanctuary | Belfast City of Sanctuary](#)

<sup>8</sup> Note that the inadmissibility concept already exists in law and is found at paras. 345 A-D of the Immigration Rules. A new process was introduced from 1 January 2021. See: Home Office, 'Inadmissibility: safe third country cases' (31 December 2020). In general, this process does not appear to have been implemented in NI.

<sup>9</sup> Home Office, '[Integrating refugees: What works? What can work? What does not work? A summary of the evidence](#)' (June 2019, second edition)

<sup>10</sup> Marchu Girma et al, '[Detained: women asylum seekers locked up in the UK](#)' (Women for Refugee Women, 2014).

<sup>11</sup> HM Chief Inspector of Prisons for England and Wales, 'Annual Report 2019-20' (October 2020), p 77.

<sup>12</sup> Government of Ireland, '[Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process](#)' (September 2020), p7.

<sup>13</sup> ALJ and A, B and C's Application for Judicial Review [2013] NIQB 88

<sup>14</sup> Government of Ireland, '[Programme for Government: Our Shared Future](#)' (June 2020).

<sup>15</sup> [124757\\_ef0c3059-b117-4bfa-a2df-8213bb6a63db.pdf](#) page 7

<sup>16</sup> Office of First Minister and Deputy First Minister, '[Together: Building a United Community Strategy](#)' (2013) paras 4.6 – 4.15.

<sup>17</sup> Dr Nazia Latif and Agnieszka Martynowicz, '[Our Hidden Borders: the UK Border Agency powers of Detention \(nihrc.org\)](#)' (NIHRC, April 2009) at p 81.

---

<sup>18</sup> Lisa O'Carroll, '[Black lawyer accuses Northern Ireland immigration of racial profiling](#)' The Guardian, 11 June 2018.

<sup>19</sup> Article 21 of the Human Trafficking & Exploitation (Criminal Justice and Support for Victims) Act (NI) <https://www.legislation.gov.uk/nia/2015/2/contents> 2015.

<sup>20</sup> For example, in her foreword, the Secretary of State for the Home Department (SSHD) states "*child rapists, people who pose a threat to national security and illegal migrants who have travelled to the UK from safe countries have sought modern slavery referrals which have prevented and delayed their removal or deportation.*"

<sup>21</sup> In practice, the number of Foreign National Offenders referred into the NRM across UK is very low: In 2017, 89 people (1%); 2018, 79 people (1%) and 2019, 182 people (3%). See Home Office data: [Issues raised by people facing return in immigration detention - GOV.UK \(www.gov.uk\)](#)

<sup>22</sup> Criminal Justice Inspectorate NI, '[An inspection of how the criminal justice system deals with modern slavery and human trafficking in NI](#)' (CJNI, 2020), Operational Recommendation 8.

<sup>23</sup> [Independent Anti-Slavery Commissioner - One year as Commissioner and this is only the beginning \(antislaverycommissioner.co.uk\)](#) (August 2016); [PSNI rescue 15 sex workers after blitz on brothels - BelfastTelegraph.co.uk: Sex 'slavery' up two thirds in Northern Ireland as web makes it easier - Belfast Live; Modern Slavery and Human Trafficking: An inspection of how the criminal justice system deals with modern slavery and human trafficking in Northern Ireland. \(cjini.org\)](#)

<sup>24</sup> [Racial Equality Strategy 2015-2025 \(executiveoffice-ni.gov.uk\)](#) para 9.5.

<sup>25</sup> For example, the consultation states that reform is needed to require immigration lawyers to act in 'good faith' (p.28) and 'present their case honestly and comprehensively' (p.27). The plan also refers to representatives 'providing misleading information or bringing evidence late' (p.27). Unfortunately the tone of this consultation is consistent with previous government attacks on the profession. See: John Hyde, '[Home Office accuses 'activist lawyers' of abusing immigration rules](#)', *The Law Society Gazette*, 27 August 2020.

<sup>26</sup> Home Office consultation document p.9.

<sup>27</sup> Bogner D., Brewin C., & Herlihy J. Refugees: Experiences of Home Office Interviews: A Qualitative Study on the Disclosure of Sensitive Personal Information. *Journal of Ethnic and Migration Studies* 36(3), 519-535

<sup>28</sup> Law Centre NI, '[Response to JCHR inquiry into immigration detention](#)' September 2018.

<sup>29</sup> Home Office, '[Victims of Modern Slavery: Competent Authority Guidance](#)' (Version 3:0, 21 March 2016), p 99.

<sup>30</sup> Home Office, '[Gender issues in the asylum claim](#)' (Version 3:0, 10 April 2018), p 32.

<sup>31</sup> Rachel Witkin and Dr Katy Robjant, '[The Trauma Informed Code of Conduct](#)' Helen Bamber Foundation, April 2021.

<sup>32</sup> See: *Detention Action vs SSHD* [2015] EWHC 1689 (Admin); *R (TN (Vietnam)) v SSHD* [2018] EWCA Civ 2838 [TN \(Vietnam\) & Anor. R. \(On the Application of\) v Secretary of State for the Home Department & Anor](#) [2018] EWCA Civ 2838 (19 December 2018) ([baillii.org](#))

<sup>33</sup> See: Law Centre NI, '[Response to JCHR inquiry into immigration detention](#)' September 2018.