1. NORMS OF TRANSPOSITION

Q.1. Identify the main norm of transposition (indicate the title, date, number, date of entry into force and references of publication into the official journal) and indicate its legal nature (legislative, regulatory, administrative); indicate in your answer if this norm was only devoted to the directive or if it has been included in a more general text and indicate in that case by quoting precisely the numbers of the provisions adopted to transpose the directive.

Transposition in the UK has involved amending the following rules and regulations:

**Statement of Changes to the Immigration Rules HC 194 – January 2005**: laid amendments to the Immigration Rules (HC 395) to create a new section (Part 11B) dealing with:

- the duty to provide written information to applicants;
- the duty to provide applicants with a document certifying their status as an applicant for asylum;
- arrangements for an applicant to apply for permission to work after 12 months;
- the duty on applicants to notify the Home Office of their current address.

[http://www.ind.homeoffice.gov.uk/lawandpolicy/immigrationrules/change194](http://www.ind.homeoffice.gov.uk/lawandpolicy/immigrationrules/change194)

**Asylum Support (Amendment) Regulations 2005, SI 2005 No.11**: laid amendments to the Asylum Support Regulations 2000 (ASR) in order to bring them into line with the directive’s provisions on discontinuation, withdrawal or reduction of support.


**Asylum Seekers (Reception Conditions) Regulations 2005, SI 2005 No.7**: new set of regulations to deal with family unity, unaccompanied asylum-seeking children, and vulnerable persons.


These changes came into force on 5 February 2005.

Q.2. List by order of importance by using numbers (1, 2, 3) the others norms of transposition if there are more than one (indicate for each norm the title, date, number and references of publication into the official journal; include in your answer the administrative measures taken to ensure implementation of the
Norms of transposition are listed at Q1. There has been very little in terms of instructions given to immigration staff on how to apply the new rules. In fact, the only guidance appears to be a general instruction to Immigration Service staff alerting them to the new duty to provide information within a given timeframe and providing a revised information leaflet; and to the duty to issue a document confirming status within three days in order to ensure compliance with the directive.

Furthermore, in April 2005, the former Home Office agency responsible for asylum support (National Asylum Support Service – NASS) issued casework instructions about the amended regulations and how they should apply (Policy Bulletin 83 - Duty to offer support, family unity, vulnerable persons, withdrawing support, available at: http://www.ind.homeoffice.gov.uk/6353/12358/pb83.pdf).

Q.3. Explain which level of government is competent to adopt the legal norms on reception conditions for asylum seekers (specify in particular in case of a federal or regional State, if it is the federal/central power or the components; in case, specify below when it is impossible for you to answer a question because it is about the competence of the components and it is impossible for you to gather reliable information about all of them)

The central government department responsible for adopting transposition norms is the Immigration and Nationality Directorate (IND) of the Home Office. As from 2 April 2007, a new executive Agency of the Home Office, the Border and Immigration Agency, has assumed the responsibilities of the Immigration and Nationality Directorate (IND).

Q.4. Explain the legal technical choices done to transpose the directive (comment on the nature and level of the norms used to do the transposition: legislative, regulatory, administrative like instructions, etc). Add any other element about the technique of transposition of the directive which is interesting for the implementation of Community law.

Transposition was effected through secondary legislation. The new/amended Regulations were laid before Parliament and adopted by negative resolution procedure (i.e. Parliament cannot amend but only recommend that it be vetoed within a 40-day period). Instructions as to transposition of EC directives are set out in the Cabinet Office transposition guide (Transposition Guide - how to implement European directives effectively: www.cabinetoffice.gov.uk/regulation/documents/pdf/tpguide.pdf). This recommends a timely implementation, which achieves the objectives of the European measure, while also being in accordance with other national policy goals. It recommends avoiding over-implementation of directives unless the benefits of exceeding the minimum standard are clearly greater than the associated costs.

Q.5. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances? If yes, give some of the worst examples and explain if
there is a risk that those provisions remain unapplied or will create difficulties of implementation in the future.

New rules and regulations essentially ‘copy out’ the directive, i.e. they adopt the same language without attempting to elaborate on the meaning of the provisions in the national context. For instance, the provisions on special needs of individuals belonging to vulnerable groups may not be applied in the absence of a clear understanding of vulnerabilities and of a clear legal obligation to identify people with special needs. Furthermore, the UK has transposed the ‘best interests of the child’ requirement of the directive although its reservation to the UN Convention on the Rights of the Child operates specifically to exclude the consideration of ‘best interests’ when immigration decisions, including relevant to support, are made about asylum seeking children.

Q.6. Have all the texts necessary to ensure the effective implementation of the new rules of transposition been adopted, prepared or at least foreseen in the future (for example a regulation completing a new law and the necessary instructions telling the administration how to apply the new rules)?

The UK believes that all necessary implementing measures have been adopted. However, this is disputed by practitioners who argue that some provisions have not been implemented at all while others have not been properly implemented.

2. BIBLIOGRAPHY

Q.7. Has an in-depth preparatory study been made public about the changes at the occasion of the transposition? If yes, thanks for trying to provide us a copy (please contact to answer this question adequately the body and person who was responsible for the preparation of the transposition of the directive in the public administration).

The Home Office has issued a public consultation document on implementation of the Reception Directive on 10 September 2004. Responses were invited by 3 December 2004 and an analysis of responses was published on 14 January 2005.


Q.8. Quote any recent scientific book or article published about the directive, the transposition rules or the question of reception conditions for asylum seekers in general (answer even if this literature is only available in your language and provide the complete title in your language (without translation) with all references; indicate author, title, in case name of periodical, year and place of publication).

Q.9. Quote any interesting decision of jurisprudence based on the implementation of the new rules of transposition of the directive (indicate references of publication if any)?

Cases relevant for interpretation of Article 16(2) Directive:

R (Limbuela, Tesema, Adam and others) v Secretary of State for the Home Department [2004] EWCA Civ 540.

R v Secretary of State for the Home Department, ex parte Adam and Others [2005] UKHL 66.

The House of Lords confirmed the Court of Appeal judgement in the case of Limbuela, Tesema, Adam and Others, which had found that support must be provided to asylum seekers verging on destitution, who have not claimed asylum as soon as reasonable practicable after entering the UK, to avoid a breach of their Article 3 rights.

In addition, the directive is now quoted in certain ASA (Asylum Support Adjudicators) decisions. These cases may not be high profile ones but nevertheless it is still an interesting development.

Thus for example in paragraph 25 in a decision from July 2005 the ASA stated that:

In making the decision to discontinue support, the respondent appears to have overlooked Regulation 20(3) of the [Asylum Support] Regulations:

“Any decision to discontinue support in the circumstances referred to in paragraph (1) above shall be taken individually, objectively and impartially and reasons shall be given. Decisions will be based on the particular situation of the persons concerned and particular regard shall had to whether he is a vulnerable person as described by Article 17 of Council Directive 2003/9/EC of 27 January 2003 laying down the minimum standards for the reception of asylum seekers.”

For the full decision: http://www.asylum-support-adjudicators.org.uk/decisions/pdf/9550.pdf

Also see paragraph 6 of another ASA decision with regard to vulnerable individuals:
On the subject of vulnerability, I have a letter dated 27 July 2005 from a Doctor with the Medical Foundation. He confirms that the appellant was tortured and is still suffering from the psychological effects of prolonged mistreatment. I therefore consider that he is a vulnerable person as described by Article 17 of Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.

For the full decision: http://www.asylum-support-adjudicators.org.uk/decisions/pdf/9766.pdf

3. GENERAL INFORMATION ABOUT THE SYSTEM OF RECEPTION CONDITIONS

The purpose of the following two questions is to help the reader to understand easily and quickly the system of reception conditions in your Member State and also to avoid that you have to repeat general elements in other parts of the questionnaire. Please do not write more than one or maximum two pages and do not include large historical developments.

Q.10. Describe in general the system of reception conditions in your Member State (in particular which are the main actors in charge of reception conditions?)

In the UK, asylum applicants may initially on entry be held for short periods (normally up to five days, but as far as possible asylum applicants are moved after one day, either to a removal centre or granted temporary release) at a Short Term Holding Facility (STHF), which are located in or near the ports of entry, or placed in an Induction Centres or Initial Accommodation for up to two weeks. The provision of Initial Accommodation is a temporary arrangement for asylum seekers who would otherwise be destitute and are awaiting a decision on whether they qualify for support under section 95 of the Immigration and Asylum Act 1999 (dispersal accommodation and/or subsistence) or qualify for support under section 95 but are awaiting transfer to their dispersal accommodation.

At the Induction Centres, as well as being provided with bed and board, asylum seekers are given an overview of their rights and responsibilities, a description of the asylum process itself, and details of voluntary return programmes—After this initial placement, asylum applicants may choose private accommodation with family or friends (and may receive subsistence payments for essential living needs at the level indicated in the regulations), or move on to accommodation, on a “no-choice” basis, which the Home Office has contracted with the public and private sector and registered social landlords normally in a designated dispersal area away from London and the South East.

The National Asylum Support Service (NASS) no longer formally exists and support issues are instead be dealt with by New Asylum Model (NAM) caseworkers. For those within the NAM, all decisions on eligibility, payment and cessation of asylum support are now made by a single dedicated case owner.

Initial Accommodation (IA) is no longer managed by voluntary sector but by private accommodation providers sub-contracted by the Home Office. There are large IA centres in each NAM region (London, Liverpool, Leeds, Cardiff, Glasgow, Solihull). NGOs provide wraparound advice services in some but not all areas, but no longer manage the accommodation.

Registered Social Landlords (RSLs) are contracted by NASS to provide housing in the same way as other public/private suppliers. Such contracts do not generally include the provision of food. RSLs are independent housing organisations registered with the Housing Corporation.
under the Housing Act 1996 to provide social housing. As the council has a limited supply of council housing, councils work closely with RSLs to provide additional housing.

A minority of asylum applicants (up to 30% according to the government target set out in the Five Year Strategy on Immigration and Asylum – see link below) may be detained in one of the 10 removal centres if the Immigration Officers believes that there is a risk of absconding, if they are from so-called safe countries to which the non-suspensive appeals provisions (NSA) apply, or if it is expected that their application can be quickly dealt with and, in case of rejection, they can subsequently be returned to their country of origin. Those who require higher levels of security and control may be detained in a number of prison establishments. In Northern Ireland, as there are no dedicated detention facilities, asylum seekers are detained in prisons.

Q.11. Explain if you have different types and levels of reception conditions following the different stages of the asylum procedure (this implies that you have to give briefly the necessary explanations about the asylum procedure). Make if relevant for reception conditions a distinction between the following procedural stages: determination of the responsible Member State on the basis of the Dublin II regulation, special procedures at the border (including transit zones in airports), accelerated procedures, admissibility procedures, eligibility procedures and the different possibilities of appeals (suspensive or not) against a refusal of the asylum request. Indicate what the main differences of reception conditions are between the different stages (if necessary by detailing between the different elements of reception conditions, in particular housing) and explain what the evolution of reception conditions is following the different stages of the procedure.

There are in the UK no procedural stages with different reception conditions as such. The main difference in treatment is between asylum seekers who are detained and those who are not detained. Everyone making an asylum application undergoes a screening interview either at the port of entry or at the Asylum Screening Unit (ASU) in either Croydon or Liverpool. At the screening interview, the immigration officer will consider whether (i) another Member State is responsible for considering the application under Dublin II or similar third country arrangements; (ii) the application could be dealt with quickly at one of the fast-track detention centres in Oakington, Harmondsworth or Yarl’s Wood.

Depending on the outcome of the screening, and assuming the UK is responsible for processing the claim, applicants may either find their own accommodation with family or friends, enter an induction centre or be detained at one of the removal centres. At least 10 days after the screening (but less so in fast-track detention centres), applicants will be invited to attend a substantive asylum interview. After the interview, the immigration authorities may detain the applicant, or recommend continuation of detention if they feel the case can be decided quickly or if they feel the applicant will not stay in touch, or given temporary admission to the UK, usually with reporting requirements, whilst they wait for a decision to be made on their case.

As part of the Home Office Five Year Strategy on Immigration and Asylum a New Asylum Model (NAM) was launched in January 2006 and rolled out March 2007. NAM is based on the reorganisation of asylum processing in three ways. The first involves segmentation: during the screening interview, Immigration Officers will assign the case to ‘segments’ which will
then determine processing, management and support pathways for each case. The five segments which have been defined are: third country cases; cases involving accompanied or unaccompanied children; cases that can potentially attract non-suspensive appeals; so-called late or opportunistic claims; and general casework. Whatever segment a person is placed will determine the speed at which the case is processed, the timing of the initial interview, assistance in obtaining access to legal advice, the type of accommodation, and reporting conditions.

Fast track processing is the second and ‘case ownership’ the third element of NAM. The idea is to have a single owner who is responsible for an asylum seeker throughout the process – from application to the granting of status or removal.

*For the government’s Five Year Strategy for Asylum and Immigration, see* [http://www.ind.homeoffice.gov.uk/6353/aboutus/fiveyearstrategy.pdf](http://www.ind.homeoffice.gov.uk/6353/aboutus/fiveyearstrategy.pdf)

From 5th March all new asylum applicants have come within the NAM. Any case not formally within the NAM by that date is dealt with by a separate Legacy Directorate. The asylum process is now divided in five segments, with processing times as follows (in working days):

<table>
<thead>
<tr>
<th>Segment</th>
<th>Screened</th>
<th>First Reporting</th>
<th>Asylum Interview</th>
<th>Decision served</th>
<th>Appeal</th>
<th>Removal</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Third Country</td>
<td>1</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>2. Minors</td>
<td>1</td>
<td>10</td>
<td>25</td>
<td>35</td>
<td>35-115</td>
<td>N/A</td>
</tr>
<tr>
<td>3. NSA detained</td>
<td>1</td>
<td>1</td>
<td>2-3</td>
<td>3-4</td>
<td>Post removal</td>
<td></td>
</tr>
<tr>
<td>NSA non detained</td>
<td>1</td>
<td>2</td>
<td>5</td>
<td>11</td>
<td>Post removal</td>
<td></td>
</tr>
<tr>
<td>4. Late/Opportunistic</td>
<td>1</td>
<td>1</td>
<td>2-3</td>
<td>3-4</td>
<td>9-10</td>
<td>After 10</td>
</tr>
<tr>
<td>Detained</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Late/Opportunistic</td>
<td>1</td>
<td>2</td>
<td>5</td>
<td>11</td>
<td>11-91</td>
<td>After 91</td>
</tr>
<tr>
<td>Non detained</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. General Casework</td>
<td>1</td>
<td>3</td>
<td>8-12</td>
<td>20</td>
<td>20-100</td>
<td>After 100</td>
</tr>
</tbody>
</table>

Under the NAM programme, people who need accommodation and support stay overnight for 1 night in accommodation near the ASUs (where people claim asylum). They are taken, usually the following day, to Initial Accommodation in one of six NAM areas, after which they are usually dispersed to more long term accommodation within the same region. The timescales have increased – people now tend to spend between 1 week and 3 months in IA and are then moved to dispersal accommodation.

**Q 11. B.** Indicate precisely for which stage(s) of the asylum procedure the answers on reception conditions you give below are valid.

The answers below are valid for the general system of reception in both detained and non-detained cases, with the exception of the NAM as this is still in the process of being rolled out.

The general system of reception is now the one provided under the NAM system. Those outside the NAM are known as Legacy Cases and are being dealt with by a separate Legacy
Directorate. Most of these are cases of those who have exhausted their appeal rights but who remain in the UK. The aim is to resolve all legacy cases by June 2011.

4. GENERAL RULES ON RECEPTION CONDITIONS

Q.12. A. Are material reception conditions provided in kind, in money or in vouchers or in a combination of these elements (see article 13, §5 which is an optional provision)? Distinguish between the different elements (housing, food, clothes, health, transportation, pocket money,…). If reception conditions are provided in money (in general or in some cases, for instance when no places are anymore available in accommodation centres), indicate the precise amount given to the asylum seekers. Indicate in your answer what is provided in general and if there are exceptional cases. Specify in your answer if reception conditions are different from the general system of social aid for nationals or aliens and if yes, if and when (which stage of the asylum procedure) can asylum seekers have access to the general system of social aid?

Material reception conditions are provided in kind (i.e. accommodation and services) and/or money (subsistence payments). From 10 April 2006, the weekly subsistence rates are (see The Asylum Support (Amendment) Regulations 2006, SI No.733):

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount (£/€)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single person aged 18 – 24</td>
<td>£31.85 (£46.66)</td>
</tr>
<tr>
<td>Single person aged 25 or over</td>
<td>£40.22 (£58.91)</td>
</tr>
<tr>
<td>Lone parent aged 18 or over</td>
<td>£40.22 (£58.91)</td>
</tr>
<tr>
<td>Qualifying couple</td>
<td>£63.07 (£92.40)</td>
</tr>
<tr>
<td>Person aged at least 16 but under 18 (except a member of a qualifying couple)</td>
<td>£34.60 (£50.69)</td>
</tr>
<tr>
<td>Person aged under 16</td>
<td>£45.58 (£66.77)</td>
</tr>
</tbody>
</table>

Pregnant women and those with children under 3 years can apply for additional payments each week (£5 per week if baby is under 1 year old, £3 per week if between 1 and 3 yrs old). There is a maternity grant of £300 (£439.48) available to those whose support has been approved – this must be claimed within tight timescales just before or after the birth.

Weekly income increased as of 9th April 07 (see The Asylum Support (Amendment) Regulations 2007, SI No.863). The new rates are:

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount (£/€)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single person aged 18 – 24</td>
<td>£32.80 (£48.07)</td>
</tr>
<tr>
<td>Single person aged 25 or over</td>
<td>£41.41 (£60.69)</td>
</tr>
<tr>
<td>Lone parent aged 18 or over</td>
<td>£41.41 (£60.69)</td>
</tr>
<tr>
<td>Qualifying couple</td>
<td>£64.96 (£95.21)</td>
</tr>
<tr>
<td>Person aged at least 16 but under 18 (except a member of a qualifying couple)</td>
<td>£35.65 (£52.25)</td>
</tr>
<tr>
<td>Person aged under 16</td>
<td>£47.45 (£69.54)</td>
</tr>
</tbody>
</table>
Subsistence payments are available both for those who need accommodation and those who are accommodated with friends and family. To qualify for such payments the case owner must ascertain whether a person is destitute or likely to become so, taking income or assets as defined under the regulations into account (see reg 6 of the Asylum Support Regulations 2002 [http://www.opsi.gov.uk/si/si2000/20000704.htm#3 which lists as assets: cash, savings, investments, land, cars, goods etc). The whole household’s income and assets are taken into account in assessing the level of support. Therefore, an asylum seeker with other resources may receive a lower rate of support.

At the Induction Centre/Initial Accommodation, asylum seekers are provided with bed and board. There is generally no cash payment. Some Initial Accommodation is not full board and cash is provided.

There is no cash payment for asylum seekers in detention.

Q 12. Can the reception conditions in kind, money or vouchers be considered as sufficient “to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence” as requested by article 13, §2 of the directive (which is a mandatory provision but leaves a certain space to Member States)? In order to help to assess the respect of this rule when reception conditions are provided in money, include if necessary in your answer points of comparison with the minimum amount of social aid guaranteed for nationals in your Member State.

The amounts are generally not considered sufficient by stakeholders as they equate to only 70% of the subsistence payment to indigenous welfare recipients. However, the government disputes this arguing that although monetary support is set at 70% of the universal level of Income Support which is said to maintain an individual or a family immediately above the ‘poverty line’, support in kind creates a degree of parity in so far as indigenous persons in receipt of Income Support must provide for their services (i.e. gas/electricity and water) from their Income Support while these are included in the support and accommodation package for asylum seekers.

Nationals on Income Support may be eligible to Housing Benefit (Housing Benefit is available to help people who are on benefits or who have low incomes to pay their rent. It is paid by local councils). Housing Benefit is only available to those on the mainstream welfare system. Asylum seekers receiving support do not pay for the cost of Home Office-contracted accommodation with private/public suppliers.

Children under 16 receive 100% equivalent of income support but their parents still receive a reduced amount and are ineligible for other valuable mainstream financial entitlements such as child benefits, working family and child tax credits. This increases the disparity between asylum and mainstream welfare support levels.

In general, where such level of support and accommodation is provided for a limited period it may be argued to be “sufficient”. Conditions become intolerable for those who are in receipt of limited support for a long period of time. This assumption is based on the government’s own stated policy for introducing lower levels of cash payments. The UK first justified lower levels of basic cash payment to asylum seekers on the basis that the asylum support system
was a safety-net arrangement on which people were intended to live for only a short time (see Home Secretary’s statement in Hansard, 15 June 1999, Vol.333, col.475). However, particularly in the early years in which NASS was established (from 2000 onwards) a large number of asylum seekers were living on NASS support for a considerable time. The hardship of those living on NASS support was documented by Oxfam and the Refugee Council in their report Poverty and Asylum in the UK, 2002, which compared mainstream welfare benefits with the package of support given by NASS. The report showed that it was particularly the most vulnerable who were losing out: pregnant women, mother with babies, the elderly and people with disabilities and ill-health, because they could not benefit from a range of additional payments that are designed to enable income support recipients to deal with extra essential costs, hardships and special needs.

It may be argued that the level of support is sufficient for applicants who have a final decision, up to and including appeal, determined within 6 months (which is the government target). This was the case of 67% of applications received in 2004/05.

Agencies working in the voluntary sector further highlight that asylum seekers who have made their own accommodation arrangements and apply for subsistence payments only, may not receive anything for several weeks while their application is assessed. They do not believe that this is sufficient to ensure they are capable of ensuring their subsistence.

Another circumstance where the adequacy of support is disputed concerns asylum seekers who make a fresh claim for asylum after a first claim has been disposed of at appeal. According to section 5(v) of Asylum Policy Bulletin 71, issued on 31 March 2005 (available at: http://www.ind.homeoffice.gov.uk/6353/12358/pb71.pdf), a person who made further representations to the Home Office seeking a fresh claim for asylum will be entitled for support under section 4 of the 1999 Act (hard case support). Support in these circumstances is provided in the form of self-catering accommodation with vouchers to the value of £35 (52 Euro) per week to purchase food and essential toiletries. In some cases, full board accommodation may be provided depending on availability. This is below the support provided to those who are claiming asylum on the first occasion. For details on section 4 support see http://www.ind.homeoffice.gov.uk/6353/12358/QandA.doc.

For domestic rules regarding successive applications see Q.16.

5. PROCEDURAL ASPECTS

Q.13. A. Does the national legislation specifically provide that a request for international protection is presumed to be under the Geneva Convention unless explicitly requested otherwise? (see article 2, b which is a mandatory provision)

No, domestic rules do not mention requests for ‘international protection’ but requests for asylum. The asylum process does, however, distinguish between refugee status and subsidiary protection status (ie humanitarian protection and discretionary leave) with clearly less rights attached to the latter (thus underlining the primacy of the Geneva Convention). However, until the determination of the status, support provisions are the same for all applicants and all applications are treated as ‘applications for asylum’. 
The Asylum Seekers (Reception Conditions) Regulations 2005, reg.2(c) define a ‘claim for asylum’ “a claim made by a third country national or a stateless person that to remove him or require to leave the United Kingdom would be contrary to the United Kingdoms obligations under the [Geneva Convention] and its Protocol.”

**Q. 13. B.** Explain if the scope of application of reception conditions is extended to other asylum seekers than refugees in the sense of the Geneva Convention, in particular to persons asking for subsidiary protection or to other forms of protection like humanitarian statuses (see article 3, § 4 which is an optional provision)? If not, explain briefly which the differences between these special regimes and the directive are.

In the consultation document, the Home Office stated that it would not extend the provisions of the directive to other asylum seekers than refugees in the sense of the Refugee Convention and has accordingly restricted the scope of the implementing legislation to claims made under the Refugee Convention (see above the definition of asylum claim in the RCR). However, in practice, for persons who are making their first asylum application the Home Office are not making technical distinctions between an asylum application made under the Refugee Convention and an asylum application made under Article 3 ECHR only, even though the EU Reception Directive allows then to make such a distinction. This is consistent with the single procedure in the UK, where human rights issues can be raised alongside an asylum claim or are inherent in that claim.

**Q. 13. C.** Are there specific provisions in national law for reception conditions in case of diplomatic or territorial asylum requests submitted through a diplomatic or consular representation (see article 3, §2 which is an optional provision)?

There is no provision in the UK Immigration Rules allowing applications for asylum through diplomatic or consular representations.

**Q.14.** Are reception conditions available as from the moment one asylum application is introduced? How is article 13, §1 which is mandatory legally understood? Do asylum seekers have to satisfy any other condition in order to get reception conditions?

Under domestic provisions entitlement to support starts when a claim for asylum is recorded and notified to the Home Office in person. In practice, therefore, asylum seekers who fulfil the eligibility criteria may be left without support because of delays in recording a claim or where it is disputed that a claim has been brought.

It is arguable that the practice of ‘recording’ a claim under domestic law makes various benefits under the directive subject to an additional requirement, which may result in asylum seekers being denied the rights to which they are entitled.

**Q.15.** Explain when reception conditions end, for instance after refusal of the asylum request (include in your answer the link with the right of appeal against a decision of refusal of the status, in particular the question of its suspensive effect)
In line with Regulation 2(2A) of the Asylum Support Regulations 2000, if a person is granted refugee status, support will be terminated 28 days from the day on which the Home Office notifies the claimant of their decision. This person will from that moment onwards enter the mainstream benefit system. If a person’s application for asylum is rejected, or his appeal is dismissed, support will cease 21 days after the Home Office notified him or her of the decision or after the notification about the dismissal of the appeal.

Q.16 Are there special rules or practices regarding reception conditions in case of successive applications for asylum introduced by the same person?

Asylum seekers who make a fresh claim for asylum after a first claim has been disposed of at appeal, may receive basic (hard case) support under section 4 of the 1999 Act pending consideration of these further representations, if the asylum support caseworker considers that there is substance in these representations. His application will then be passed for consideration to the asylum caseworker who will determine under rule 353 of the Immigration Rules whether the further representations constitute a fresh claim for asylum. There are then 3 possibilities: (1) the asylum caseworker considers that the further representations amount to a fresh claim for asylum and makes a decision to grant asylum - the applicant will then become eligible for mainstream benefits as a refugee. (2) The asylum caseworker decides that the further representations do amount to a fresh claim but decides to reject the claim. This carries a right of appeal and the applicant will be entitled to apply for asylum support under section 95 of the 1999 Act if he chooses to appeal the decision and pending a final outcome. (3) The asylum caseworker decides that the further representations do not amount to a fresh claim for asylum and rejects them. This carries no right of appeal. The applicant would no longer be eligible for support under section 4, unless he brought himself under one of the other criteria for support, for example that he was taking steps to leave the UK.

Q.17. Information of asylum seekers about their rights and obligations in terms of reception conditions, in particular about established benefits (see article 5 which is too large extend a mandatory provision; do not confuse this question with the information to be provided to asylum seekers about the asylum procedure):

Q. 17. A. Are asylum seekers informed, and if yes about what precisely?

Information about rights and obligations is provided to everyone who claims asylum even if they make no application for asylum support. Central government funds six agencies to provide orientation briefings to newly arrived asylum seekers, all of which are also responsible for the information provided through the formal induction processes.

Orientation briefings include an explanation of the support system, requirements in order to continue to access this support (eg what constitutes a breach of conditions etc), the Accommodation Provider’s role, how to access legal advice, reporting requirements, health care, how to complain etc.
Q. 17. B. Is the information provided in writing or, when appropriate, orally?

It is given orally, accompanied by written information for example a list of local solicitors and a Welcome Pack including information on local services. New asylum claimants are also shown a Home Office DVD outlining the Home Office’s approach to the asylum process.

Briefings and DVDs for asylum seekers and induction staff have are being updated in order to reflect the changes that have been introduced to the decision making and support arrangements under the NAM.

Q.17. C. Is that information in general provided in a language understood by asylum seekers? Specify the list of languages in which it is available.

Orientation briefings are centrally controlled and provided on DVD in 15 languages (Arabic, Dari, English, Farsi, French, Kurdish Sorani, Mandarin, Pashtu, Russian, Somali, Spanish, Swahili, Turkish, Urdu and Vietnamese). Asylum seekers whose language is not covered by this list receive a briefing given by an interpreter from a script.

Q. 17. D. Is the deadline of maximum 15 days respected?

The 15 days deadline has been transposed in the Immigration Rules Part 11B para. 358. In the large majority of cases delivery of information is usually completed within 15 days.

Q.18. Information of asylum seekers about the existence of organisations or groups promoting their interest and defending their rights (see article 5 which is to a large extend a mandatory provision):

Q. 18. A. Is there a list of organisations dressed by the authorities and if yes is it comprehensive? Is this in particular the case about the possibilities to get legal assistance and health care?

There is no central list of organisations dressed by the authorities. When a person claims asylum there are usually signposted to the local One Stop Service where further information on specific needs (list of local solicitors, GPs etc) is given.

One Stop Services are a network of advice centres which are managed by NGOs but receive funding from central government to provide services to asylum seekers.

Q. 18. B. Is the information provided to the asylum seekers, and if yes, in writing or, when appropriate, orally?

Asylum seekers may be given a leaflet containing the address of the local One Stop Service but, quite often this information is given orally.

Q. 18. C. Is that information in general provided in a language understood by asylum seekers? Specify if possible the list of languages in which it is available.
Where leaflets are provided they are given in English. Each One Stop Service also produces a “service description” leaflet which may be translated into languages which are needed locally.

Q. 18. D. How many organisations are active in that field in your Member State?

This is extremely difficult to quantify. There are a range of organisations active in the UK. These include Refugee Community Organisations, charitable, voluntary sector and faith organisations. They range in size and capacity and their number is believed to run in the hundreds if not thousands.

Q.19. Documentation of asylum seekers (see article 6):

Q.19. A. What kind of document is delivered to the asylum seeker? Explain the legal value of this document (just a certification of the status as asylum seeker or also prove of identity?) (see §1 of article 6 which is a mandatory provision)

Asylum seekers are issued an Asylum Registration Card (ARC). The ARC provides prove of identity and gives asylum seekers access to services provided for them within the UK. The ARC is a credit card-sized plastic card issued as an acknowledgement of an Asylum or Article 3 application made to IND. It contains information about the identity and immigration status of the holder (as recorded by IND when the card was created) in visible form and/or stored on a magnetic chip that can be read in specially programmed "QuickCheck" card readers. As well as the inclusion of the holder’s personal details, the card contains a number of security features including the inclusion on the face of the card of two digital images of the holder, the holder’s fingerprint details on the chip and optically variable printing. On all ARCs issued from mid-January 2005 the card shows on the reverse whether or not the holder is an asylum claimant.

The ARC has been defined in section 26A of the 1971 Immigration Act, as amended by section 148 of the Nationality, Immigration and Asylum Act 2002 (the NIA Act) in connection with certain offences as:

(1) "a document which-
(a) carries information about a person (whether or not wholly or partially electronically), and
(b) is issued by the Secretary of State to the person wholly or partly in connection with a claim for asylum (whether or not made by that person)."

Q.19. B. Are there situations or specific cases in which another equivalent document or even no document is issued? (in particular is there an exception for “procedures to decide on the right of the applicant legally to enter the territory” as made possible by §2 of article 6)?

A Standard Acknowledgement Letter (SAL) is provided if an ARC cannot be issued. A SAL is a double-sided A4-sized document printed on special security paper and containing a unique number. It is used to acknowledge a claim for asylum in circumstances where it is not possible to issue an ARC within 3 days of the claim being lodged. A SAL displays the name, date of birth and nationality of the claimant and any dependants, the date of arrival (if known), the date of application, their address in the UK and HO reference. Photographs of the claimant and any dependants are also attached. Following changes introduced on 17
December 2004, SALs issued are now normally valid for just 2 months from date of issue (known as a time-limited SAL). The time limiting is to enable arrangements to be made for the claimant and any dependants to attend and be issued an ARC, and to encourage attendance at such an event. Very rarely, where for wholly exceptional reasons (such as severe physical disability making the taking of fingerprints impossible) it is not possible to issue an ARC, a SAL valid until the claim has been finally decided will be issued to a claimant instead of an ARC. Such a SAL will be withdrawn when the claim is finally decided or the claimant leaves the UK.

Q.19. C. For how long is this document in principle valid and is it necessary to renew it after a certain period?

There is no expiry date on the ARC card and there is no requirement for renewal.

Policy instructions state that the ARC, once issued, is valid for as long as the asylum claimant is authorised to remain in the UK while their application is pending or being examined.

A sample of ARC is available at: [http://www.bba.org.uk/pdf/Asylumcard.pdf](http://www.bba.org.uk/pdf/Asylumcard.pdf)

Q.19. D. What is the deadline for the delivery of that document? Is the mandatory deadline of 3 days set by article 6, §1 respected?

The Home Office usually issue either a SAL or an ARC card within 3 days. The duty to issue a status document within three days is now a requirement under the Immigration Rules (rule 359), which have been amended to implement the Directive.

Delays to issuing an ARC occur on account of the fact that the Rules subject this requirement to an asylum application being recorded, rather than made. Those who make a fresh claim for asylum after a first claim has been disposed of at appeal are rarely documented within three days because of delays in recording a fresh claim.

Q.19. E. Is it possible for an asylum seeker to get a travel document for serious humanitarian reasons (see §5 of article 6 which is an optional provision)?

The UK has not transposed this optional provision. The qualifying criteria set out in the instructions are limited to people granted limited leave to remain (humanitarian protection or discretionary leave), who wish to apply for travel documents on compassionate grounds, such as for serious illness or the funeral of a close relative, or to receive medical treatment. The instructions do not explicitly include those awaiting a decision on their claim.

Q.19. F. Is there a central system of registration of asylum seekers and is it or not separate from the registration of aliens? If yes, describe it briefly (content) and indicate in particular if it is an electronic database.

There are various enabled sites were asylum seekers are registered and issued with an Asylum Registration Card. These are located at airports, at the Asylum Screening Units in Croydon and Liverpool, at Reporting Centres and at Oakington Detention Centre. Fingerprints taken
from applicants as part of the registration process are examined and retained in the central Immigration Fingerprint Bureau (IFB).
The system is separate from the registration of aliens.

Q.20. Residence of asylum seekers:

Q.20. A. Is in principle an asylum seeker free to move on the entire territory of your Member State or only to a limited part of it and in case, which part? (see article 7, §1 which is a mandatory provision)

There is no rule explicitly restricting freedom of movement but conditions which may be imposed upon asylum seekers (such as reporting requirements under paragraph 21 of Schedule 2 to the Immigration Act 1971, as amended) may restrict this freedom in practice.

Q.20. B. About the place of residence (see §2 of article 7): explain to which extend the person is free to choose her residence and if this depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance processing of application, attribution of reception conditions,...).

UK policy makes it a condition of support that an asylum seeker lives at ‘the authorised address’. An ‘authorised address’ is either the accommodation provided to the applicant and his or her dependants (if any) by way of asylum support (generally in a dispersal area) or the address notified by the supported person to the Home Secretary in his or her application for asylum support.

Q.20. C. About the place of reception (meaning where the asylum seeker has to stay to benefit from reception conditions) (see § 4 of article 7): explain which are the general rules about the determination of this place (to which extend are the decisions determining the place taken individually and do they take into account the personal situation of the asylum seeker?) and to which extend the person is free to choose it and if it depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance attribution of reception conditions, processing of the application,...).

If asylum seekers apply for the ‘accommodation and support’ package, accommodation will be provided on a no-choice basis. The policy is to disperse asylum seekers around the UK, to areas outside London and the southeast where accommodation is more readily available. The Home Office makes arrangements for accommodation in hotels, flats or houses through contracts with public, private and/or voluntary sector suppliers.

In determining the nature and location of accommodation, the case owner must take into account circumstances such as the location of other family members, education, medical or other social welfare needs (see Asylum Policy Bulletin 31 - Dispersal Guidelines, available at: http://www.ind.homeoffice.gov.uk/6353/12358/pb31.pdf).
Q.20. D. If all asylum seekers are not placed in accommodation centres because of capacity limits, explain how the persons are distributed between accommodation centres and other accommodation facilities (which authority takes the decisions, on the basis of which elements, can that decision be appealed by the asylum seeker,…)

Not applicable in UK context.

The Secretary of State has a statutory power to set up ‘accommodation centres’, in which supported asylum seeker households would live and be educated and which would include the provision of facilities for determining asylum claims and appeals (Part II Nationality, Immigration and Asylum Act 2002). This provision was to be implemented on a pilot basis but this has proved difficult due to planning objections from district councils. The government has recently stated that it will not proceed with the building of accommodation centres.

Q.20. E. How can an asylum seeker ask to leave temporarily the place of residence or of reception or an assigned area? How is the individual AND impartial character of the decision ensured? (see §5 of article 7 which is a mandatory provision)

Requirements on notifying IND of any temporary absences from accommodation are set out in the NASS Agreement. Asylum seekers have also an obligation to notify the authorities of any change of address, i.e. when they permanently leave the place of residence (Immigration Rules, Part.11B rule 358B).

Q.21. Q.21. A. Do rules on reduction or withdrawal of reception conditions exist in internal legislation and if yes in which cases (mention in particular if there are cases not foreseen by article 16, § 1 and 2 which are optional provisions)? Distinguish in your answer between cases of reduction and withdrawal and explain which conditions can be reduced and if access to emergency health care is always ensured as requested by article 16, §4, last sentence.

The UK has transposed Article 16 by adding provisions in domestic regulations where asylum support is terminated. Reg 20(1) of the Asylum Support Regulations (ASR), as amended, now sets out the same set of circumstances in which support can be suspended or discontinued as those specified in the directive. In addition, support can be discontinued for failure, without reasonable excuse, to comply with a relevant condition (reg 20(1)(k)). A relevant condition is a condition subject to which asylum support is being provided (reg 19(2)). These may include living at ‘the authorised address’ and the duty to notify a change of circumstances as specified by the regulations (reg 15 ASR).

Access to emergency health care is always ensured. The National Health Service (Charges to Overseas Visitors) Regulations and Health Service Circular HSC 1999/018 Overseas visitors’ eligibility to receive free primary care, state that no charge shall be made in respect of any services forming part of the health service in respect of those who have made a formal application for asylum.
Q.21. B. Has article 16, §2 dealing with refusal of reception conditions for unreasonably late applications for asylum been transposed by your Member State (or was this case already applicable before transposition)? Are there cases in practice?

A provision allowing support to be refused, where the asylum seeker failed to demonstrate that his or her asylum claim was made as soon as reasonably practicable after arrival, existed in the UK (in section 55 of the Nationality, Immigration and Asylum Act 2002) prior to adoption and transposition of the Directive and has been applied in practice since January 2003. In fact, the wording of Article 16(2) of the directive follows closely the wording of section 55.

Further to a Court of Appeal judgement in R (Limbuela, Tesema, Adam and others) v Secretary of State for the Home Department [2004] EWCA Civ 540 – see Q9 above), the Home Office has revised guidance on section 55 to the effect that the government must provide support unless it is positively satisfied that the individual concerned has some alternative form of support available to meet his or her need for housing, food and washing facilities. The case was examined by the House of Lords, which reached a similar judgement to that of the Court of Appeal (R v Secretary of State for the Home Department, ex parte Adam and Others – see Q9 above). The Courts clarification on the interpretation of Article 3 ECHR in the context of section 55 has led to the number of section 55 refusals decreasing significantly ever since this provision entered into force in January 2003. Home Office statistics show that in 2003, of 14,760 cases referred to NASS, 9,410 were refused support under section 55. In 2004, section 55 refusals were 1,360 out of 10,570 cases referred to NASS. In 2005, section 55 refusals were 340 out of 3,780 cases referred to NASS. Finally, there were 450 section 55 refusals in the first 2 quarters of 2006 (January to June) out of 2,515 applications for support.

During 2006, there were still 895 people who were refused support under section 55.

Q.21. C. How is it ensured that decisions of reduction or withdrawal are taken individually, objectively AND in particular impartially (for instance through and independent arbitrator) (see article 16, §4 which is a mandatory provision)?

Article 16(4) of the Directive has been transposed in reg 20(3) ASR, and requires, in similar terms, that decisions to discontinue support take into account the particular circumstances of the person concerned. Asylum policy instructions (see Policy Bulletin 83) do not provide any further guidance as to how this requirement is to be ensured in practice.

Q.21. D. Is statement 14/03 adopted by the Council at the same moment as the directive respected (see the document attached to our sending)?

Yes, as a matter of policy, since the Court of Appeal judgement in the case of Limbuela and the Home Office’s decision to review application of section 55. See revised guidance in Asylum Policy Bulletin 75(V5) – Section 55 (late claims) 2002 Act guidance:
http://www.ind.homeoffice.gov.uk/6353/12358/pb75.pdf

There is no specific guidance as to how decisions to discontinue support (other than in section 55 cases) are to take account of the situation of the persons concerned, particularly those of
vulnerable people, nor is there any litigation readily traceable on the subject. I cannot say whether this statement is respected in practice.

Q.21. E. Are there already administrative appeal decisions or judgements on cases of reduction, withdrawal or refusal which have been taken, and if yes, what has been the outcome?

Section 55, allowing support to be refused where the asylum seeker failed to demonstrate that his or her asylum claim was made as soon as reasonable practicable after arrival, has been subject to extensive litigation in the UK and to an unprecedented number of applications for interim relief. The issue was finally settled in final instance by the House of Lords, which found that the Home Office must provide support to asylum seekers verging on destitution, who have not claimed asylum as soon as reasonably practicable after entering the UK, to avoid a breach of their Article 3 ECHR rights.

Q.22. A. Appeal against a negative decision relating to the granting of benefits or based on article 7 (see article 21 which is a mandatory provision): indicate against which decision an appeal can be introduced, describe the system of appeal in general and include in particular in your answer the information given to asylum seekers about possibilities of appealing, deadline for appealing, if the appeal has or not a suspensive effect, if there are different steps (for instance first an administrative appeal and in particular if the guarantee of an appeal before a judicial body in the last instance is respected)?

Appeals against support decision are heard by the Asylum Support Adjudicator (ASA). However, ASA’s jurisdiction is limited. For example, there is no right to appeal as to the location, nature or standard of support. The only way of challenging all such decisions is by way of judicial review. Asylum Policy Bulletin 23 explains the process of asylum support appeals (see http://www.ind.homeoffice.gov.uk/6353/12358/pb23.pdf).

Furthermore, ASA appeals lack suspensive effect, i.e. they do not allow the continuation of support while the appeal is being decided. This makes interim relief in the courts the only possible remedy, but this remedy is not a practical one and, therefore, in most cases interim relief will not be a viable option.

Under section 103 of the Immigration and Asylum Act 1999, a right of appeal exists only against the Secretary of State’s decision that an applicant does not qualify for support, and the Secretary of State’s decision to stop providing that support before that support would otherwise have come to an end.

In the context of Article 7, there is no appeal against the decision in respect of the ‘assigned’ dispersal accommodation. A decision to detain, on the other hand, can be challenged as explained in Q.33H.

Where an asylum seeker is notified of a decision against which they may appeal, he will be sent a notice of appeal with two copies of the decision letter. The asylum seeker will have been deemed to have received the decision on the second working day after it was sent, unless
Reception Conditions National Reports

1483

the contrary is proven. The asylum seeker then has three working days in which to submit an appeal to the Asylum Support Adjudicators.

The Asylum Support Adjudicators have discretion to extend the time limit for receiving the notice of appeal if it is in the interests of justice, and if they are satisfied that the appellant or his representative was prevented from complying with the three working days’ time limit by circumstances beyond his control.

After receipt of an appeal by the ASA, if there is no oral hearing, the appeal must be determined on consideration day (day 4) or as soon as possible thereafter, and in any event not later than 5 days after the consideration day – ie day 9. If there is an oral hearing, the reasons statement will be sent to appellant or representative, and Secretary of State by day 11.

Q.22. B. Explain which are the possibilities for asylum seekers to benefit from legal assistance when they introduce such an appeal (see article 21, §2 which is a mandatory provision but leaves space to Member States)?

There is very limited, voluntary, assistance available at ASA hearings. The lack of a proper system of legal assistance before ASA (other than on an exceptional funding basis which, if granted, is invariably ex post facto) represents a serious obstacle to asylum seekers wishing to exercise their appeal rights or be represented before the ASA.

Q.22. C. Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?

See Q. 9 above.

Q.22. D. Is a mechanism of complain for asylum seekers about quality of receptions conditions in general (even if they are not personally concerned) organised? If yes, before which authority? Is it linked to the system of guidance, control and monitoring of reception conditions (see below question n° 39)?

Asylum seekers can lodge a complaint both in relation to the treatment of their claim and the support they receive.

The Home Office Immigration and Nationality Directorate (IND) has a complaints procedure for responding to complaints about its services and staff. The IND Complaints Unit deals with all complaints about IND service delivery. It can only accept complaints in English and in writing and reserves the right not to respond to complaints that it consider abusive. IND also permits complaints lodged on behalf of another person. The IND Complaints Unit can accept complaints on another person’s behalf such as spouse or partner, or the legal representative. People can also involve their Member of Parliament (MP) in raising their complaint with IND.

When the investigation of a formal complaint is complete and the unit has sent their response to the complainant with its findings, the complaint file is audited by the Complaints Audit Committee (CAC). The CAC is an independent panel set up to oversee the investigation of formal complaints. The CAC are not part of the investigation process for complaints and do
not enter into correspondence about individual cases. They report directly to the Home Secretary and make recommendations from their findings to improve the complaints service.

An ‘informal complaints’ procedure has only recently been implemented by the Home Office and only at the insistence of the Complaints Audit Commission (CAC). The CAC (reports readily available) has also recently raised concerns about the manner in which complaints are investigated. The CAC were critical of the Home Office’s complaints procedures generally.

In addition to the informal and formal complaints procedures all asylum seekers have access to the UK’s Parliamentary Ombudsman scheme if they are dissatisfied with the outcome of any complaint. Access to the Ombudsman is available only after other internal processes have been exhausted although delay in dealing with a complaint can amount to maladministration. Complaints to the Ombudsman must be made via a constituency MP. The scheme is not well publicised to asylum seekers and is under use.

6. RIGHTS AND OBLIGATIONS OF ASYLUM SEEKERS

Q.23. Family unity of asylum seekers: define how a family is defined in relation with article 2, (d) which is a mandatory provision and explain how housing is provided to a family (see articles 8 which is a mandatory provision but leaves space to member States and 14, §2, (a) which is a mandatory provision).

There are two definitions of ‘family’ in UK Regulations: The Reception Conditions Regulations (RCR), which provide a duty to have regard to family unity when provisions of support are made, use the directive’s definition of family members; The Asylum Support Regulations (ASR) use a much wider concept of family by defining a ‘dependant’ in relation to an asylum seeker or supported person as being:

(a) the spouse;
(b) the child of the applicant or the applicant’s spouse and dependent on the applicant;
(c) the minor who is a member of the close family of the applicant or the applicant’s spouse;
(d) the minor who has been living as part of the household since birth or for six of the 12 months before the application for support;
(e) the disabled family member who is in need of care and attention and fulfils the conditions in (c) or (d);
(f) the unmarried partner who has been living with the applicant for two of the three years before the application for support was made.

While the Asylum Seekers (Reception Conditions) Regulations (reg.3) places a new obligation on the Secretary of State to accommodate members of a family together as defined in the directive, the government maintains a discretion to accommodate with the family other dependants, as defined in the ASR. The implications of not exercising this discretion properly are significant in the context of the UK’s dispersal policy. If a family member is not treated as a dependant he or she could be dispersed to a different part of the UK from the other relatives claiming support.
Q.24. A. How is housing of asylum seekers organised: describe the system in general and indicate in particular what is the most frequently system used (see article 14, §1 which is a mandatory provision but leaves space for Member States; distinguish between accommodation centres, private houses and apartments, hotels places or other premises).

Where asylum seekers apply for accommodation and support (rather than support only), the Home Office makes arrangements for accommodation in hotels, flats or houses through contracts with public, private and/or voluntary sector suppliers.

The Asylum Seekers (Reception Conditions) Regulations now establish that the Secretary of State has a duty (rather than a discretion) to provide support to eligible asylum seekers (reg.5). Under section 95 of the Immigration and Asylum Act 1999, support is provided to asylum seekers who do not have adequate accommodation or any means of obtaining it (whether or not his other essential living needs are met). Such support may take the form of adequate accommodation. Under the provisions of section 97 the caseworkers must have regard to the desirability, in general, of providing accommodation in areas in which there is a ready supply of accommodation. Casework instructions (Policy Bulletin 31) specify that careful consideration must be given to the individual circumstances of each case and when deciding whether it is reasonable to allocate dispersed accommodation particular attention should be given to the following:

- Medical treatment
- Family ties
- Education
- Ethnic group
- Religion
- Employment
- Legal advice
- Special needs

The UK does not have accommodation centres as such (a statutory provision allowing for such centres to be established has never been implemented – see Q.20D above). The UK has a small network of “Induction Centres” (or Initial Accommodation) which are facilities that provide short term accommodation to people who have made an asylum application and who are waiting for an application for support to be considered. These are not accommodation centres as defined by the directive, being based upon hotel or other accommodation.

Q.24. B. What is the total number of available places for asylum seekers? Distinguish in your answer between accommodation centres, private houses and apartments, hotels or other premises.

There is no fixed number of dispersal beds available for asylum seekers. There are approximately 1700 bedspaces available in the initial accommodation estate (where people may stay on arrival), however this too can be increased upon negotiation with the accommodation provider. There are regions in which asylum seekers may be dispersed. There are agreed percentages of the overall total of asylum seekers which each region agrees to accommodate. It is then up to the contracted accommodation provider to provide the accommodation in that region.
Q.24. C. Is this number of places for asylum seekers sufficient in general or frequently insufficient?

The number of dispersal places for asylum seekers is generally sufficient. According to responses from the non-governmental sector initial accommodation less so.

Q.24. D. Are there special measures foreseen in urgent cases of a high number of news arrivals of asylum seekers (outside the case of application of the directive on temporary protection)?

None.

Q.25. Accommodation centres (important note: all the following questions are about open and not closed centres where asylum seekers are detained which are covered by another question)

Q.25. A. Are there different categories of accommodation centres, for instance depending of the stage of the procedure (admissibility and eligibility)?

As mentioned above, there are no accommodation centres in the UK as defined in the directive. The questions will therefore be answered, in so far as relevant, with regard to Induction Centres (or Initial Accommodation) where asylum seekers are housed for the time necessary to assess their application for support and organise their dispersal.

Q.25. B. Is there a legal time limit for accommodation in a centre after which the asylum seekers have access to private houses or apartments or is this limit linked to a stage of the asylum procedure?

There is no time limit for accommodation in an Induction Centre. The Home Office aims to move all asylum seekers who are in Induction Centres to more permanent accommodation as soon as possible. The Government states that this is usually carried out in two weeks.

Unless accommodation in an Induction Centre proves unsuitable for medical reasons then asylum seekers will be accommodated until their application for asylum support is considered. A positive asylum support decision will result in transferral to dispersal accommodation while a negative asylum support decision will mean no support is forthcoming. However, an asylum seeker whose application for asylum support is refused will have the opportunity to appeal against that decision to the ASA.

Q.25. C. Is there a general regulation about the internal functioning of those centres and the rights and duties of the asylum seekers? If yes, is this general regulation applicable to public and private centres? If not, are the centres supposed to adopt an internal regulation and does a central authority have or not a kind of control about its content?

There is a general regulation about the internal functioning and the rights and duties of asylum seekers in Induction Centres. Each asylum seeker resident in the Centre receives a briefing on rights and responsibilities as part of their introduction to the UK (this briefing is centrally...
Each organisation managing an Induction Centre has a system of house rules which are explained to residents on arrival. If these rules are breached it is dealt with on a case by case basis. For example, one organisation requires residents to sign a register each day. If one day is missed then a warning is given, on the second occasion a final warning is given and if a third signing is missed then the organisation will seek to move the asylum seeker to alternative accommodation which will involve a further briefing session on rights and responsibilities. Serious breaches of rules may be dealt with by the police where necessary, for instance fighting or criminal damage although organisations try to minimise potential incidents where at all possible.

The UK has, moreover, amended the Regulations so that support may be suspended or discontinued if the case owner has reasonable grounds for believing that the asylum seeker or a dependant has committed a serious breach of the rules of collective accommodation or committed an act of seriously violent behaviour anywhere (new reg 20(1)(a)), and has defined ‘collective accommodation’ to include shared accommodation or accommodation with shared facilities (such as kitchen or common area). According to the directive, support can only be withdrawn for breach of an occupancy agreement if the perpetrator is in an accommodation centre – not dispersal accommodation. In dispersal accommodation, support can be withdrawn if the applicant has demonstrated seriously violent behaviour (new reg 20(1)(b)).

Decision to suspend or discontinue support under these regulations can be appealed to the ASA.

Q.25. D. Do the regulations foresee the possibility of sanctions against asylum seekers in case of breach of the rules? (see article 16, §3) If yes, which sanctions for which rules? Which is the competent authority to decide? How is it ensured that decisions are taken individually, objectively and in particular impartially (for instance through an independent arbitrator) as requested by §4 of article 21 which is mandatory provision? Which are the possibilities of appealing against those decisions if the system is different from the general one under question n°22? Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?

Asylum seekers are not involved in the management of Induction Centres. One NGO which manages two induction centres is planning to introduce client forums where residents can make suggestions on ways to improve the Centre. This work is outside the current contract specification for Induction Centres and is not something that the State has requested.

Q.25. E. Are asylum seekers involved in the management of these centres? If yes, how (advisory board, appointment or election of representatives)? (see article 14, §6 which is an option provision)

Q.25. F. Do specific rules exist on work of asylum seekers inside the accommodation centres different from the general ones about employment (see below)? If yes, which ones? Can working inside accommodation centres be considered as a (mandatory) contribution of
the asylum seekers to the management of the centres, is it or not paid and considered as implying access to the labour market and subject to the same rules?

Asylum seekers resident in Induction Centres are not required to work or to make a contribution to the management of the centre.

Q.26. How can asylum seekers communicate with legal advisers, representatives of UNHCR and NGOs? (see article 14, §2, (b) which is a mandatory provision).

The referral system for communication with NGOs, legal advisers and UNHCR is set up in practice. There is no norm of transposition or pre-existing provision in either regulations or rules.

Q.26. What are the rules about access of legal advisers, UNHCR and NGOs regarding access to accommodation centres and other housing facilities (see article 14, §7 which is a mandatory provision)?

Some of the six Induction Centres have a referral system to legal advisers such as the Refugee Legal Centre or the Immigration Advisory Service. Where such a referral service exists asylum seekers may of course exercise their right to seek advice from any other adviser of their choice. Generally, asylum seekers go to the legal advisers rather than advisers entering the centre.

As part of the NAM process, those who request support and accommodation are usually allocated a solicitor on a rota basis. In many ways this is a very positive step forward as individuals found it difficult on occasion to find a solicitor previously. In some cases however the applicant is not given an appointment before the substantive asylum interview. Those applying only for cash-support must still find their own solicitor.

Asylum seekers who are resident in dispersal accommodation may contact a One Stop Service for information on how to find legal advice. All access to publicly funded legal advice on asylum and immigration is strictly controlled.

Q.26. Can the access of legal advisers, UNHCR and NGOs be limited for security reasons or any other reason (see article 14, §7, last sentence)?

No.

Q.27. Is a medical screening organised by the receiving State, is it mandatory or voluntary? Does it include HIV tests? (see article 9 which is an optional provision)

A voluntary medical screening is available to all asylum seekers. It does not include HIV test. Under the NAM, the Home Office intend a general 15 minute medical check up to be available to every individual requesting accommodation and support. This happens in some regions but not in others. Screening is voluntary.
Q.27. B. Do the legal provisions on reception conditions ensure that asylum seekers receive at least emergency care and essential treatment of illness as requested by article 15 §1 which is a mandatory provision? Do they have a further access to health care?

National Health Services Regulations, as amended, entitle asylum seekers to access to the National Health Service, nationally on the same basis as the indigenous population.

Section 1 of the National Health Service Act 1977 requires the Government to provide comprehensive health service so as to secure an improvement in the prevention, diagnosis and treatment of illness. In 1989, the Government introduced regulations requiring NHS Trusts to charge “overseas visitors” for secondary care (hospital treatment), subject to various exemptions (National Health Service (Charges to Overseas Visitors) Regulations 1989). Asylum seekers and failed asylum seekers who had been in the UK for 12 months were unaffected at that time. In 2004, the regulations were amended again so that more overseas visitors, including failed asylum seekers, became liable for hospital charges (2004 Charging Regulations and Department of Health guidance Implementing the Overseas Hospital Charging Regulations). The current system is that a person who has formally applied for asylum is entitled to NHS routine hospital treatment without charge for as long as his application (including any appeal) is under consideration.

Q.27. C. What is the practice regarding access of asylum seekers to health care and how is it organised? In particular, what is the situation in accommodation centres (are doctors coming to the centres or do asylum seekers go to doctors outside)?

The policy is set out at http://www.ind.homeoffice.gov.uk/6353/12358/pb85.pdf.

Asylum seekers who are resident in Induction Centres have access to medical services. In some centres medical services are provided at the centre but the majority of asylum seekers go outside the centre and use the same facilities as the indigenous population.

Health care via an initial assessment is not universal throughout the Initial Accommodation Network and therefore, while there are examples of good practice (e.g. Initial Accommodation at Dover and Ashford), no health care assessments and therefore, potentially no prompt access to primary health care is available in other parts of the Network.

Furthermore, when asylum seekers are ‘onward dispersed’ from Initial Accommodation to their ‘final dispersal destination’ access to primary health care is not universal. For example, although the Home Office has arranged with the accommodation providers with which it contracts for them to facilitate the registration of asylum seekers with primary health care providers, this does not generally take place until after the individual has left her/his Initial Accommodation which may be 15 days or more after an asylum application has been made. Also, doctors in primary health care remain confused as to the definition of an asylum seekers and are therefore tempted to evade their responsibility to register asylum seekers with their practices on the basis that they may be or may become failed asylum seekers who have diminished entitlement to primary and secondary health care.

Procedures exist, in principle, to ensure that all asylum seekers are registered with GPs for primary health care in accordance with their entitlements under the UK’s regulations and the
Reception Conditions National Reports 1490

directive. However, there is anecdotal evidence that those procedures may not be fully effective.

The recent parliamentary by the Joint Committee on Human Rights inquiry into the treatment of asylum seekers reported about considerable difficulties experienced by asylum seekers in registering with a GP.

Q.28. What is the length of the period determined by the concerned Member State during which asylum seekers have no access to the labour market? (see article 11 which is a mandatory provision)

Applicants for asylum are allowed to apply for permission to take up employment if a decision at first instance has not been made within one year of the date on which it was recorded (the policy is set out in Asylum Policy Bulletin http://www.ind.homeoffice.gov.uk/6353/12358/pb72.pdf).

Q.28. A. After that period, are asylum seekers or not obliged to obtain a work permit? In case is there a limit for the administration to deliver the permits and how quick are they delivered? What is their length?

No, they don’t require a work permit but must obtain written permission from the Home Office before taking employment (if successful, this permission will be endorsed on the holder’s ARC). Employment is granted only until such time as his or her asylum application has been finally determined. The Immigration Rules do not transpose Article 11(3), which prohibits withdrawal of permission to work while an appeal or further appeal is pending (where such an appeal has suspensive effect). There is no fixed period within which written permission must be given.

The Home Office does not automatically inform asylum seekers that they have the right to apply for permission to work after one year without an initial decision, or when the year has passed. If an asylum seeker applies to the Home Office after a year, waiting times vary greatly with some receiving no reply. Asylum seekers informed that they have been granted permission to work then have to arrange an interview for a new Asylum Registration Card (ARC) which will state employment permitted.

Q.28. B. After that period, what are the conditions for access of the asylum seekers to the labour market? (in particular, are there rules concerning the maximum allowed of working hours or days per week, month or year, limits in terms of type of work or of professions authorised?)

The Immigration Rules explicitly exclude the entitlement to become self-employed or engage in a business or professional activity.

Q.28. C. What are the rules in terms of priorities between asylum seekers on the one hand and nationals, EU or EEE citizens and legally third-country nationals on the other?

The normal labour market tests apply.
Q.28. E. Do asylum seekers have access to vocational training, does this or not depend of their right to access to the labour market, and in case at which conditions? (see article 12 which is optional regarding §1 and mandatory regarding § 2)

The UK has not transposed this provision. However any applicants who have access to the labour market in line with Article 11 would be able to participate in vocational training funded by their employer.

Q.28. F. Are the rules regarding access to the labour market adopted to transpose the directive more or less generous than the ones applicable previously?

Prior to transposition, there was no entitlement for asylum seekers to access the labour market. Ministers retained discretion to allow asylum seekers to work in exceptional circumstances. An exceptional circumstance might have arisen where an application for asylum remained outstanding for longer than 12 months without a decision being made on it, providing the reason for the delay was not attributable to the applicant.

Q.29. Are reception conditions subject to the fact that asylum seekers do not have sufficient resources? Are asylum seekers requested to contribute to reception conditions when they have personal resources (for instance if they work) or to refund the authorities if it appears that they have resources? (see article 13 §§ 3 and 4 which are optional provisions)

Any government-funded reception support is only available to those who can prove they are destitute. Most asylum seekers are not allowed to work. However, if they have any savings/other forms of income, they are required to report it to Home Office, and it is usually deducted from their payments, or payments stop altogether. If the Home Office become aware of any income the applicant has not reported, they can request a refund, or prosecute the individual.

There is updated guidance for caseowners on determining destitution: see Asylum Support Policy Bulletin 4, Determining whether persons who apply for asylum support are destitute. It includes a destitution threshold table to determine whether a person is destitute.

7. SPECIAL NEEDS OF PARTICULAR CATEGORIES OF ASYLUM SEEKERS

Q.30. Which of the different categories of persons with special needs considered in the directive are taken into account in the national legislation (see article 17, §1 which is a mandatory provision): disabled people, elderly people, pregnant women, single parents with minor children, persons who have been tortured, raped or victims of serious physical or psychological violence? Include in your answer all other categories envisaged in national law.

Article 17(1) has been transposed in identical terms in the Reception Conditions Regulations (RCR) which define a vulnerable person by reference to the list contained in Article 17.
Q.30. B. **How is their specific situation taken into account** (see articles 13, §2, second indent, 16 §4 second sentence and 17 which are mandatory provisions)?

Provided people with special needs are identified, upon arrival or in their dispersal area, they will be referred to a GP for assessment and/or their Local Authority for additional support. However, the Asylum Seekers (Reception Conditions) Regulations 2005 establish that there is no duty on the Home Office to carry out or arrange for the carrying out of an individual evaluation of a vulnerable person’s situation to determine whether he or she has special needs. It is up to applicants to disclose details of special needs they may have in writing to the Home Office or to health care professionals. Hence, there is no assurance under domestic regulations that such persons will be identified and their specific situation taken into account when provisions for their support and health care are made.

Q.30. C. **How and when are the special needs of the concerned persons supposed to be legally identified** (see article 17 § 2 which is a mandatory provision and clarify how it has been interpreted by transposition)?

Under the National Health Service and Community Care Act 1990 a person can request an assessment from the Local Authority if they think they have a need for community services. If they are found to have such a need then they will be able to access specialist care facilities. An asylum seeker with a disability can also request an assessment under Section 3 of the Disabled Persons (Services, Consultation and Representation) Act 1986.

As stated above, while there is a duty on local authorities to assess special needs for asylum seekers who need community care services, there is no corresponding duty to assess special needs where this is only relevant for support provided by the Home Office. Policy instructions simply state that the Home Office must take into account any evidence of an individual evaluation supplied that confirms that a vulnerable person has special needs (Asylum Policy Bulletin 83). Examples of individual evaluations which the Home Office will accept include an assessment from the Medical Foundation for the Care of Victims of Torture confirming that an asylum-seeker has been accepted for further treatment, or a community care assessment undertaken by a social services department.

Q.30. D. **Is the necessary medical and other assistance provided to persons with special needs as requested by article 15, §2 which is a mandatory provision and in particular to victims of torture and violence as requested by article 20 which is a mandatory provision**?

This is contingent upon their needs being recognised and appropriately assessed and supported. There is limited capacity for such screening, assessment and support outside of London where few asylum seekers are now dispersed.

There has been no transposition of these provisions. The UK believes they are complied with under existing regulations giving asylum applicants access to free NHS medical services. Decisions as to what health services should be provided for an individual, including mental health provision and treatment for victims of torture and violence, is a matter of clinical judgment made within the policies of the particular NHS Trust or Primary Care Trust. Clinical
information is assessed by NASS and the medical advisor, who have to ensure that asylum seekers are linked to the health care services they need in the areas to which they are to be dispersed. A review undertaken in 2004 of how NASS meets the health care needs of people seeking asylum has found that NASS is not consistent in considering and acting upon evidence of the applicant’s health care needs and that staff making these assessments are sometimes not equipped for the task.

Q.31. **About minors:**

Q.31. A. **Till which age are asylum seekers considered to be minor?**

A child, whether unaccompanied or accompanied, is defined in the Immigration Rules (paragraph 349 of HC395 as amended) as a person under eighteen years of age or who, in the absence of documentary evidence establishing age, appears to be under that age.

Q.31. B. **How is access of minor asylum seekers to the education system ensured? Is it at school or in case inside accommodation centres and can it be considered as similar to the conditions for nationals as requested by article 10, §1?**

Asylum seekers’ children of school age are entitled to primary and secondary education under section 16 Education Act 1996, which places a duty on local education authorities to secure places in primary and secondary schools for children residing temporarily or permanently in their area. The duty covers education appropriate to the age, aptitude, abilities and special educational needs they may have up to the age of 16. In addition, there is a power in the regulations to make provision for services to asylum seekers in the form of education, including English language classes and ‘developmental activities’. This power has never been used.

Q.31. C. **Is access to education ensured not later than 3 months as requested by article 10, §2 (or after maximum one year if specific education for asylum seekers is provided) and till an expulsion decision is really enforced?**

There is an expectation that unaccompanied asylum seeking children in public care are found a full-time education placement in a school within a time limit of 20 days. (Guidance on the Education of Children and Young People in Public Care, May 2000). However in practice this often takes much longer due to limited resources.
There is only guidance as to this matter and only for children in public care.

Q.31. D. **Is specific education (like language classes) available for asylum seekers, in particular to facilitate their effective access to the education system of the reception Member State (see article 10, §2 which is an optional provision)?**

Theoretically yes but in reality this depends entirely on where the minor is supported and resources of their local authority to meet this need.

Q.31. E. **Are minors in general accommodated with their parents or with the person responsible of them? (see article 14, § 3)**
Minors are always accommodated with their parents or with the person responsible for them unless there are child protection concerns (see sections 17 and 20 of the Children Act 1989).

Q.31. F. Do minors with special needs enumerated by article 18, §2 which is a mandatory provision, have access to appropriate mental health care and qualified counselling?

Sections 1 and 3 of the National Health Service Act 1977 provide for this care. Children have access to mental health care and qualified counselling via Local Authority children’s social services and Child and Adolescent Mental Health Services (CAMHS) teams, but in practice this depends on how a child gains access to the statutory assessment process (there are major differences for children in families and for separated/unaccompanied children), the quality of the assessment of the child’s needs and the availability of resources within the area of accommodation. For all (non-age disputed) unaccompanied children the Children Act 1989 section 17 needs assessment process should, if carried out properly, identify mental health needs and provide the vehicle to refer to all necessary services. Age disputed children deemed to be over 18 can however be excluded from children’s services by taking the age assessment as a preliminary issue prior to a full needs assessment and as a result may be treated as adults, referred to the adult support scheme and never receive a proper needs assessment or referral for treatment/counselling.

Asylum Policy Bulletin 82 (http://www.ind.homeoffice.gov.uk/6353/12358/pb82.pdf) contains detailed guidance on dispersing asylum seekers with special needs. However, it focuses on recognition of “clear and urgent” cases and only uses “obvious” examples of often extreme physical/mental characteristics in guidance to its staff. This militates against caseworkers correctly identifying the mental and other health needs of children and their families and leaves too much scope for these needs to be overlooked or delayed in being treated.

Q.31. G. How and when is organised the representation of unaccompanied minors (guardianship, special organisation) and regularly assessed? (see article 19, §1 which is a mandatory provision)

The UK considers that its obligations under Article 19 are met by reference to the Children Act 1989 duties upon social services departments to look after children in need in their area, under the safeguarding provisions of the Children Act 2004 and the Home Office’s contractual arrangement with the Refugee Council establishing a Children Panel of Advisers. All unaccompanied minors arriving in the UK should be referred to the Refugee Children’s Panel (RCP), based at the Refugee Council, where a named adviser is meant to be allocated to them to provide guidance and support and ensure that they are aware of their rights and the services to which they are entitled. However, there is no guarantee that a child, who has been referred, will be taken on by the RCP. Furthermore, the Children’s Panel Adviser has no legal responsibility for the child and no rights with regard to their care.

The panel has an advisory function, advising on the panel provide short-term support to children who have claimed or are about to claim asylum in their own right. This includes: assisting child in accessing quality legal representation; guiding the child through the complexities of the asylum procedure; if necessary, accompanying the child to asylum interviews, tribunal and appeal hearings, magistrates and crown court appointments; building
up a support network for the child involving a range of statutory and non-statutory service providers; supporting the child during appointments with GPs, hospitals, social service or other service providers. The Panel does not provide a guardianship type role for unaccompanied children in the UK.

The Panel is only able to meet some of the needs, for some of its clients, some of the time. For example, in 2004 the Panel received 3,868 referrals and of those, 990 were allocated a named adviser. Although the Panel saw many more children through drop-in and surgery work, it does not have the capacity to provide named advisers to all children throughout the process. Moreover the role of the Panel is not a statutory one and, although the Home Office funds it, there is no obligation on Social Services Departments to work together with the Panel’s advisers or vice versa. It does not act as an ‘appropriate adult’ or litigation friend in legal proceedings. At the same time the Children’s Panel has limited capacity to follow up the referrals that it makes and no powers to ensure that the wide range of bodies in contact with a child act in his or her best interests.

The Policy Instructions to case-workers only say that:

Panel of Advisers

The Refugee Council will represent a child in his/her dealings with the Home Office and other agencies for the duration of the asylum claim. IND should notify the Panel of Advisers as soon as a claim for asylum is made by, or on behalf, of a child. The Panel of Advisers should also be notified of all age dispute cases. The legal role is limited to advising the child on her or his options and acting on the instructions, to the extent that the young person is capable of giving them.

The Home Office has commissioned a review of the RCP, to focus on, amongst other issues, whether the RCP arrangements meet the Home Office’s obligations to unaccompanied minors under the directive. The findings are not yet publicly available.

Q.31. H. How is placement of unaccompanied minors organised (with adult relatives, a foster family, in special accommodation centres or other suitable accommodation)? (see article 19, §2 which is mandatory provision)

Unaccompanied minors are the responsibility of the local authority social service department and are provided with housing and support under the Children Act 1989, until he or she reaches the age of 18. They should, on arrival, be referred immediately to the social services department for an assessment and for the immediate provision of assistance. Assistance ranges from accommodation and food to foster carers, language help and trauma counselling.

Q.31. I. How is the tracing of the family members of the unaccompanied minors organised? Are measures taken to protect confidentiality of information when necessary? (see article 19, §3 which is a mandatory provision)

This provision has been transposed in the regulations (reg 6 RCR) and underpins current domestic arrangements that link unaccompanied minors with the family tracing service provided by the Red Cross. The Home Office considers it to be in the best interests of the child to remove an unaccompanied minor where it is possible to put in place acceptable reception and care arrangements in their country of origin. This is for example due to take place shortly to return minors to Vietnam, in disregard of their vulnerability as children who
have very likely been trafficked to the UK. It is arguable whether this policy protects the unaccompanied minor’s best interests.

8. EXCEPTIONAL MODALITIES OF RECEPTION CONDITIONS

Q.32. Apart from detention covered by the next question, are there exceptional modalities for reception conditions in the following cases and if yes, which ones and for how long are they applicable, knowing that they should be “as short as possible” (see article 14, §8)?

Q.32. A. Persons with specific or special needs, regarding in particular the period of assessment of those needs?

Q.32. B. Non availability of reception conditions in certain areas

Q.32. C. Temporarily exhaustion of normal housing capacities

Q.32. D. The asylum seeker is confined to a border post

Q.32. E. All other cases not mentioned in the directive (for instance urgent situation in case of a sudden high number of applicants outside a case of application of the directive on temporary protection).

Confinement to a border post should be considered to be detention – Her Majesty’s Inspectorate of Prisons (HMIP) has produced several recent reports on conditions in “short term holding facilities” – e.g Heathrow October 2005 and Calais/Les Coquelles January 2005 juxtaposed border controls – August 2005 and found that facilities, procedures and staffing were insufficient.

Q.33. Detention of asylum seekers (we do not cover the situation of rejected asylum seekers detained for the purpose of their return) (see articles 6 §2, 7 §3, 13, §2 2nd indent and 14 §8 which implies that the directive is in principle applicable in case of detention):

Q.33. A. In which cases or circumstances and for which reasons\(^1\) (identity verification in particular if the persons have no or false documents, protection of public order or national security, refugee status determination, way of entry into the territory, etc) can an asylum seeker be detained during the asylum procedure till his request has been finally rejected. Quote precisely in English in your answer the legal basis for detention of asylum seekers in national law.

All asylum seekers are liable to detention under the Immigration Act 1971 and could be detained. In practice, however, only a proportion of them are (what this proportion is we do not know but the target set by the government in their Five Year Strategy is 30%).

\(^1\) Please specify if article 18 §1 of the directive on asylum procedures of 1 December 2005 following which “Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum” is or not respected (even if it has not yet to be transposed).
The power to detain an illegal entrant, seaman deserter, person liable to administrative removal (or someone suspected to be such a person) is in paragraph 16(2) of Schedule 2 to the 1971 Act as amended by section 140(1) of the Immigration and Asylum Act 1999 and section 73(5) of the Nationality, Immigration and Asylum Act 2002. Paragraph 16(2) states: "If there are reasonable grounds for suspecting that a person is someone in respect of whom directions may be given under any of paragraphs 8 to 10 or 12 to 14, that person may be detained under the authority of an immigration officer pending a) a decision whether or not to give such directions; b) his removal in pursuance of such directions".

Section 62 of the Nationality, Immigration and Asylum Act 2002 introduced a free-standing power for the Secretary of State (i.e. an official acting on his behalf) to authorise detention in cases where he has the power to set removal directions.

The government’s criteria with regard to detention are outlined in chapter 38 of the Operational Enforcement Manual (OEM). The OEM states that ‘detention must be used sparingly and for the shortest period necessary’. Section 38.3 cites factors that should be taken in consideration when deciding whether or not to detain an individual. The following factors must be taken into account when considering the need for initial or continued detention.

♦ what is the likelihood of the person being removed and, if so, after what timescale?
♦ is there any evidence of previous absconding?
♦ is there any evidence of a previous failure to comply with conditions of temporary release or bail?
♦ has the subject taken part in a determined attempt to breach the immigration laws? (e.g. entry in breach of a deportation order, attempted or actual clandestine entry)
♦ is there a previous history of complying with the requirements of immigration control? (e.g. by applying for a visa, further leave, etc)
♦ what are the person's ties with the United Kingdom? Are there close relatives (including dependants) here? Does anyone rely on the person for support? Does the person have a settled address/employment?
♦ what are the individual's expectations about the outcome of the case? Are there factors such as an outstanding appeal, an application for judicial review or representations which afford incentive to keep in touch?

The three factors mentioned against detention (put in a form of questing the case worker needs to consider) are: ‘is the subject under 18?’ ‘Has the subject a history of torture?’ ‘Has the subject history of physical or mental ill health?’ Section 38.10 identifies persons considered unsuitable for detention. Section 38.4 identifies persons considered unsuitable for detention under the Fast Track procedure.

Since March 2000 asylum applicants have been detained at Oakington where it appears that their claims are capable of being decided quickly. Detention for this purpose is commonly referred to as being under the 'Oakington criteria' although it is now set out under the title "Detained Fast Track Processes Suitability List". In addition, since 10 April 2003 there has been a Detained Fast Track process at Harmondsworth which includes an expedited in-country appeals procedure for male claimants. In May 2005, the Detained Fast Track was expanded to include the processing of female claimants at Yarl’s Wood.

The policy in relation to detention for Fast Track processes was updated in February 2006. When officers come across a person who makes an application for asylum, they should consider whether he or she meets the Detained Fast Track Suitability List criteria. All potentially suitable applicants must be referred to the National Intake Unit (NIU) Oakington co-ordinator who will confirm if they are accepted into either the process at Oakington,
Harmondsworth or Yarl’s Wood. The use of detention to Fast Track suitable claims under these processes is necessary to achieve the objective of delivering decisions quickly. Any claim may be referred to the Detained Fast Track, whatever the nationality or country of origin of the applicant, where it appears after screening to be one that may be decided quickly. To assist staff in making referrals, the 'Detained Fast Track Processes Suitability List', includes a list of countries which may well give rise to claims which may be decided quickly, within the indicative timescales for the Detained Fast Track. Generally speaking, any asylum claim from a national of the countries listed on the Detained Fast Track Suitability List should be referred to the NIU unless the claimant falls within one of the excluded categories.

The OEM was revised in 2005 though the nature of the changes introduced is not clear. [http://www.ind.homeoffice.gov.uk/documents/oemsectiond/chapter38?view=Binary](http://www.ind.homeoffice.gov.uk/documents/oemsectiond/chapter38?view=Binary)

The OEM seems to allow wide scope for discretion in individual decisions to detain. Practitioners and stakeholders raise concerns stating that the Home Office decision to detain is often arbitrary and that caseworkers do not give appropriate consideration to the specific circumstances of the individual’s case. See, for instance, Amnesty’s report from June 2005 commenting on the detention policy of the UK government: [http://web.amnesty.org/library/Index/ENGEUR450192005?open&of=ENG-2EU](http://web.amnesty.org/library/Index/ENGEUR450192005?open&of=ENG-2EU)

Amnesty’s report, *United Kingdom, Detention of People who have sought asylum*, highlights how individuals are often taken into detention on the basis that a bed is available within the detention estate, rather than on considerations of necessity, proportionality and appropriateness. They found that authorities are using the risk of absconding as justification for detention without a detailed and meaningful assessment of the risk, if any, posed by each individual. In short, Amnesty International considers that detention is not being carried out according to international standards, is arbitrary and serves little if any purpose at all in the majority of cases where measures short of detention would suffice.

Q.33. B. Has your member State adopted measures to transpose §3 of article 7 which is an optional provision? If yes, how has this provision been legally understood (is it a case of detention or an obligation to stay in and not leave a certain place?) and for which reasons can an asylum seeker be “confined” in such a place?

This measure was not transposed. Indeed, the UK government considers that the directive is not relevant to detention and therefore does not have any impact on its detention practice.

Q.33. C. Are there legally alternatives to detention, like obligation to report to the authorities, obligation to stay in a place, provision of a guarantor or of a financial guarantee?

Contingent on an immigration service assessment, a person may be required to report regularly. This may involve an electronic tag or voice recognition technology or physically attending a reporting centre.

Q.33. D. Which is the competent authority to order the detention of an asylum seeker? Explain if different authorities are involved to first take and later confirm the decision.
Chief immigration officers acting under the authority of the Secretary of State.

**Q.33. E. For how long and till which stage of the asylum procedure can an asylum seeker be detained?**

People can be detained at any stage of their application for asylum. There is no maximum period of detention.

**Q.33. F. In which places (can we call them “closed centres”?) are asylum seekers detained (places in a special closed centres reserved only to asylum seekers, together with returnees like illegal aliens or even in a normal prison, in case within separated areas or with the other detainees)? Indicate if a difference has to be made following the location of the “closed centres” at the border or on the territory? Which is the authority managing those places and is it the same as the one in charge of reception conditions?**

There are 10 immigration removal centres (IRCs) in the UK. Most are run by private companies contracted to the Immigration and Nationality Directorate (IND), however, 3 centres are run by the Prison Service. There are 'short term holding facilities' at Manchester, Dover, Harwich and Colnbrook.

**Q.33. G. Does UNHCR and NGOs have access to the places of detention and under which conditions?**

UNHCR and NGOs may access immigration detention. Particularly important is the work carried out by AVID (Association of Visitors to Immigration Detainees), the national umbrella charity for groups visiting immigration detainees, in supporting individuals and groups of visitors to detainees, and collating and communicating information in order to help define and implement best practice.

Within the framework of exercising its supervisory function under Article 8 of its Statute and Article 35 of the 1951 Convention relating to the Status of Refugees, UNHCR engages in a monitoring role of detention policy and practice in the United Kingdom. As such, UNHCR London is granted unhindered access (including to detainee persons of concern) to places of detention throughout the UK upon notification to the relevant authorities. While unannounced 'spot visits' are not carried out, a high level of cooperation on the part of the authorities is exercised. UNHCR conducts regular visits to detention centres and may bring concerns to the attention of the authorities including interventions on individual cases where deemed necessary and appropriate in extending protection to persons of concern to UNHCR.

**Q.33. H. What appeal(s) can asylum seekers introduce against the fact he is detained? Is article 18 of the directive on asylum procedures of 1 December 2005 following which “Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review” respected (even if it has not yet to be transposed)?**

Ways of challenging detention are:
- Bring a bail application to an Immigration Court (the Asylum and Immigration Tribunal or AIT) where an independent Immigration Judge makes a decision on whether released should
be allowed. The case is presented by a legal representative and opposed by a Home Office Presenting Officer, who is a representative of the Home Office and Immigration Service. If bail is refused, the detainee has the right to apply for bail again. If bail is granted there will normally be certain conditions attached.

- The legal representative can also make an application for 'CIO (Chief Immigration Officer) Bail'. Normally this involves two people offering a large amount of money (often more than £2,000 each although it can be much less) to obtain release.
- The detainee's legal representative can make an application for 'Temporary Admission.' If successful the Immigration Service will usually release with very few conditions - normally a condition to live at a particular address and report to the Immigration Service on a particular date.
- In addition, legal representative can go to the High Court in a 'Judicial review' or 'Habeas Corpus' procedures.

Bail applications are lodged with the AIT by completing a given form B1. The AIT must list the hearing within three days of receiving the application.

Habeas corpus is only appropriate where it is asserted that there is no power to detain. There are procedural advantages to habeas corpus: habeas corpus writs are issued as of right (there is no discretion to withhold relief as there is in judicial review); habeas corpus applications are given high priority; there is no permission procedure and there is no time limit on applications. However, the Courts have cautioned against using habeas corpus.

Judicial review affords greater flexibility. Judicial review should be used in detention cases where:

a) the real challenge is to the administrative decision underlying the decision to detain (such as the issuing of a deportation order);
b) the challenge is to a refusal by an immigration judge to grant bail;
c) the challenge is brought on the basis that the detention was not in accordance with Home Office policy; or
d) the challenge does not concern the power to detain but about whether the exercise of the power was reasonable or proportionate

Where the claimant is still detained at the time that the judicial review is lodged, bail can be sought from the High Court. The claimant (or his representative) must serve notice on IND within 7 days that they have filed a claim for JR and must disclose the grounds on which his claim relies. Once notice is served and the grounds disclosed, a summary defence must be submitted within 21 days. If permission is granted, IND then has 35 days to submit a full defence. Expedited consideration of the claim for judicial review can be sought by lodging an application for urgent consideration in addition to the standard judicial review claim form.

Q.33. I. Is the directive on reception conditions considered to be in principle applicable to the places where asylum seekers are detained? In particular which information do they receive about their rights, which access do they have to legal advice and health care?

The UK government considers that the directive is not relevant to detention.

Q.33. J. Apart from freedom of movement, what are the main differences between normal reception conditions and exceptional modalities for

Reception Conditions National Reports 1500
reception conditions in case of detention, knowing that they should be “as short as possible” (see article 14, §8)? If it is about closed centres, are the regulations of those places in line with the requirements of the directive (is article 13, §2, second indent of the directive following which “Member States shall ensure that standards of living is met (...) in relation to the situation of persons who are in detention” respected?).

The Detention Centre Rules 2001 provide for the regulation and management of these centres, underpinned by a comprehensive set of Operating Standards.

Independent inspections by Her Majesty’s Chief Inspector of Prisons and Her Majesty’s Chief Inspector of Education have highlighted concerns about the welfare and development of children within a locked-in custodial setting, where there is a high level of insecurity, and without the freedom to engage with wider society and establish other social and cultural relationships. “It remains our view that, however conscientiously and humanely children in detention are dealt with, it is not possible to meet the full range of their developmental needs. We therefore remain of the view that the detention of children should be an exceptional course, and only for a very short period – no more than a matter of days. We also believe that the guiding principles that underlie international and domestic law on children should be brought into decisions to detain, and to continue to detain, children and families” (HMIP Report on Dungavel Published August 2003, p45)

As at 30 December 2006, 45 people detained solely under Immigration Act powers were recorded as being less than 18 years old. 25 of these had been in detention for less than one month, 15 for between 1 and 2 months, and the remainder between two and three months.

Q.33. K. Are measures taken to avoid detention of asylum seekers with special needs (if yes, which ones?) or are special measures taken because of their needs?

With regard to detention of individuals with special needs, section 38.1 of the OEM states that people suffering from serious medical conditions or the mentally ill should not be detained. With regard to possible victims of torture, the policy states that there should be ‘independent evidence that they have been tortured’ to prevent detention. The question remains whether the screening procedure is efficient enough to identify such cases as the onus appears to be on the person with special needs to draw these to the attention of the Home Office.

Q.33. L. Can minor asylum seekers be detained together with relatives? Can unaccompanied minor asylum seekers be detained? If yes, are there special measures which take into account that children are concerned?

Children can be lawfully detained as part of a family group. Continued detention is subject to Ministerial review but only after 28 days. The Ministerial review is considered an inadequate safeguard against inappropriate detention and is currently subject to pending legal challenge. The process provides for a statutory child in need assessment only at day 21 of the detention.

Immigration instructions clearly provide that unaccompanied children should not be detained except in exceptional circumstances and for the shortest possible period and that measures are followed to minimise the risk of children being detained as adults by mistake. The current guidance on detained fast-track processes gives clear unequivocal advice to immigration
personnel on how to reduce the risk of detention on account of age dispute. Despite these instructions, children continue to be detained as adults whilst awaiting age assessment to be carried out rather than being released pending the outcome of an age assessment.

There is growing concern among practitioners and stakeholders that use of detention for children contravenes a range of international human rights standards relating to the treatment of children, and impacts negatively on already vulnerable children. Save The Children has recently produced a report, No Place for a Child, which sets out to analyse current UK detention policy and practice, its impact on children, and to offer viable alternatives to the immigration detention of children. The report is available at:

The UK’s reservation to the Convention on the Rights of the Child (CRC) operates specifically to exclude the consideration of ‘best interests’ when immigration decisions are being made about foreign children, including asylum seekers, as is apparent in the current policy to detain families with children or unaccompanied minors whose age is disputed by the Home Office or social services departments.

It is clear that this approach is at odds with the CRC’s best interest of the child principle in article 18(1) of the directive and that significant changes will have to be made for the UK effectively to implement that the best interests of asylum seeking children should be a primary consideration for Member States in operating reception facilities and making decisions about reception arrangements.

The exclusion of immigration agencies, including the Immigration Removal Centres, from section 11 of the Children Act 2004 is illustrative of this wider failure to treat children seeking asylum as children first and foremost. Section 11 imposes a duty on public bodies to have regard to the need to safeguard and promote the welfare of children in discharging their normal functions and to ensure that their services are provided with regard to that need.

The recent report by the Joint Committee on Human Rights is very critical of the UK Government’s continued reservation to the CRC and insists that the reservation should be withdrawn.

Q.33. M. In particular is article 10 regarding access to education of minors respected in those places?

Education in detention centres is ensured as a matter of practice but independent inspections have found that educational provisions are deficient in detention centres. While schoolrooms are provided within the detention facilities, at present, it does not appear that funds have been made available, and processes put in place, to make education in any real sense meaningful. A recent inspection of one immigration detention centre with dedicated family units has highlighted cases of children whose education had been severely damaged by their detention (HM Chief Inspector of Prisons, Report on an announced inspection of Yarl’s Wood Immigration Removal Centre, 28 February-4 March 2005).

Q.33. N. How many asylum seekers are for the moment detained in your Member State? Which proportion does this represent in comparison of the total number of asylum seekers at the same moment?
At 30 December 2006, 1285 asylum seekers were detained in Immigration Removal Centres, and 30 at Immigration Short Term Holding Facilities. This excludes persons detained in police cells and those detained under both criminal and immigration powers. The number of people detained in prison facilities and in police cells is not given in the latest statistics.

It is not possible to know exactly what proportion of all asylum seekers this represents as the UK government does not collate the relevant information. The most recent bulletin (Home Office, Asylum Statistics: 4th Quarter 2006) includes statistics on the number of asylum seekers leaving detention during the quarter. A total of 3,740 people left detention in the 3rd quarter of 2006, 1970 (53%) were removed from the UK, 1545 (41%) were granted temporary admission/release and 215 (6%) were bailed. These statistics however exclude persons detained at Oakington Reception Centre, Harwich and prison establishments.

9. ORGANISATION OF THE SYSTEM OF RECEPTION CONDITIONS

Q.34. Explain if the system of providing reception conditions is centralised or decentralised (which levels of government do provide practically reception conditions?) (do not confuse this question with question number 3 about the competence to make rules about reception conditions).

The system is centralised but in the process of being regionalised. NASS is the overall government body with responsibility for supporting asylum seekers, although service delivery is mostly run by voluntary sector agencies with the assistance of NASS. Many of the detention centres are managed by private companies, contracted by the Home Office.

With the New Asylum Model (NAM) complete, responsibility for all new asylum claims falls to one of six regions across the UK: Scotland and Northern Ireland; North West; North East, Yorkshire and Humberside; Midlands and East of England; London and South East; and Wales and South West. Six new Regional Directors will be in post in the next few months. They are responsible for managing all aspects of Agency business in their regions, except ports and detention centres.

Q.35. In case, are accommodation centres public or/and private (managed by NGOs? If yes, are the NGOs financially supported by the State?)

Initial accommodation is managed by NGOs and public organisations. Dispersal accommodation is managed by public and private providers. They are all funded by the State to deliver this support.

Both initial and dispersal accommodation is managed by public or private providers contracted by the Home Office.

Q.36. In case, how many accommodation centres are there in your Member State (distinguish in your answer between public and private centres)?

There are six Induction Centres in the UK. Induction Centres are where asylum seekers may be accommodated while their asylum claim is registered and while their application for
support is decided. Four of the centres are run by NGOs and the other two are run by Local Authorities.

NGOs no longer deliver Initial Accommodation. Instead, the Home Office runs mainly large IA centres in each NAM region (London, Liverpool, Leeds, Cardiff, Glasgow, Solihull).

**Q.37.** Is there in the legislation a plan or are there rules in order to spread the asylum seekers all over the territory of your Member State to avoid their concentration in some areas like big cities or to share the costs of their reception between central, regional and local authorities?

Under the 1999 Act, the UK government has the power to “disperse” asylum seekers around the country. There are currently 34,220 dispersed asylum seekers living in accommodation provided by the National Asylum Support Service (end of March 2006). The idea behind the law is to move asylum seekers away from London and the South East of England where they have historically resided.

Dispersal is divided into a dozen cluster areas in the UK. Within each cluster area NASS proposes to form smaller clusters of asylum seekers based on language. For an area to be considered suitable to house asylum seekers it must have available affordable accommodation, a multi-cultural environment and a support infrastructure. There are additional guidelines on cluster areas. They should:

- Have unemployment levels at, or below, the national average.
- Be within 1 - 1.5 miles of further or adult education college.
- Be within 3 miles of a district general hospital.
- Be adequate number of health centres in the locality.
- Be sufficient primary schools with gaps on rolls.

**Q.38.** Does a central body representing all the actors (like NGOs) involved in reception conditions exist? Does it play a consultative role for the State authorities, a coordination role for the actors or any other role?

There is no central body representing all the actors involved in reception conditions. There is a National Asylum Support Forum which is co-ordinated by the Home Office and holds quarterly meetings. Membership is individual not organisational. It is an advisory body for the Immigration Minister and has no statutory powers and there is no obligation to follow its advice.

The six agencies involved in providing initial accommodation are co-ordinated by a central body – the Inter-Agency Co-ordination Team. They meet regularly together to share good practice, and with the Home Office, to raise difficulties or discuss issues relating to reception conditions.

The Home Office intends to develop regional stakeholder groups to reflect devolution of responsibility to the regional NAM centres.

**Q.39.** A. Which is the body in charge of guidance, monitoring and controlling the system of reception conditions as requested by article 23
which is mandatory provision? Include in your answer which is the competent ministry (Interior, Social affairs, etc) for reception conditions?

The Immigration and Nationality Directorate of the Home Office is overall in charge for the system of reception.

There is no system of orientation, guidance and control in place, nor has one been set up further to the directive. The only control, monitoring and guidance that takes place is, with regard to housing, in respect of arrangements for accommodation under target contracts. Target contracts set out performance standards, which those contracted by the the government to provide accommodation to asylum seekers must respect. While this guidance is very detailed (see http://www.ind.homeoffice.gov.uk/6353/12358/schedule3tothetargetcontract.pdf) it concerns only housing and there is no public account of how/how often the contract standards are monitored by government officials and requirements respected by housing providers.

The system of guidance, control and monitoring of the level of reception conditions cannot be deemed to be sufficient as it does not concern all asylum seekers (but only those housed under the target contracts above), relates only to standards of accommodation, and is not made public.

Q.39. B. Has your Member State (like the Czech Republic did recently) approved quality standards (not necessary legally binding) for housing services (for instance about the number of persons per bedroom on the basis of its size, number of accessible toilets, bathrooms, showers and washing machines per number of persons, existence of common rooms with radio, television, newspapers, books, computers, accessibility of telephone, existence of recreative rooms for children,…) to be respected in particular in accommodation centres?

The National Asylum Support Service has introduced (in April 2006) quality standards for housing services. These are known as “Target Contracts” and were introduced following a large tendering exercise. The Statements of Requirements for Accommodation providers can be found at http://www.ind.homeoffice.gov.uk/6353/12358/schedule3tothetargetcontract.pdf.

While the contract specifications are more prescriptive than the previous specifications, NGOs working with asylum seekers accommodated by the Home Office find that they are still difficult to enforce and that standards still vary widely.

Q.39. C. How is this system of guidance, control and monitoring of reception conditions organised?

There is no organised system of guidance, control and monitoring of reception conditions. The Home Office undertakes inspections of dispersal accommodation and plans are being developed to undertake inspections of Initial Accommodation. Her Majesty’s Inspectorate of Prisons (HMIP), and independent body, inspects removal centres on a regular basis.

Q.39. D. Does the body in charge of guidance, control and monitoring produce reports about the level of reception conditions? If yes, how frequently and are they public?
Q.40. A. What is the total number of asylum seekers covered by reception conditions for the last year for which figures are available (see article 22 obliging Member States to calculate those statistics about which we also asked the Commission to require them from Member States for mid June)?

At the end of 2006, 49295 asylum seekers (including dependants) were being supported. 36420 asylum seekers (including dependants) were being supported in dispersed accommodation, 11355 were receiving subsistence only support and 1525 were supported in initial accommodation.

Q.40. B. What is the total budget of reception conditions in euro for the last year for which figures are available?

Costs estimates for asylum support for 2005-06 are around £170 million (€250 million). (See NASS evidence to House of Lords 32nd Report of Session 2005-06, p.52)

Q.40. C. What is the average cost of reception conditions in euro per asylum seeker for the last year for which figures are available?

The cost of accommodation and cash support per person in dispersed accommodation is £610 (€ 900) per month. The cost of cash support for those requiring “subsistence only” support is £170 (€250) per month (see NASS evidence to House of Lords 32nd Report of Session 2005-06, p.52).

Q.40. D Are the costs of reception conditions of asylum seekers supported by the central/federal or federated government or are they shared with regional and/or local authorities?

All costs are supported by central government.

Q.40. E. Is article 24 § 2 of the directive following which “Member States shall allocate the necessary resources in connection with the nationals provisions enacted to implement this directive” respected?

The problem is not so much the lack of central government resources but the lack of local resources and the political control of those resources which creates a failure to provide consistent services and support. Stakeholders and legal practitioners point out the following areas where more resources are needed to meet obligations under the directive:
- There remains no structured legal guardianship or representation arrangements as required by Article 18. It is legally possible for an asylum seeking child to be appointed a children’s guardian within the asylum process through the Children and Family Courts Advisory and Support Service (CAFCASS) but practically remote. The government presumption is that local social services departments act as an adequate “corporate parent” for the purpose of Article 18 of the directive – in practice there is a real lack of genuine independence of social services due to financial pressures and relationships and information sharing practices between Home Office and social services for purposes not necessarily connected with the best interests and welfare of the child. This compromises the independence needed to ensure that
legal guardianship or representation properly maintains a child’s best interests and for the child to be confident that their views, wishes and feelings at all stages of the asylum and support process are taken into account and reflected in the decision making process.

- The lack of a proper system of legal assistance before Asylum Appeals Adjudicators (ASA) represents a serious obstacle to asylum-seekers wishing to be represented before the ASA and exercise their appeal rights under Article 21 of the directive.

Q.41. A. What is the total number of persons working for reception conditions?

According to the section about NASS in the IND website, NASS employs approximately 900 staff. About half of them are based in the 11 regional offices and the other half in Croydon. 
[http://www.ind.homeoffice.gov.uk/applyin/nass/claimingsupport/aboutus](http://www.ind.homeoffice.gov.uk/applyin/nass/claimingsupport/aboutus)

However, this is a fraction of the numbers involved as there are others working in providing health care, education, detention services etc.

Under the New Asylum Model (NAM), around 300 case owners have been recruited to staff 25 teams in the six regions across the UK. In addition, some 1,000 staff comprises the Legacy Team.

Q.41. B. How is the training of persons working in accommodation centres organised? Does it take into account specific needs of unaccompanied minors when relevant as well as the gender dimension? (see article 14 §5, 19 § 4 and also 24 §1 which are mandatory provisions)?

The UK contracts out the provision of accommodation. For staff working in Initial Accommodation, a job description details their individual roles and responsibilities.

Case owners who have been recruited to work in the New Asylum Model (NAM) have to complete a 55-day training programme.

Q.41. C. Are there rules about the deontology of persons working in accommodation centres, in particular on confidentiality?

There generic contracts in place between the Government and its contractors include clauses relating to confidentiality.

10. IMPACT OF THE DIRECTIVE

Legal impact of the transposition of the directive:

Q.42. Specify if there are or not big problems with the translation of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated? (please note that this question has in particular been added to the questionnaire concerning the new Member States)

None in the UK.
Q.43. Where there precise legal rules on reception conditions for asylum seekers before the adoption of the norms of transposition of the directive (if yes, specify what the nature of those rules was (legislation, regulation, administrative instructions,…))?

The UK government considered that many elements of the Directive did not require implementation as equivalent provision already existed in UK law. The main Acts covering reception conditions, which predate transposition of the Directive, are:

Immigration and Asylum Act 1999
Nationality, Immigration and Asylum Act 2002
Asylum and Immigration (Treatment of Claimants, etc.) Act 2004

Q.44. Did the legal rules applicable to reception conditions become more clear, precise, coherent or detailed with the adoption of the transposition norms (for instance do you now have after the transposition one basic text dealing with reception conditions instead of numerous different texts in the past?)

Rules relating to asylum support did, if anything, become more confused and scattered. Implementation of the directive has further complicated the legislative asylum reception framework by adding/amending regulations and immigration rules against which various statutory provisions (i.e. primary legislation) have to be read to understand what exactly rights and obligations in the system of asylum support are.

Q.45. Did the transposition of the directive imply important changes in national law or were the changes of minor importance? In case, list the most important changes that have been introduced.

The changes were of minor importance. The government stated that that they did not need to make any changes with regard to several sections of the directive. Voluntary sector organisations agreed with this in some cases – for example the UK government have always, on the whole, attempted to house families together where possible. In other cases, voluntary sector organisations felt that the government would need to make modifications in order to meet the directive’s requirements – for example reviewing the level of support that is currently 30% below income support.

Of the changes the government did intent to make, very few have been carried out. For example, they noted that they would need to provide information on voluntary organisations and legal representatives to new asylum applicants. This has not become standard policy. The Home Office policy is instead to fund the voluntary sector to provide further information.

Because very little appears to have changed in terms of government policy or procedure, implementation of the directive has not affected voluntary sector service to asylum seekers very much. However, the directive has been a useful tool on a broader policy level, when debating the need for increased protection or more detailed standards for newly arrived asylum seekers.

Political impact of the transposition of the directive:
Q.46. Explain briefly if there has been an important debate about the transposition of the directive (in particular in the Parliament, but possibly also in the government, between political parties, including in medias, etc; underline in case the main points which have been discussed or have created difficulties)

None to my knowledge.

Q.47. Did the transposition of the directive contribute to make the internal rules stricter or more generous? In particular, did your Member State use the occasion of the transposition to abolish more favourable provisions of national law? Does your Member State still have rules more favourable than the provisions of the directive (if yes, try to give the more important examples).

Transposition transformed some discretionary powers with regard to reception in a legal duty without however making a difference in practice. Some rules, such as those on reduction and withdrawal of support, have become stricter further to transposition.

11. ANY OTHER INTERESTING ELEMENT

Q.48. What are in your view the weaknesses and strengths of the system of reception conditions in your Member State?

Weaknesses:

- Increasing reliance on detention (see IND’s Five Year Strategy: Home Office, Controlling our Borders: Making Migration Work for Britain, 2005)
- Use of support as a tool of coercion throughout the system
- UK reservation to the CRC which has a negative impact on the way in which asylum seeking children and young people in public care are dealt with, despite the same care duties as for indigenous children being enshrined in primary legislation
- Lack of definition of ‘vulnerable’ individuals who should receive additional and tailored support and lack of agreement between NASS and Social Services around who should support those with less clear care needs

Strengths:

- Eligibility for support for all destitute asylum seekers after lodging their claim
- Families are on the whole housed together and NASS has in practice kept its broader definition of a family
- Independent advice on support is available from contracted voluntary agencies
- Independent adjudication body for negative support decisions.
- Minors entitled to the same support and education as other children in UK
- Free access to primary and secondary health care until appeal stage.

Q.49. Mention any good practice in your Member State which could be promoted in other Member States

- Consultation with relevant stakeholders on implementing legislation
- Commitment to working with stakeholders
Funding for voluntary sector agencies which play a role in advice and delivering support services while preserving their right to advocate against government policy

Accommodation within indigenous UK communities rather than in institutionalised accommodation centres

Q.50. Please add here any other interesting element about reception conditions in your Member State which you did not had the occasion to mention in your previous answer.

Stakeholders and practitioners question the desirability of maintaining a separate housing and social security system for asylum seekers. It would arguably be more equitable and cost-effective to revert to delivering welfare support to destitute asylum seekers through the mainstream welfare system. At a minimum, they consider that the provision of support to asylum seekers by a dedicated agency (such as, at present, NASS) should be made independent of the Home Office, so as to insulate it from Home Office policies that are driven by a culture of deterrence and restriction, rather than designed to meet asylum seekers’ needs.

Another major, negative, impact on asylum seekers’ reception conditions are the frequent and rapid changed to the support system which leave asylum seekers between regimes. An example is the situation of asylum seekers supported by local authorities under Interim Provisions, which in the course of the last year have been transferred to NASS support on a phased basis. Disbenefited cases have also been transferred to direct NASS support. A ‘disbenefited’ asylum seeker is one whose claim for asylum was refused on or after 25 September 2000 and who was previously in receipt of income support. NASS has agreed special arrangements to fund local authorities to continue providing necessary accommodation for them. Between 5,000 and 6,000 interim cases and up to 350 disbenefited cases were caught under this change of policy. It is thought that the majority of people involved will have had to move in line with NASS’s dispersal policies, although they will normally have been accommodated since at least 2000.

The UK parliamentary Joint Committee on Human Rights has recently conducted an inquiry into the treatment of asylum seekers (see Q7 bibliography) and concluded that: “In the Committee’s view, the current system is overly complex, poorly administered, offers inadequate information and advice to ensure that people receive the support to which they are entitled and in some cases denies any support at all to those who are destitute.”
This Synthesis Report was prepared on the basis of National Contributions from 24 EMN NCPs (Austria, Belgium, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom, Norway) according to a Common Template developed by the EMN and followed by EMN NCPs to ensure, to the extent possible, comparability. The Reception Conditions Directive has laid down minimum standards for the reception Council Directive 2005/85/EC ("the Asylum Procedures Directive") provides for a number of procedural standards rather than for a "standard procedure". This Directive allows a large degree of flexibility in many areas, such as the provisions on accelerated procedures, border procedures, and inadmissible applications. Further law approximation is needed if the objective of the EU wide common procedure set by the Hague Programme is to be met. It could further be entrusted with monitoring the implementation of reception conditions granted to asylum seekers. (19) In what other areas could practical cooperation activities be usefully expanded and how could their impact be maximised? How could more stakeholders be usefully involved? Implementation of this Directive has been challenging mainly because of the financial and planning aspects related to major infrastructure investment such as sewerage systems and treatment facilities. For more details on the scope. EE.14 This reporting exercise on the implementation of the Directive has been a success. (Situation as of 31 December 2009 or 31 December 2010). The Report also includes trends in compliance and presents the new approach for "compliance promotion" and its steps towards public information and reporting. LV. 27 Member States have provided information for the report and all largely on time.