# Border Management and Migration Controls - UK Report

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RESPOND

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# Border Management and Migration Controls

# UK Report

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# Contents

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# About the project

RESPOND: Multilevel Governance of Mass Migration in Europe and Beyond is a comprehensive study of responses to the 2015 Refugee Crisis. One of the most visible impacts of the refugee crisis is the polarization of politics in EU Member States and intra-Member State policy incoherence in responding to the crisis. Incoherence stems from diverse constitutional structures, legal provisions, economic conditions, public policies and cultural norms, and more research is needed to determine how to mitigate conflicting needs and objectives. With the goal of enhancing the governance capacity and policy coherence of the European Union (EU), its Member States and neighbours, RESPOND brings together fourteen partners from eleven countries and several different disciplines. In particular, the project aims to:

- provide an in-depth understanding of the governance of recent mass migration at macro, meso and micro levels through cross-country comparative research;
- critically analyse governance practices with the aim of enhancing the migration governance capacity and policy coherence of the EU, its member states and third countries.

The countries selected for the study are Austria, Germany, Greece, Hungary, Iraq, Italy, Lebanon, Poland, Sweden, Turkey and the United Kingdom. By focusing on these countries, RESPOND studies migration governance along five thematic fields: (1) Border management and migration control (2) Refugee protection regimes, (3) Reception policies, (4) Integration policies, and (5) Conflicting Europeanization. These fields literally represent refugees' journeys across borders, from their confrontations with protection policies, to their travels through reception centres, and in some cases, ending with their integration into new societies.

To explore all of these dimensions, RESPOND employs a truly interdisciplinary approach, using legal and political analysis, comparative historical analysis, political claims analysis, socio-economic and cultural analysis, longitudinal survey analysis, interview-based analysis, and photo voice techniques (some of these methods are implemented later in the project). The research is innovatively designed as multi-level research on migration governance now operates beyond macro level actors, such as states or the EU. Migration management engages meso and micro level actors as well. Local governments, NGOs, associations and refugees are not merely the passive recipients of policies but are shaping policies from the ground-up.

The project also focuses on learning from refugees. RESPOND defines a new subject position for refugees, as people who have been forced to find creative solutions to life threatening situations and as people who can generate new forms of knowledge and information as a result.

# Executive Summary

The report examines the UK legal and policy frameworks on border management and migration control and key narratives on migration control. It situates them in the specificities of the UK context, and outlines the key developments in policies and politics of migration since the 1990s. Further, it maps developments related to the implementation of border management and migration control policies in the UK since 2011, as well as the actors involved and relations among them.

In terms of methodology, the report draws on legal and policy analysis, qualitative content analysis and qualitative research interviews. The analysis of legislation and policy utilises both primary and secondary sources such as academic literature, research reports, reports by government institutions and NGOs. Definitions and conceptualisations follow those developed in the WP2 report on EU border management and migration controls (Karamanidou and Kasparek 2018). The section on narratives on border and migration controls in the UK draws on the qualitative content analysis of speeches by British prime ministers and Home Secretaries, as well as press releases issued by the Home Office. The section on implementation draws on academic literature, reports by government and third sector organisations, as well as on 13 interviews conducted with stakeholders from public and local authorities and the third sector, recruited through direct contact via email and snowballing techniques.

Key findings include:

- British border management practices rely heavily on pre-entry measures such as API and PNR information, the visa and entry clearance regime and biometric data, which prevent access to UK territory and produce the information that enables the conduct of at-the-border checks as well as internal controls, detention and return.
- The UK border management and migration control regime is characterised by a high level of complexity of law and policy. There are at least 15 statutes regulating migration, in addition to statutory instruments implementing legislation (both domestic and EU), other legislative acts pertaining to criminal law, and the Immigration and Detention rules.
- There are significant implementation issues raised, concerning efficiency, co-operation and communication among both Home Office agencies and between the Home Office and other actors, and as well as lack of comprehensive and reliable data. Another significant issue is the non-adherence of Home Office actors, such as case workers and ICE personnel to the ministry's own guidance – albeit often unclear – or its application in an inconsistent manner.
- Hostile environment measures have had an adverse impact at all levels and actors. They have created tensions among actors operating at the local level, their relations with the Home Office and their professional practices and ethics.
- There are considerable tensions between human rights and asylum obligations on the one hand, and the border management and migration control regime on the other, which result in human rights violations and inhibit access to protection. These are underpinned by an active hostility and opposition to human rights and asylum regimes, expressed both in policy and policy narratives.

# Abbreviations

| | |
|---|---|
| AIA | Asylum and Immigration Act 1996 |
| AITCA | Asylum and Immigration (treatment of claimants) Act |
| AVR | Assisted Voluntary Return |
| DFT | Detained fast track |
| ECO | Entry Clearance Officer |
| EMN | European Migration Network |
| ICIBI | Independent chief Inspector for borders and Migration |
| IAA | Immigration and Asylum Act 1999 |
| IANA | Immigration, Asylum and Nationality Act 2006 |
| ILM | Immigration Liaison Officer |
| IR | Immigration Rules |
| IRC | Immigration Removal Centres |
| NAO | National Audit Office |
| NIAA | Nationality, Immigration and Asylum Act 2002 |

# 1. Introduction

The aim of Work Package 2 of the RESPOND project is to explore border management and migration control policies in the EU and the countries selected for analysis by the RESPOND consortium. The current report provides an overview of the UK legal and policy frameworks on border management and migration control and key narratives on migration control. Further, it maps developments related to the implementation of border management and migration control policies in the UK, as well as the actors involved and relations among them.

The United Kingdom has a particular position within the European Union context. First, it has not fully participated in the EU instruments outlined in the preceding report on EU Border Management and Migration control (Karamanidou and Kasparek 2018). The UK participated in the intergovernmental phase of policy development concerning border management and migration control and adopted legal instruments on carrier sanctions, ILOs and facilitation (Ette and Gerdes 2007; Geddes 2005). However, it did not accede to Title IV of the Amsterdam Treaty supranationalising asylum and migration policy, maintaining the right to opt in or out of legal proposals, and remained out of Schengen arrangements (Ette and Gerdes 2007; Geddes 2005). In short, while UK policymaking does not necessarily oppose EU legislative developments that enhance control capacities, it privileges what is perceived as prioritising national sovereignty and interests over increasing Europeanisation. Although it has been largely independent from EU policy developments, the perception that membership to the EU undermines the ability of the UK to control migration underpinned support for the country's exit from the EU during the 2016 referendum (Bennet 2018; Dennison and Geddes 2018). These perceptions have persisted through the process of 'Brexit', which is still ongoing at the time of writing.

Secondly, while the UK is primarily a destination country in terms of contemporary migration movements, its policy responses to migration are shaped by the country's imperial and colonial history, which has rendered race and ethnicity central to policy developments and debates on migration (Erel, Murji and Nahaboo 2016; Virdee and McGeever 2018). The dynamics of race and racism have changed to an extent following the terrorist attacks in New York in 2001 and the growing securitisation and scapegoating of Muslim citizens and migrants, as well as the increasing hostility towards EU migrants especially from eastern Europe since the 2000s (Yuval-Davis, Wemyss and Costello 2018). However, racialized policies and practices of border management and migration control, in particular under the Conservative government's 'hostile environment' policy[1], have had a continuous and significant impact not only on recent and settled migrants to the UK, but also on British citizens of ethnic minority backgrounds (Erel, Murji and Nahaboo 2016; Yuval-Davis, Wemyss and Costello 2018). The

[1] The term 'hostile environment' refers to a set of measures that were introduced since 2012 in order to create, in the words of the then Home Secretary, a 'hostile environment' for migrants without legal status which would facilitate their detention and removal. It has entailed measures such as intensified legal status checks, employment checks and raids, curtailment of access to healthcare, accommodation, bank accounts, and driving licenses, and obligations of employers, landlords and public bodies to inform immigration authorities (House of Lords 2018a; Jones *et al* 2017; Yuval-Davis, Wemyss and Costello 2018)

2018 Windrush scandal[2] is an example of such dynamics (House of Lords 2018a; Erel, Murji and Nahaboo 2016).

The drive towards expanding UK border and migration control, however, precedes the introduction of the 'hostile environment' policy but displays the same drive towards controlling unauthorised migration. Similar to other European contexts, asylum and unauthorised migration have been problematized since the late 1980s (Bosworth 2008; Geddes 2005). Adopting a 'migration management' approach, UK migration policy favoured a moderately open policy towards highly skilled migrants, while actively discouraging asylum seeking, unauthorised entry and undocumented stay (Bosworth 2008; Bloch, Neal and Solomos 2013; Yuval-Davis, Wemyss and Costello 2018). Since the 1990s, border management and migration control instruments, including detention and deportation, expanded considerably (Bloch, Neal and Solomos 2013; Vaughn-Williams 2010). The same period saw the externalisation of the UK border in both its physical and intangible forms through the introduction of externalised border controls in France and Belgium and the expansion of visa regimes, carrier sanctions and information systems allowing controls to be exercised before departure (Bosworth 2008; Geddes 2005; Vaughn-Williams 2010). After 9/11, the securitisation of UK migration policy intensified through the increasing interconnection between migration control and anti-terrorism legislation (Bosworth 2008; Vaughn-Williams 2010).

While the migratory movements of 2015 were a key event for other European states, they had a more significant impact on political responses rather than on border management and migration control policies. Because of the geographical position of the UK, arrivals did not increase significantly, while refugees accessed UK territory mainly through resettlement programs rather than spontaneous arrivals (Collyer and King 2016; Sirriyeh 2018). Yet small numbers of migrants attempting to cross into the UK from the makeshift camps in Calais were constructed by the government as a 'crisis' (Bennett 2018; House of Commons 2016a; 2016b). With the exception of reinforcing already existing border management and surveillance arrangements, however, there was no significant impact on policy. Rather, the perception of a European 'migration crisis' fed into existing narratives of 'securing' borders against migratory movements that were illegalised and securitised in political and media discourse (Anderson 2017; Bennett 2018; Sirriyeh 2018). A further significant effect was the utilisation of narratives of 'crisis' and failure of EU border management and migration control policies in the run-up to the referendum on the country's exit from the European Union (Anderson 2017; Bennett 2018).

[2] The Windrush scandal refers to the targeting of predominantly British Caribbean citizens for detention and removal. Windrush was the ship in which Caribbean subjects of the then British Empire arrived in the UK in order to fill in labour shortages in the aftermath of the World War II. Although subjects of the Empire were originally considered UK citizens, changes in citizenship law since the 1960s, informed by racism and hostility to migration, weakened provisions for safeguarding their formal status. One of the consequences was that while being in essence citizens, the 'Windrush generation' and their descendants could not formally prove their citizenship status through documentation - for example possessing a British passport. This rendered them deportable under the 'hostile environment' and led to their erosion of rights to employment, healthcare and social welfare (Bloom 2018; Wright and Madziva 2018).

# 2. Developments since 2011

Border management and migration control policy developments since 2011 are best understood in the context of the 'hostile environment', a term used to describe an array of often highly coercive measures targeting migrants with no legal status and the curtailment of their rights (House of Lords 2018a; Jones *et al* 2017; Yuval-Davis, Wemyss and Costello 2018). While this is a now widely used term in media and public discourse, especially in the light of the Windrush scandal, it is in fact rooted in government policy and discourse. Theresa May, the current Prime Minister and then Home Secretary, stated in 2012 that 'the aim is to create here in Britain a really hostile environment for illegal migration' (Daily Telegraph 2012) and the term has been widely used in government policy documents (Independent Chief Inspector for Borders and Migration [ICIBI] 2016a). Although renamed 'the compliant environment' following the Windrush scandal (The Guardian 2018a; Wemyss 2018), policies and their implementation continued to display the same emphasis on border and migration controls.

Border management and migration control policies since 2011 – coinciding with the election of the Conservative Party to the government the previous year – have been shaped by a predominantly and increasingly hostile approach to migration. Like the Labour government before them, the Conservative government continued to an extend the 'migration management' approach, ostensibly aimed at attracting 'wanted' skilled labour migrants while preventing the entry and stay of 'unwanted' asylum seekers and undocumented migrants (Bloch, Neal and Solomos 2013; Partos and Bale 2015). While being presented as guided by the aim of 'modernising' migration and asylum policy (Partos and Bale 2015), it however privileged control objectives aimed at realising the frequently stated aim of reducing net migration to the UK. The reform of the visa system since 2011 aimed to enhance and facilitate the recruitment of skilled labour migrants, but also intersected with the objective of reducing net migration and what was perceived as entry of false grounds (Partos and Bale 2015). However, the 'hostile environment' policy represents a shift towards targeting unauthorised stay rather than entry, as the former accounts for the majority of migrants with no legal status in the UK, in order to 'inhibit their ability to work and live in the UK (Yuval-Davies, Wemyss and Costello 2018: 233). Ultimately 'hostile environment'- measures introduced since 2012 have aimed at the removal of unauthorised migrants, which constituted a stated aim of government policy and was accompanied by an expansion of detention and removal powers and practices (Amnesty International 2017; Ikegwuruka 2017). Interviewed stakeholders were highly critical of hostile environment policies, in particular detention:

> There is plenty of evidence against that and certainly indefinite detention is a breach of all sorts of human rights. (Interview, Councillor, Green Party)

> The awful thing about detention is that […] there are no real safeguards against arbitrary detention. You know, there are no judicial oversights, the decision to detain someone isn't overseen or authorised by a court or any independent… Nobody, it's just taken by a civil servant you know, an immigration officer. So the power to detain exists in law, its devolved from the secretary of state to the immigration officers, but there is no independent oversight of the decision to detain. (Interview, Voluntary Sector Organisation, London)

One early example of the 'hostile environment' measures was the deployment of the so-called 'go home' vans – known as Operation Vaken - in 2013. Vans with signs asking migrants with no legal status 'to go home or face arrest' were deployed in areas of London with high migrant populations. While the measure resulted in only 11 voluntary returns, it exemplified the adoption of publicly visible measures against unauthorised migration (Jones *et al* 2017; The Guardian 2013; Yuval-Davies, Wemyss and Costello 2018). The key legislative measures associated with the 'hostile environment', however, were the two Immigration Acts introduced in 2014 and 2016. These two Acts continued previous trends of increasingly restrictive policies, strengthening enforcement powers to search properties and residencies and imposing greater migration control responsibilities on employers, landlords and public authorities (House of Lords 2018a; Aliverti 2015). The most notable new 'hostile environment' measures were the ban on driving licences and bank accounts for those without legal status, introduced by the 2014 Immigration Act, as well as the extensive curtailment of appeal grounds against detention and removal decisions (ILPA 2016; Home Office 2018a). These two Acts also expanded the obligations of public authorities, such as the Departments of Education and the National Health Service, to cooperate with the Home Office on migration control (House of Lords 2018a).

Another key feature of the UK border management and migration control regime is the *privatisation* of controls. While this trend pre-existed the Immigration Acts of 2014 and 2016, it intensified under the 'hostile environment' (House of Lords 2018). On the one hand, control functions are outsourced to for-profit actors, who are responsible for a range of services such as receiving and processing visa applications, running detention facilities, and implementing removals (Kaneff 2012; Shaw 2016; Corporate Watch 2018). On the other, legal measures introduced by these two acts can be understood in terms of 'everyday bordering', whereby public service agencies, businesses, employers and ordinary citizens 'are turned into border guards' (Wemyss 2018; Yuval-Davies, Wemyss and Costello 2018).

# 3. Methodology

The legal and policy sections of this report draw on the analysis of legislation and utilises both primary (legal and statutory instruments provided in Appendix 1) and secondary sources such as academic literature, research reports, reports by government institutions and NGOs. Definitions and conceptualisations follow those developed in the WP2 report on EU border management and migration controls (Karamanidou and Kasparek 2018).

The section on narratives on border and migration controls in the UK draws on the qualitative content analysis of speeches by British prime ministers and Home Secretaries, as well as press releases issued by the Home Office. These were sourced from the Home Office webpage (http://www.gov.uk/government/organisations/home-office), using 'migration' and 'borders' as keywords. Due to logistical and time limitation, a sample of 35 documents (Appendix 2) was selected on the basis of relevance and spread across the 2011-2017 period. The documents were analysed using NVivo qualitative software. The coding frame used for this task (Appendix 3), was created based on the WP guidelines and existing literature on migration discourses in the UK and was revised while coding to reflect emerging themes and categories. Existing literature on political discourses of migration in the UK supplemented the analysis.

The section on implementation draws on academic literature, reports by government and third sector organisations, as well as on 13 Interviews conducted with stakeholders from public and local authorities and the third sector, recruited through direct contact via email and snowballing techniques. A full list of interviewees is provided in Appendix 4. Unfortunately, agencies of Home Office with responsibilities in border management and migration control did not respond to invitations to participate in this research. The interviews were qualitatively analysed so as to discern the main issues and concerns pertaining to the implementation of border management and migration controls.

The review procedure for this report has followed the overall project review standards, which includes a review by Primary Investigator, 1-2 external reviewers, WP co-leaders, and project coordinators.

# 4. Legal and Policy Framework

## 4.1 Pre-entry measures

With the exception of British and certain Commonwealth citizens who have right of abode in the UK, all other nationals are subject to immigration controls (Immigration Act 1971, s 3(1); Clayton and Firth 2018). Taken together, the different aspects linked to pre-entry measures examined in this section pertain to developments around the exported border, whereby border and immigration controls are enacted outside UK territory (Clayton and Firth 2018).

### 4.1.1 Entry clearance

The issuance of visas in order to enter the UK is part of the Entry Clearance arrangements as set in UK law. The Immigration Act 1971 sets out an obligation for third country nationals with no right of abode to have entry clearance[3]. Citizens of non-EEA countries and nationals of countries requiring a visa thus need entry clearance to enter the UK to stay for more than six months (Immigration Rules [IR] 2018, para 24; Clayton and Firth 2018). Recognised refugees must also obtain entry clearance as the UK does not participate in 1959 Council of Europe Agreement on the Abolition of Visas for Refugees (Clayton and Firth 2018).

Entry clearance is issued by an Entry Clearance Officer (ECO) normally stationed in British embassies, consulates or similar authorities in third countries (IR 2018, par. 28). There is no provision for the role of Entry Clearance officers in Immigration Acts (Clayton and Firth 2018) but the Immigration Rules (2018, par. 24-26) suggest the post is interchangeable with that of Immigration Officers. Entry clearance can be refused if the applicant has not supplied the necessary documentation or information, has a criminal record, is considered a security risk, is subject to a deportation order, has been issued a travel ban, their previous immigration

[3] Defined as a visa, entry certificate or other document which, in accordance with the immigration rules, is to be taken as evidence or the requisite evidence of a person's eligibility, though not a British citizen for entry into the United Kingdom (but does not include a work permit) (Immigration Act 1971, s 33)

record constitutes grounds for refusal, or they fail medical examinations and are thus considered a danger to public health (IR par. 320 (7A); Clayton and Firth 2018). In 2012, Entry Clearance officers were given powers to refuse applications on the grounds of non-genuineness (Home Office 2018a). Entry clearance operations are overseen by ICIBI (Clayton and Firth 2018).

In addition, immigration controls are exempt from the provisions of section [hereafter 's'] 29 of the Equality Act 2010, which prohibits public service employees from committing any action 'that constitutes discrimination, harassment or victimisation'. In essence, this allows border control and immigration enforcement authorities to apply more strident immigration controls on certain nationalities – based on intelligence, without a corresponding duty to disclose which nationalities are being targeted (Clayton and Firth 2018).

### 4.1.2 Visas

The UK has not transposed Regulation 539/2001 (Recital 4), Regulation 810/2009 (Recital 36) or Regulation 767/2008 which are part of the Schengen acquis. Thus, visa policy in the UK is determined at the national level.

The list of nationals that require a Visa to enter the UK is determined by the Immigration Rules. At the time of writing, nationals of 111 countries required a Visa to enter the UK (IR 2018, Appendix V). The UK authority for examining and issuing visa applications is UK Visas and Immigration, which is part of the Home Office (Home Office 2019a). Visa nationals wishing to enter the UK must apply to specific Visa Application Centres (VAC) at their country of origin (Clayton and Firth 2018). These are normally run by private companies, currently VFS Global (Kaneff 2013; VFS Global 2018). Entry Clearance Officers examine the applications and grant or refuse entry clearance.

There are broadly four grounds to apply for visas: a) temporary visits (IR 2018 Appendix V) b) family reasons c) study and d) work.

**Visitor visas** can be obtained by both non-visa and visa nationals who wish to enter for a range of reasons such as tourism, business, academic, creative or other events and short-term activities, civil partnership or marriage, or transit (IR 2018, Appendix V). Non-Visa nationals are not required to apply for visitor visas unless they intend to marry or enter a civil partnership in the UK or their visit exceeds six months (IR Appendix V, para 1.2 & 1.3). Visa nationals applying for visitor visas are generally subject to a higher level of controls in order to deter overstaying, irregular employment and asylum seeking (Clayton and Firth 2018).

**Family members' visas** concern third country nationals who are 'seeking to enter or remain in the UK on the basis of their family life with a person who is a British Citizen, is settled in the UK, or is in the UK with limited leave as a refugee or person granted humanitarian protection' (IR 2018, Appendix FM; also IR 2018 part 8). This category is not governed by the 1971 Immigration Act (s 1.4) but legislated under the IR (Clayton and Firth 2018).

**Study and Work visas** are legislated under the Points Based System (PBS) (IR 2018, Part 6A). They include five tiers for entry:

Tier 1: Entrepreneurs, Investors, Exceptional Talent

Tier 2: High skilled migrants

Tier 3: Low skilled migrants

Tier 4: Students

Tier 5 Temporary workers (IR 2018 part 4; Clayton and Firth 2018)

For all visa routes, applicants must meet the specified criteria to be granted entry clearance. In the case of temporary visas, applicants must meet criteria related to a genuine intention to visit, duration of stay, maintenance and accommodation, intention to leave, credibility as well as special conditions attached to some sub-categories (Clayton and Firth 2018a). All types of visas entail the payment of fees, ranging from £93 for a sixth month visitor visa to £1623 for PBS tier one visas (Home Office 2018b). Additionally, a minimum income level of 18,600 was introduced for family visas in 2012 (Clayton and Firth 2018; House of Commons 2018a). There are limited rights for appeal or judicial review in all visa categories (Clayton and Firth 2018). In the case of visitor visas, the right of appeal stipulated by the Immigration Act 1999 (ss 59 & 60) was abolished in 2013. Since then only appeals on human rights grounds are allowed – mainly on grounds pertaining to the right to private and family life according to Art. 8 of ECHR (Clayton and Firth 2018). All visa applications require the provision of biometric data – fingerprints and photographs (Immigration (Provision of Physical Data) Regulations 2006, 2006/1743; Clayton and Firth 2018). Fingerprints are checked against police and immigration databases – including Eurodac, as Regulation 603/2013/EU has been transposed to UK law – in order to decide on applications (Clayton and Firth 2018).

### 4.1.3 Carrier Sanctions

The United Kingdom has transposed Council Regulation 2001/51/EC on carrier sanctions. However, carriers' liability in national law predated the transposition of the directive, therefore no changes to British legislation were made as a result (EMN 2012).

The Immigration Act 1971 (Schedule 2 par. 26&27) stipulated that carriers had a responsibility to conform with immigration law although there was no statutory obligation for carriers to check identity documents or refuse embarkation (Clayton and Firth 2018). This was established by the Immigration (Carriers' Liability) Act 1987, which rendered individuals and business entities responsible for checking passenger documentation. Liability extends to train and road carriers (Channel Tunnel (Channel Tunnel Carriers' liability Order 1998, SI 1998/1015; IAA 1999). The Immigration and Asylum Act 1999, repealing the 1987 Act, extended liability to all persons entering in a clandestine manner (IAA 1999 s. 32; Clayton and Firth 2018). A person is defined as a clandestine entrant if

> (a) he [sic][4] arrives in the United Kingdom concealed in a vehicle, ship or aircraft,
>
> (aa) he arrives in the United Kingdom concealed in a rail freight wagon,
>
> (b) he passes, or attempts to pass, through immigration control concealed in a vehicle, or
>
> (c) he arrives in the United Kingdom on a ship or aircraft, having embarked—
>
> (i) concealed in a vehicle; and

[4] The pronoun 'he' is used repeatedly through immigration acts, without the equivalent use of the female pronoun. Although the law encompasses both sexes in terms of it remit, it suggests at the same time, a heavily gendered understanding of migration.

(ii) at a time when the ship or aircraft was outside the United Kingdom,

and claims, or indicates that he intends to seek, asylum in the United Kingdom or evades, or attempts to evade, immigration control. (IAA 1999, s 32 (1))

The scope of the definition includes a person who 'indicates that he [sic] intends to seek asylum in the United Kingdom' (Immigration Act 1999, S 32(1)), thus directly linking Carriers' liability legislation with the prevention of asylum seeking (Clayton and Firth 2018). Although there is provision in guidelines for carriers that penalties can be refunded if an asylum application is successful, the legal provisions have a deterrent effect on carriers (Clayton and Firth 2018) and are at odds with the provisions of the Geneva Convention and EU law.

The 1987 Immigration Act introduced fines of £1000 per passenger –increased to £2000 by the Carriers Liability Regulation 2002– if carriers transported persons who sought entry to the UK without valid documentation (Bloom and Risse 2014; Clayton and Firth 2018). Penalties can be imposed on more than one person or carrier – for example the driver of a vehicle and their employer - in which case the maximum aggregate penalty is £4000. In case of more than one clandestine entrant, the maximum fine remains at £2000 (Clayton and Firth 2018). The proscribed fines are at the lower level determined by Council Regulation 2001/51. The 2016 Immigration Act introduced a civil penalty scheme for air carriers that fail to ensure that passengers present themselves to immigration control, even because of errors (Home Office 2016a).

### 4.1.4. API/PNR

The UK has opted into Directives 2004/82/EC on the obligation of carriers to communicate passenger data and 2016/681/EU on the use of Passenger Name Record. As in the case of Carrier Liability legislation, UK law predated the introduction of relevant legislation. The Immigration and Asylum Act [IAA] 1999 amending the provisions of the Immigration Act 1971 (Schedule 2, par 27 (2)) stipulated for the first time the obligation for carriers to provide information to immigration authorities on passengers 'carried, or expected to be carried' (Clayton and Firth 2018). The Asylum and Immigration (Treatment of Claimants Etc) Act 2004 further stipulated that carriers must provide authorities with copies of documents of passengers. In addition to immigration authorities, the police can also require passenger information and, along with HMRC, they must share information with each other (IANA 2006, S 32&33; Clayton and Firth 2018). Details of the passenger-related information carriers must provide to authorities is specified in the Immigration and Police (Passenger, Crew and Service Information) Order 2008, SI 2008/5 and the Immigration Act 1971. The provision of this information has been obligatory since 2012 (Clayton and Firth 2018). As in the Directive, API Data is retained for 5 years with a possible extension of a further 5 on the grounds of law enforcement and migration control (European Commission 2012). However, the scope of British law extends beyond EU law, as it also covers data collected in relation to rail and sea travel (The Channel Tunnel (International Arrangements and Miscellaneous Provisions) (Amendment) Order 2007; Freitag 2018). At the domestic level, the Home Office *Semaphore* system is used to collect information on API (National Audit Office 2017).

### 4.1.5 Immigration Liaison Officers

The UK has transposed Council Regulation (EC) 377/2004, although provisions relating to immigration liaison officers have not been affected Regulations 1168/2011/EU or 2016/1624/EU, neither of which have been transposed by the UK.

The role of Immigration Liaison Officer replaced the previous role of Airline Liaison Officer (ALOs) in 2008 (Clayton and Firth 2018; Home Office 2012a). They are part of the Immigration Enforcement International division (formerly RALON) of the Home Office (Clayton and Firth 2018), although they are posted under the Foreign and Commonwealth Office. The key responsibilities of Immigration Liaison Managers (ILMs) are to liaise with airlines and advise on allowing embarkation on flights to the UK, for example based on the assessment of genuineness of identification and travel documents (Bloom and Rise 2014; Clayton and Firth 2018; Scholten 2015). Similarly, ILMs provide training on forged documents to airline staff, advise on visa applications and risk assessment and intelligence gathering (Clayton and Firth 2018; Home Office 2012a; Scholten 2015). ILMs are currently posted in 44 international immigration enforcement posts in both EU member states (for example Belgium and Greece) and third countries (Home Office 2018c).

## 4.2 At-the-border controls

As the UK is not part of the Schengen area, it has not transposed Regulations (EU) 2016//399 (the Schengen Borders Code), its amendment 2017/458 on the reinforcement of checks against relevant databases, the Entry-Exit System (EU/2017/226) or the SIS II regulation ((1987/2006/EC), although it participates in police and crime measures under it (Clayton and Firth 2018). It has, however, transposed Council Directive 2002/90/EC defining the facilitation of unauthorised entry, transit and residence and Council Framework Decision 2002/946/EC on strengthening the penal framework to prevent the facilitation of unauthorised entry, transit and residence. At the same time domestic developments around the externalised border mean that crossing the UK border, and thus border checks, can take place outside UK territory (Clayton and Firth 2018; National Audit Office 2017).

### 4.2.1 Juxtaposed controls

A particular feature of the UK border management architecture concerns juxtaposed controls[5]. Juxtaposed – from the French word *juxtaposé* – controls refer to reciprocal arrangements with France and Belgium established by the Sangatte Protocol to the Treaty of Canterbury (1991) and a further agreement between the United Kingdom, Belgium and France (1993) (Clayton 2010; Ette and Gerdes 2007; Ryan 2004). Linked to the opening of the Channel Tunnel, these arrangements allowed for British immigration officers to conduct border controls in ports outside UK territory, and their French and Belgian counterparts to do likewise in UK ports (Clayton and Firth 2018; Ryan 2004). These arrangements allow the UK government to

[5] While they are in a sense a pre-entry measure reflecting externalisation processes, they are discussed in this section because of their pertinence for the exercise of at-the-border controls (Clayton 2010; Ryan 2004).

exercise ‘frontier controls’ in the designated control zone territories in France and Belgium (Clayton 2010). ‘Control zones’ are defined as

> the part of the territory of the host State determined by mutual agreement between the two Governments within which the officers of the adjoining State are empowered to effect controls (Sangatte Protocol, art 1 (g); Channel Tunnel Order 1993 Art 1 (g)).

Following the operation of Eurostar, control zones were expanded to include railway stations in both France and Belgium and non-stopping trains among the three countries (Sangatte Protocol, art 7; Channel Tunnel order 1993 Art 7; Clayton 2010; Clayton and firth 2018; Ryan 2004). In 2003, following the informal cooperation of British and French migration control authorities in Calais, juxtaposed migration controls were extended to sea ports in UK and France by the Treaty of Touquet (Clayton 2010; Clayton and Firth 2018). The Sangatte Protocol and ensuing legal arrangements designated France as responsible for receiving asylum applications submitted in control zones (Clayton and Firth 2018; Clayton 2010).

### 4.2.2 Entry

Arrival at a port of entry is distinct from leave to enter and actual entry into UK territory, which is not realised until a person is through the immigration control area of ports of entry such as airports, road or rail crossing points or ferry terminals (Immigration Act 1971; Clayton and Firth 2018). Entry clearance is in essence leave to enter (Clayton and Firth 2018). However, immigration officers at the border can refuse entry or cancel an existing entry clearance on the grounds outlined in section 4.1.1, and in addition if the entry clearance was obtained through false representation, omitting material facts that could have affected the application, or if since the application there was a material change in the circumstances of the applicant (IR 2008 par. A320 to 324; Clayton and Firth 2018).

Persons arriving at the UK border must provide appropriate identity documentation such as a passport ‘satisfactorily establishing his [sic] identity and nationality’ (Immigration Act 1971 Schedule 2, par 2 (1) &4; IR 2018, part 1, par 11’). In addition, third country nationals must provide a visa if required (Immigration Act 1971 Schedule 2 par 4; IR 2018, part 1, par 11’). Any third country nationals arriving at the UK without the appropriate documents are in breach of legal provisions (Immigration Act 1971, s 3(1); Home Office 2017a). UK law, unlike EU legislation, explicitly criminalises ‘clandestine’ entry as defined in IAA 1999, s 32 (1) (see section 4.1.3 above) which is criminal offence punishable by a fine, imprisonment of up to 6 months or both (immigration Act 1971, s 24 (1)). In addition to these provisions, a ‘clandestine’ migrant can be prosecuted for a range of other offences such as

- Possession of false identity documents with improper intention (Immigration and Asylum Act 1999 s 31; Identity documents Act 2010)
- Falsification of documents (Immigration Act 1971, s 26 (1))
- Entering the UK without a passport (AITCA 2004)
- Forgery and connected offences (Forgery and Counterfeiting Act 1981)

The law allows for certain grounds to be used as defence against prosecution for clandestine entry. Seeking international protection is one such defence but is permitted only when an applicant arrives ‘directly from a country where his [sic] life or freedom was threatened (IAA 1999). Other grounds include the applicant having:

(a) presented himself [sic] to the authorities in the United Kingdom without delay;

(b) showed good cause for his illegal entry or presence; and

(c) made a claim for asylum as soon as was reasonably practicable after his arrival in the United Kingdom. (Immigration Act 1999 s 31 (1); CPS 2018a)

Arriving indirectly – via third countries - is a defence only insofar as a claimant 'shows that he [sic] could not reasonably have expected to be given protection under the Refugee Convention in that other country' (IAA 1999 s 31 (2)). These provisions were partially reinforced by a court decision, *R v Naillie,* which ruled that requesting asylum without the use of deception in the UK did not render an applicant a clandestine entrant (Clayton and Firth 2018).

Facilitating entry was a criminal offence in UK law before the transposition of Council Directives 2002/90/EC and 2002/946/EC. The Immigration Act 1971 (s 25 (2) (a)) included provisions on assisting illegal entry which was punishable with imprisonment of up to seven years (Clayton and Firth 2018). This was increased to a maximum penalty of 14 years, applicable outside the UK, in 2002 (NIA 2002, s 143). It also specifically penalises the facilitation of entry of asylum seekers 'knowingly and for gain', beyond the scope of Directive 2002/90/EC (NIAA, s 143; Clayton and Firth 2018; Ette and Gerdes 2007).

### 4.2.3 Border checks

Immigration officers at border crossing points, currently operating under the UK Border Force (until 2012, the UK Border Agency) have powers to check that those entering have the appropriate documents, to search and detain documents and persons, to take fingerprints of persons who do not produce appropriate identity documents, do not have leave to enter, have made an application for asylum are subject to deportation orders (Immigration Act 1971 Schedule 2; IAA 1999, s 141; Clayton and Firth 2018). The 2016 Immigration Act extended the powers of immigration officers to curtail leave to enter at the border if they suspect that a person might violate leave conditions (Immigration Act 1999, s 141; Immigration Act 2016). Not complying with the requests of immigration officers is a criminal offence (INA 2006, s 41; Clayton and Firth 2018).

The powers of immigration officers under the 1999 and subsequent Acts applies to the control zones designated by the 'juxtaposed controls regime' (Clayton and Firth 2018; Clayton 2010; Ryan 2004). One significant difference from at-the border checks in UK territory is that those refused entry in sea port control zones – although not rail control zones – do not have a right to appeal as accorded by the Immigration and Asylum Act 2002 (Clayton 2010). Like other immigration control and enforcement personnel, immigration officers performing at-the-border checks are exempt from the provisions of s 29 of the Equality Act 2010 (see also section 4.1.1). As of 2015, the UK also conducts exit checks for all international travel (EMN 2016; ICIBI 2018a exit). Exit checks are not purely a border control measure but linked to measures under the 2015 Counter Terrorism and Security Act (EMN 2016).

Immigration officers also have powers to stop, detain, search and interview both nationals and third country nationals at sea and air ports and sea port zones under anti-terrorism legislation (Schedule 7 of the Terrorism Act 2000, par 2; NIAA 2002 (Juxtaposed Controls)

Order 2003, SI 2003/2818; Clayton and Firth 2018). Although powers under the Terrorism Act are subject to the s 29 of the Equality Act, they 'do not require a basis of reasonable suspicion' and in case of complaints place the burden of proof to the complainant (Clayton and Firth 2018: 217). These arrangements have been largely upheld by court decisions such as *David Miranda v SSDH* (2016) and *Beghal v DDP* (2015) (Clayton and Firth 2018).

With regard to the use of EU databases, the UK did not transpose regulation 1987/2006 (SIS II), although it participates in police and criminal aspects of Schengen, including access to the SIS II database since (Home Office 2016b; EMN 2016). The National Crime Agency is the designated SIRENE[6] bureau (Home Office 2015a). API data as well as information from SIS II and domestic police and security databases is used to conduct entry and exit checks. For the purpose of the latter, the Home Office also developed the Initial Status Analysis (ISA) database (ICIBI 2018a).

### 4.2.4 Border surveillance

The UK is not part of the Schengen Area and has not transposed regulations 2016/399/EU (the Schengen Borders Code), 1052/2013/EU establishing the European Border Surveillance System, 1168/2011/EU establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union or 2016/1624/EU establishing the European Border and coast Guard Agency. However, regulations 1168/2011/EU and 2016/1624/EU allow for the participation of the UK in 'operational actions' (1168/2011/EU, recital 38) and 'specific activities' (2016/399/EU, Recital 68) of Frontex on a case by case basis as decided by the Agency's Management Board. It also has observer status in the Management board (Costello and Hancox 2014). The remit for this participation is weaker in the EBCGA regulation which states that the UK 'may be invited to Management board meetings' (rec 68), as opposed to 'should be invited' in Regulation 1168/2011 (Rec 38). In practice, these arrangements allow the UK to participate in border surveillance operations by FRONTEX (Costello and Hancox 2014; House of Lords 2017).

Similarly, the EUROSUR regulation allows for the participation of the UK and Ireland, on the basis of regional agreements, in information concerning the UK national situational picture, national situational pictures of member states and information collected by the UK that is relevant to the European situational picture or pre-border intelligence (Regulation 1053/2013, Art 19; House of Lords 2017a).

Border surveillance is not explicitly defined in British law. Powers to conduct activities defined as border surveillance in Art 13 of the Schengen Borders code arise from the provisions of the Immigration Act 1971 which authorise immigration officers to 'search any ship or aircraft and anything on board it, or any vehicle taken off a ship or aircraft on which it has been brought to the United Kingdom' (Schedule 2, par 1, 5; Clayton 2010) in order to ascertain if persons meet the entry conditions. Domestic land border surveillance arrangements have little relevance within UK territory since the only land border is with another member state, Ireland, is a 'frictionless' border due to arrangements pertaining to the Common Travel Area and the Good Friday Agreement, therefore not the object of surveillance measures (National Audit Office 2017; Hayward and Phinnemore 2018). However, border surveillance activities as described in the above paragraph take place in British ports, and under the

[6] National SIRENE (Supplementary Information Request at the National Entries) bureaus are responsible for information exchange and activities related to information alerts

juxtaposed controls regime in control zones in sea ports in France (NIAA (Juxtaposed Controls) Order 2003; The NIAA 2002 (Juxtaposed Controls) (Amendment) Order 2006; Clayton 2010). They are supported by a range of modalities and technological means of surveillance such as fencing, CCTV cameras, and motion and carbon monoxide detection (Home Office 2017b; House of Commons 2016a; Malcolm 2016; Migration Observatory 2014).

### 4.2.5 Border surveillance at sea

The UK has ratified the United Nations Convention on the Law of the Sea in 1997, the international convention for the Safety of life at Sea (SOLAS) in 1980 (UN 2018) and the International Convention on maritime Search and Rescue in 1985. Thus, border surveillance practices are bound by these treaties. Relevant EU legislation (Regulation 1168/2011/EU and Regulation 2016/1624/EU) has not been transposed.

Sea border surveillance is legislated by the Immigration Act 1971. Immigration officers have powers to stop, board, divert and detain, and engage in hot pursuit of ships in UK territorial waters 'for the purpose of preventing, detecting, investigating, or prosecuting an offence' (Immigration Act 1971, Part 3A, s 28M) relating to 'assisting unlawful immigration to member State' (s 25); 'Helping asylum-seeker to enter United Kingdom' (s 25A) and 'Assisting entry to United Kingdom in breach of deportation or exclusion order' (s 25B). While the Immigration Act 1971 referred to a breach of these provisions in relation to the enforcement of maritime powers, the Immigration Act 2016 expanded their scope to include *attempts* against the above provisions (Schedule 14, s 2-4; Home Office 2016a). Equally the Immigration Act 1971 accords immigration officers the power to search and detain persons on ships and search for nationality documents (Harvey 2016).

## 4.3 Internal controls

The UK has transposed the first-generation asylum directives but has not recast second generation CEAS instruments or the Returns Directive. Therefore, the relevant EU legislation that has a bearing on the stay and residence of refugees, asylum seekers and undocumented and unauthorised migrants is:

- Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status
- Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted
- Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers
- Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence
- Council framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence

## 4.3.1 Stay and Residence

### 4.3.1.1 Recipients of international protection

Recipients of international protection – in UK law refugee status – and their family members are entitled to a five-year residence permit (IR 2018, par 339Q). In line with EU legal arrangements, since 2005 refugee status is not permanent (ICAR 2010). Refugee status and the attached residence permit may also be revoked or not renewed (IR 339). Cessation grounds are identical to the Council Directive 2004/83/EC and include having re-availed of the protection of the country of nationality; re-acquisition of nationality if lost; acquisition of a new nationality; return and resettled to the country of origin voluntarily; the conditions in the country of nationality leading to refugee status have ceased to exist; is stateless, they can return to the country of habitual residence because of a change in circumstances there (IR p. 339A). A person can be excluded from refugee status on the basis of Articles 1 D, 1E or 1F of the Geneva Convention (The Refugee or Person in Need of International Protection (Qualification) Regulations 2006, s.7), with the stipulation that the Secretary of State 'is satisfied that the person has instigated or otherwise participated in the crimes or acts mentioned therein' (IR 2018, par. 339A). Refugee status can be also revoked or not renewed if 'misrepresentation or omission of facts, including the use of false documents' led to the acquirement of refugee status (IR 339AA) and if a person to the security or the community of the UK (IR 339AC). The indefinite leave to remain attached to refugee status is similarly revoked or not renewed (IR 2018 par 339BA). Humanitarian status – which is the equivalent of subsidiary protection in UK law – can be revoked or applicants excluded from it on the same grounds as with refugee status (IR par 339D, 339G, 339GB, 339GD). As with refugee status, recipients of humanitarian protection and their family members can be granted a five-year residence permit (IR 2018 339Q). Recipients of international protection are issued with a Biometric Residence Permit (All Party Parliamentary Group on Refugees 2017).

After the expiry of the initial five-year permit, refugees can be granted indefinite leave to remain and settle in the UK. In order for ILR to be granted recipients of refugee and humanitarian status and their dependants must have status that has not been revoked or not renewed, continuous residence of 5 years, and not to have committed offenses carrying imprisonment of at least four years or offenses carrying sentences of less than four years within specified time frames from the ILR grant (IR 2018 339R). In addition, ILR might not be granted if 'in the view of the Secretary of State' an applicant has 'caused serious harm by their offending or persistently offended and shown a particular disregard for the law' or 'demonstrated the undesirability of granting settlement in the United Kingdom in light of his or her conduct (including convictions which do not fall within paragraphs 339R(iii)(a-e)), character or associations or the fact that he or she represents a threat to national security'.

Recipients of refugee and humanitarian protection status and their family members can obtain travel documents upon application, 'unless compelling reasons of national security or public order otherwise require' (IR 2018, par 344A).

### 4.3.1.2 Asylum seekers

Whether asylum seekers are given leave to remain in the UK depends on the outcome of the screening interview (Clayton and Firth 2018). Asylum applicants may receive the status of

'temporary admission' which is distinct from leave to enter[7] and applies while an asylum claim is under examination (Right to Remain 2018; Clayton and Firth 2018). Home Office guidance explain this status as

> This does not mean that you have the right to remain in the UK or that you can stay permanently. However, it does allow you to stay in the UK whilst your asylum application is being considered (Home Office 2016c:11)

Alternatively, asylum seekers may be detained following the screening interview. The UK has transposed Council Directives 2005/83/EC and 2003/9/EC which stipulate that migrants should not be detained solely for being asylum applicants. However, domestic law allows for the extensive detention of asylum seekers at different times of the asylum process (Clayton and Firth 2018; Right to Remain 2018). Detention of asylum applicants upon entry is possible under the provisions of the Immigration Act 1971 and its subsequent amendments[8], which stipulates that a person can be detained in order for the authorities to examine their immigration status, their identity, and decide whether to grant or refuse leave to enter (Immigration Act 1971, Schedule 2, ss 2-3 & 16.1; Amnesty International 2017; Clayton and Firth 2018).

Beyond these provisions, which apply to all migrants, there are no specific grounds in law concerning the detention of asylum seekers specifically (ECRE 2017, country report 2017). There is also no formal procedure for assessing whether detention is appropriate; it is decided on a case by case basis by Home Office caseworkers (Immigration Act 1971, Schedule 2, ss 2-3 & 16.1; Home Office 2014a; Amnesty International 2017) and determined at policy level by Home Office guidance (AIDA 2017; Home Office 2018d).

Asylum seekers can thus be detained on a number of grounds:

- If they are likely to abscond, especially in relation to Dublin cases
- If there is insufficient information to make a decision of granting temporary admission, or release a person who made an asylum application while in detention or whose identity cannot be confirmed
- If an asylum application is examined under the accelerated procedure
- If alternative arrangements need to be made for the care of a person
- If a person has previously failed to comply with immigration bail, leave to enter or leave to remain conditions (Home Office 2018d; Home Office 2014a; House of Commons 2018b)

Applicants from safe third countries whose applications were considered unfounded were detained under the Detained Fast Track (DFT) scheme, in operation until 2015 (Amnesty 2017; House of Commons 2016b; Liberty 2017a). This was replaced by the Detention Asylum Casework scheme in 2014, following the closure of DFT scheme after legal challenges (Amnesty 2017; Liberty 2018). There is also an additional list of 13 criteria, including ties to the community, previous failures to comply with immigration decisions, deception, and not providing 'satisfactory or reliable' answers to immigration officers (Home Office 2018d, par

[7] This was replaced by the status of 'immigration bail' in January 2018 (Right to Remain 2018).

[8] IAA 1999; NIAA 2002; UK Borders Act 2007; Immigration Act 2014; Immigration Act 2016 (Amnesty International 2017)

55.6.3; Home Office 2014a). Asylum detention in the UK is indefinite since there is no statutory limit (Amnesty international 2017; Clayton and Firth 2018).

Home Office guidance advises against the detention of asylum seekers who are designated as 'adults at risk' and may be particularly vulnerable in detention. This applies to applicants who are

- Pregnant
- have been victims of torture
- have a mental health condition or impairment, a serious physical disability
- have been a victim of sexual or gender based violence, including female genital mutilation
- have been a victim of human trafficking or modern slavery
- have post-traumatic stress disorder
- have serious physical health conditions or illnesses
- are aged 70 or over
- are a transsexual or intersex person (Home Office 2018e; Home Office 2014a; House of Commons 2018b)

It should be noted that the above grounds are not prohibitive of detention but should be taken into account when decisions to detain asylum seekers are taken (Home Office 2018e; Home Office 2014a; Right to remain 2018). There is no formal vulnerability assessment procedure and decisions are taken on a case by case basis (Home Office 2014a). Rule 35 of the Detention Centre rules stipulates the review of the suitability for continued detention of vulnerable detainees by doctors in detention centres (Home Office 2014a; House of Commons 2015a; Shaw 2016).

There is no policy against the detention of women (Amnesty International 2017), unless one of the above conditions apply. Similarly, UK law and policy guidance allows the detention of children, including unaccompanied minors, although under the provisions of the Human Rights Act 1998, international human rights instruments and UK law, the interests of the child must be taken into account (Borders, Citizenship and Immigration Act 2009, s 55 Immigration Act 2014, s.5; AIDA 2017; House of Commons 2018b). In a contradictory manner, the absence of care arrangements is one of the criteria that can justify detention, as is the existence of health conditions that give rise to concerns about a person's wellbeing or public safety and health (Home Office 2018d, par 55.6.33). The detention of pregnant women (since 2016) and children, and families with children, is limited by law to 72 hours, or 7 days with approval by the Home Office (AIDA 2017; House of Commons 2018b, detention). According to Home Office documents, unaccompanied children are not generally detained, except in exceptional circumstances such as Dublin returns or if the Home Office believes they are adults (Home Office 2014a). The detention time limit for unaccompanied minors is 24 hours (immigration Act 2014, s5). In general, policies of detention are circumscribed by case law. For example, court decisions have ruled detention of asylum seekers unlawful because no authorised reason was applied (AAM v SSHD [2012] EWHC2567). Domestic and European court decisions, however, has not necessarily challenged the legitimacy of detaining asylum seekers as in the case of *Saadi v. UK* (Clayton and Firth 2018).

The residence of asylum seekers in the UK in terms of accommodation is subject to restrictions, broadly in accordance with the stipulations of the 2003 Reception Directive.

Asylum seekers have freedom of movement within the UK. However, if they are assessed as destitute, under policies of dispersal the Home Office designate their place of residence with no option to refuse the provided accommodation (IAA 1999, s 95; Asylum Support Regulations 2000, regulation 13; AIDA 2017). In addition, UK law allows for reporting obligation to be imposed on asylum seekers as an alternative to detention, such as having to report to Home Office centres across the UK, or to designated police stations, surrendering travel documents and residence requirements (Immigration Act 1971, Schedule 2 par 21; NIAA 2002, s 71; Home Office 2016c).

#### 4.3.1.3 Irregular migrants

Irregular migrants do not, by definition, have a right of residence in the UK. Facilitation of stay is an offence – and has been criminalised long before the transposition of the Facilitation directive (Immigration Act 1971 s 25; FRA 2014). Furthermore, irregular stay is a criminal offence and is punishable by fine of £5000 and/or imprisonment of up to 14 years (Immigration Act 1971, s 24; s 25; Provera 2015). Unlike the EU directive, UK law does not refer to financial profit and does not make space for humanitarian exceptions or the provision of essential services (Provera 2015). In a similar vein, UK law criminalises illegal working (Immigration Act 1971, s 24B; immigration Act 2016, s 34)[9] and bars persons without legal status from entering residential tenancy agreements (Immigration Act 2014 s 21; Aliverti 2016), while the 2016 Immigration Act rendered the eviction of migrants who lose their legal status easier (Home Office 2016d). Since 2014, undocumented migrants are barred from opening bank accounts and obtaining driving licences (Immigration Act 2014, s 40, s 46). The Immigration Act 2016 (s. 44) rendered driving in the UK while unlawfully resident a criminal offence, punishable with a custodial sentence and/or a fine (Harvey 2016). Undocumented migrants are entitled to free emergency health care but are generally barred from accessing public services. Persons and institutions who facilitate irregular stay (through for example employing or renting to undocumented migrants) face both civil and criminal penalties (Aliverti 2016). If not in detention, irregular migrants are subject to immigration bail conditions that may involve a number of reporting responsibilities and restrictions such as restrictions to residence, work, study, curfews and the use of electronic tags to those released from detention (Immigration Act 2016, Schedule 10; Home Office 2018f).

### 4.3.2 Internal control and apprehension measures

While the UK has not transposed EU legal instruments such as the Schengen Borders Code that provide a legal basis for internal control and apprehension measures, domestic legislation provides for an extensive regime of such policies.

Immigration officers have wide ranging powers to search and arrest persons suspected for irregular stay, and to enter and search premises to this aim (Immigration Act 1971, s 28; Borders Act 2007, s 44-46;). Police officers in the UK also have powers to search an arrested person, or a person that has been released but is suspected of immigration offences, their property and since 2016 other premises for the purpose of establishing their identity and immigration status (Borders Act 2007, s 44-46; National Policing Improvement Agency 2011;

[9] Immigration Act 1971 criminalised irregular work in s 24, as failing to observe a condition of leave, while Immigration Act 2016 explicitly criminalised illegal working (Harvey 2016)

Immigration Act 2016). A number of police databases are used for establishing the identity and criminal records of third country nationals (ICIBI 2016b; 2014a). In addition, police officers can check a person against the Schengen Information System for the purpose of identification (National Policing Improvement Agency 2011). API and Exit check data in the Semaphore and ISA databases are used to identify migrants with no legal status or who are in breach of immigration conditions (ICIBI 2018a).

The Employers Directive 2009 has not been transposed, yet in UK law the employment sector is a key area for internal control and apprehension measures. It is an offence to employ a person without legal status, punishable by a fine (IAA 1996, s. 8; IANA 2006, S 15, s 21). The maximum civil penalty in such case is 20,000 for each worker, while criminal penalties include fines and/or imprisonment of up to five years (Aliverti 2016). The Immigration Act 2016 (s 35) extended the criminal liability of employers to 'having reasonable cause to believe' (s 35) that the potential employee is an undocumented migrant. It also extended control powers to searching and arresting undocumented migrants for the offence of illegal working, and to enter and search business premises where illegal working is suspected to be taking place (Immigration Act 1971, s 28; Immigration Act 2016, Schedule 8). In particular, it gives authorities the power to search multiple premises with multiple entries (Schedule 8; immigration Act 1971 s 28D), although this power does not apply in Scotland (par (5); Immigration Act 1971, s 28D (2A)). The Immigration Act 2016 also granted immigration officers powers to enter and search premises for the purpose of checking driving licenses (Immigration Act 2016, s 43).

In what concerns residential tenancies, since 2014 failing to check the status of potential tenants carries a civil penalty of up to 3,000 per lodger (Immigration Act 2014, s 23; Harvey 2016; Home Office 2016d). The Immigration Act 2016 rendered renting accommodation to undocumented migrants, or those landlords who 'have reasonable cause to believe' are undocumented migrants, a criminal offence, punished by up to five-year imprisonment (Immigration Act 2016 s 39; Aliverti 2016). This provision, however, was not implemented at the time of writing in the devolved administrations of Scotland, Wales or Northern Ireland (Liberty 2018).

Other public bodies, such as local authorities and the Inland Revenue, have had the power to provide information related to the status of third country nationals to the Home Office, if asked to do so (Immigration Act 1999; NIAA 2002, s. 129-130; Provera 2015). The Immigration Act 2016 established a *duty* for a wider range of public bodies, including the police, the NHS, schools, universities, marriage registrars and the Gangmasters and Labour Abuse authority to provide such information (Immigration Act 2016, s 55; Home Office 2016e; Harvey 2016; Wemyss 2018). Her Majesty's Revenue and Customs (HMRC) and the national parliaments of Scotland, Wales and Northern Ireland as well as the House of Commons and House of Lords are excluded from these provisions (Immigration Act 2016, s 55; Home Office 2016e; Harvey 2016). Universities are expected to check the immigration status of students and face civil penalties, although with no criminal liability (Aliverti 2016).

Banks are required to check the immigration status of persons opening a bank account (Immigration Act 2014, s 40). Since 2016 they must check the immigration status of third country nationals who already have bank accounts and notify the Home Office if they do not have legal status (Immigration Act 2016, s 45 and Schedule 7). The health surcharge introduced by Immigration act 2014 (s 38-39) has indirectly created responsibilities for the NHS to determine the immigration status of patients (Provera 2015).

## 4.4 Return and Readmission

The UK has not transposed the Returns Directive, on the grounds that it would 'pose a 'risk to national control over how we remove people with no right to be here' (Home Office 2017c letter). Return and detention for the purpose of return are regulated by domestic law and human rights instruments.

### 4.4.1 Deportation and administrative removal

While 'return' is a term employed in EU law, there are three relevant legal terms and procedures in UK law - deportation, administrative removal and voluntary return. However, as Clayton and Firth (2018) note, the terms 'deportation' and 'removal' are sometimes used interchangeably and can also refer to the act of carrying out a deportation.

'Deportation' refers to the enforced removal of third country nationals from the UK when it is deemed 'conducive to the public good' by the Secretary of state or a Court, often after a prison sentence (Immigration Act 1971, s 5 and 6; Right to Remain 2018; Clayton and Firth 2018). If someone has been sentenced to at least 12 months' imprisonment or an offense prescribed by the 2002 Nationality Immigration and Asylum Act, s 72 (4), their deportation is automatically considered to be conducive to public good (Borders Act 2007, s 32; Clayton and Firth 2018). As the 1971 Immigration Act allows for further scope, Home Office guidance has interpreted these provisions to include sentences for gun and drug crimes of any length, consecutive sentences, persistent offending, offences committed outside the UK offences considered by the Secretary of State to have caused serious harm (Home Office 2015b). Further, the Home Office guidance stipulates that 'deportation may be pursued in any case where the Secretary of State considers that the individual's presence in the UK is not conducive to the public good' (Home Office 2015b). Deportation orders issued by the Secretary of State, often following recommendations of courts upon sentencing, are not appealable but can be not issued or revoked on specific grounds – the rights of the person under EU law, the ECHR, the Geneva Convention for Refugees, if the 'foreign criminal' is a minor, under extradition proceedings or cannot be deported on health grounds, or is a victim of trafficking the interests of the community, immigration enforcement or compassionate circumstances (IR 2018, par 390; UK Borders Act s 33; Immigration Act 1971, 3(6); UK Borders act, s 32; Clayton and Firth 2007).

Administrative removal refers to the removal of persons who have entered in a clandestine manner or have no leave to remain in the UK, or their application for such leave has been removed. Grounds for administrative removals emanate from different legal acts. Immigration Act 1971 stipulated for the removal of third country nationals who are refused leave to enter or enter in a clandestine manner (Schedule 2, par, 8 and 9). Under the immigration Act 1999, grounds for removal included overstaying leave to enter or remain, breaking the conditions of leave to enter or remain, and obtaining leave to enter or remain by deception. The distinction between clandestine entrants and overstayers was abolished by the Immigration Act 2014, s 1, which collapsed the grounds of the 1999 act into a single one of a person not having leave to enter or remain while legally obliged to do so (IAA 1999 s 10; Immigration Act 2014, s.1; Clayton and Firth 2018). In the case of asylum seekers, while the law prohibits removal while a claim is being examined, it is only the actual removal that is precluded (NIAA 2002, s 77).

The authorities can still issue removal directions and make other preparatory steps (NIAA 2002 s 77 (4)).

'Voluntary departure' refers to the departure of migrants against whom enforced removal procedures have been issued (Blinder 2017). 'Supervised departure' refers to deportations under Immigration Act 1971 s 5(6) whereby the deportee waives appeal rights and their journey can be paid by the UK authorities (Immigration Act 1971 5(6); Clayton and Firth 2018). In technical terms voluntary departures include Notified (by the departing migrant) Voluntary Departures, Confirmed (by the Home Office) Voluntary Departures and Assisted Voluntary Returns (AVRs) (ICIBI 2015a; Blinder 2018). Assisted voluntary return programmes concern refused asylum seekers and migrants with no legal status, provide cash and or in-kind assistance, and have been implemented by IOM and the NGO Refugee Action between 2011 and 2015 (McGhee and Bennette 2014). They do not apply to deportation cases (Clayton and Firth 2018).

UK law does not prohibit the deportation or removal of either family members or minors. Family members – including civil partners – of persons under deportation procedures are also liable to be deported unless they have legal status of their own or have ceased to be members of the family of the person liable to deportation (Immigration Act 1971, s 5 (3); IR 2018 par 365; Home Office 2015b; Right to Remain 2018). Deportation orders cannot be issued against family members after eight weeks of the deportation of the key family member (Immigration Act 1971, s 5(3)). Administrative removal provisions also allow the removal of families[10] and children (IAA 1999; Immigration Act 2014). Asylum seekers who have arrived in the UK via an EU country are liable to be returned there under the Dublin Regulation, which the UK has transposed into domestic law (Home Office 2017d).

There is no right of appeal against deportations and administrative removals (Clayton and Firth 2018; Right to Remain 2018; BID 2017; Home Office 2014b). They can be challenged in court only after human rights or asylum claims presented by the person to be removed or deported have been rejected by the secretary of state, or if there is an ongoing or new asylum claim or appeal (Right to Remain 2018). In what concerns deportations, the Immigration Act of 2014 limited the human rights grounds that can be considered against the notion of public interest in cases where a 'foreign criminal' has been sentenced to four years or less. These include:

- lawful residence in the UK for most of their life
- social and cultural integration in the UK
- there are significant impediments to integration in the country of origin after deportation
- the person liable to deportation 'has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child', and the effects of the deportation would have a serious impact on them (Immigration Act 2014, s 19, (4) and (5))

The interpretation of key concepts such as 'social integration' and 'unduly harsh' are not defined in law but relies on court cases such as *SSDH v Kamara [2016] EWCA Civ 813* and

[10] Family is defined rather differently in this case: it includes the partner, children, including under the care of the person to be deported, the parents of a person to be deported if they are a child and adult dependent relatives (IAA 1999).

*MAB USA [2015] UKUT (IAC)*. If the deportation concerns convictions of over four years, 'very compelling circumstances' (immigration Act 2014, s 19, (6); also IR 2018, par 391) must be present, in addition to the above grounds, for it to be challenged. Again, the interpretation of very compelling circumstances relies on Court decisions (Clayton and Firth 2018), while the IR designate deportation as 'the proper course' (IR 2018, par 391).

However, a removal decision can be made while an appeal is pending (NIAA 2002, s 92; IANA 2006, s 47). In general, appeals against deportations or removals can be heard only from outside the UK, unless they involve asylum appeals or human rights grounds (NIAA 2002, s 92; Home Office 2018g). The Secretary of State has powers to certify appeals on human rights grounds unfounded (NIAA 2002 s 94). Immigration Act 2014 further strengthened these powers by stipulating that the Home Secretary could certify appeals on the grounds that the deported person would not face a risk of irreparable harm in the country of removal (Immigration Act 2014, s 117 (c); NIAA 2002 s 94B; Clayton and Firth 2018). The above grounds do not mean that deportation or removal won't be affected, and in essence appeals are likely to be heard after deportation or removal (Home Office 2015b). In the case of Dublin returns, while the Dublin Regulation allows for appeals, EU member states are designated as safe third countries for the purposes of return (AITCA 2004; Home Office 2017d). Therefore, the Home Secretary can certify the case as clearly unfounded, removing any in-country rights to appeal (AITCA 2004; Home Office 2017d).

Judicial review is in most cases the main legal route to challenge both decisions to deport or remove as well as their implementation (Clayton and Firth 2018). Judicial reviews are normally heard in the Upper Tribunal or High Court and consider the lawfulness of Home Office decisions to deport or remove and if so request that the Home Office reviews their decision (Right to Remain 2018). In Dublin cases, judicial review can be exercised against the certification as unfounded and the designation of a third country as safe (Home Office 2017d). Courts may issue injunctions to prevent a removal from being carried out (Home Office 2018h; Home Office 2018i). They are not however, a guarantee that a deportation or removal will not take place, as they do not have a blanket suspensive effect, or the outcome may uphold the original decision (Home Office 2018i; Right to Remain 2018). Another avenue for preventing removal is seeking an injunction under Rule 39 of the European Court of Human Rights (Home Office 2018h).

The person liable to be deported must be issued with a notice (IR 2018, par 381; Home Office 2018h; NIAA 2002 s. 120). In the case of administrative removals, before 6 April 2015 the Home Office notified a person that they are liable to be removed and the country to which they will be removed; after this date there is no a legal requirement to do so (Home Office 2017e; ICIBI 2015a; Right to Remain 2018). Notifications include all information relevant to a case and inform the person liable to deportation or removal of deadlines to present their argument why they should not be deported (NIAA 2002 s 120; Home Office 2017e). Removal in the sense of the carrying out of the order can be effected to the country of nationality, 'a country or territory to which there is reason to believe that he will be admitted' which can be a country that has most recently provided the person under deportation order with travel documents (Immigration Act 1971, Schedule 3, par 1; IR, par 385). While medical conditions and pregnancies must be taken into account, but they do not preclude removal (Home Office 2018h). In Dublin cases, the Home Office must request return to an EU state within two months from obtaining a Eurodac 'hit' or one month if the asylum seeker is in detention (Home

Office 2017d; Right to Remain 2018). If another country accepts responsibility, removal must take place within 6 months (Home Office 2017d; Right to Remain 2018). In the case of children and family members under administrative removal, the removal cannot be effected for 28 days until appeal rights have been exhausted and the removal of a parent/carer would mean that 'no relevant parent or carer would remain in the United Kingdom' (NIAA 2002 78A; immigration Act 2014 s. 2; Home Office 2019b).

Re-entry bans vary in length depending on the legal process followed and the immigration offences involved (Home Office 2017f). Entry bans following administrative removals range between one and five years, depending on whether the person removed left voluntarily, how soon after the removal decision they left, whether they left on their own expense or not and the immigration offences involved (Home Office 2017f). Deportation orders carry a ten-year entry ban (IR 2018 par 362; Clayton and Firth 2018; Home Office 2017f). Children that have been deported as family members can be readmitted to the UK after they are 18 and spouses or civil partners after the end of a marriage or civil partnership (IR 2018, par 389). Revocation of a deportation order does not automatically allow for the right to re-enter the UK (IR 2018, par 392).

### 4.4.2 Detention

Powers to detain for the purpose of removal are rooted in the immigration Act 1971 as amended by the immigration and Asylum Act 1999. These allow for the detention of persons when there are 'reasonable grounds for suspecting' that they might be removed (Immigration Act 1971 Schedule 2 par 16(2)). This provision grants the UK authorities considerable discretion to detain migrants even when a removal or deportation decision has not been issued (Clayton and Firth 2018). In the case of deportation orders, there is an automatic duty to detain, unless it is decided as inappropriate by the Secretary of State (UK Borders Act s 32(5), s 36 (2); IR 2018, par 382). In such a case, other restrictive measures may be applied, such as limiting a person to a 'residence, employment or occupation, and requiring him to report to the police, pending the making of a deportation order' (IR par 382).

Similar to asylum-related detention, in addition to a realistic prospect of effecting removal, the criteria for decisions to detain are not provided in law but in policy guidelines issued by the Home Office (Home Office 2018d, par 55.1 Ch 55). The legal and policy framework concerning 'adults at risk', children and families is that discussed in section 4.3.1.2. There is no right of appeal against removal-related detention (Clayton and Firth 2018). As with decisions to deport or remove, the only option is judicial review (Clayton and Firth 2018; House of Commons 2017a). Provisions under the 1971 Immigration Act, which allowed First Tier Tribunal judges to release detainees on bail, were limited by the Immigration Acts of 2014 and 2016. The Immigration Act 2014 prohibits granting bail if there are removal orders and the removal is scheduled within 14 days and prohibits the hearing of a bail request within 28 days from the previous one (Immigration Act s 7; Amnesty International 2017). Before the enactment of the Immigration Act in 2018, detainees could be released on temporary admission, temporary release on bail and release on restrictions (Muzira 2018; Right to Remain 2018). The 2016 Immigration Act unified these regimes into the status of immigration bail, which can be granted by a first -tier tribunal, the home secretary or a chief immigration officer (Schedule 10, par 1; House of Commons 2018b). It further introduced a wide -ranging regime of reporting obligations including restrictions to residence, curfews and the use of electronic tags to those released from detention (Immigration Act 2016, Schedule 10; Home Office 2018f).

Detention takes place in 'Immigration Removal Centres' (IRCs) as well as prisons in the case of migrants with criminal convictions waiting to be transferred to IRCs and those considered a security risk (NIAA 2002; House of Commons 2018b detention; Home Office 2014a). Their operation, including the duties and responsibilities of personnel, is regulated by UK law and the 2001 Detention Centre Rules (IAA 1999; NIA 2002; Home Office 2001). There are currently 8 IRCs[11], two short term holding facilities (in Northern Ireland and Manchester) and one pre-departure centre aimed at families (formerly Cedars and now Tinsley House) (House of Commons 2018b). In addition, there are short term detention sites in the juxtaposed controls areas in Calais, Dunkirk and Coquelles (Boswell 2016). There is no women-only IRC, although Yarl's Wood is predominantly for women detainees and families (Yarl's Wood 2019). Apart from two centres operated by the Prison Service, the operation of the rest has been outsourced to private companies (Clayton and Firth 2018; Shaw 2016). Depending on the facility, independent reviews are undertaken by the HM Inspectorate of Prisons, ICIBI and monitoring boards (House of Commons 2018b).

### 4.4.3 Readmission

The UK has opted into 14 out of the 21 current EU readmission agreements - Albania, Bosnia-Herzegovina, FYROM, Georgia, Hong Kong, Macao, Moldova, Montenegro, Pakistan, Russia, Serbia, Sri Lanka, Turkey and Ukraine (European Parliament 2018; Home Office 2014c). In addition to the EU readmission agreements, the UK has bilateral arrangements in the form of Memoranda of Understanding (MoU) with six countries: Jordan, Libya, Lebanon, Ethiopia, Morocco and Afghanistan (House of Commons 2017a; UNHCR 2002). It further has an agreement with Algeria in the form of exchange of letters (House of Commons 2017a).

Bilateral arrangements were an effort to bypass constraints by human rights obligations, in particular article 3 of the UN convention against torture and article 3 of the ECHR in an increasingly securitised and hostile context. These were upheld *Chahal v UK* judgment of the ECtHR, which found the UK in breach of these articles in the deportation case of a Sikh separatist (House of Commons 2017a).

# 5. Key narratives of migration control

Since the 1990s, political discourses on migration in the UK have been characterised by hostility directed in particular to unauthorised migration and migrants, including asylum seekers and refugees (Anderson 2013; Gabrielatos and Baker 2008; Bennet 2018; Jones *et al* 2017). Unauthorised migration has been constructed through narratives of illegality, burden, abuse and threat (Anderson 2013; Bennet 2018; Bosworth 2008; Gabrielatos and Baker 2008; Mulvey 2011; Jones *et al* 2017; Stewart and Mulvey 2014) which legitimate the introduction of ever increasing border management and control measures to prevent unauthorised arrivals.

## 5.1 Controlling migration

The analysis of texts for this report suggests that controlling migration is presented as an imperative for the British government (n=19), which is a long -established trope in British

[11] Two centres, Dover IRC and Haslar IRC, closed in 2015.

political discourse on migration (Bosworth 2008; Capdevilla and Callaghan 2008; Mulvey 2011). In the words of PM May, 'we *must* […] have an immigration system that allows us to control who comes to our country' and control the country's borders (The Independent 2015; also Home Office 2017g; 2015c). Commenting on the 2015 migration movements and the introduction of internal border controls in Schengen, she presented border controls at the national level as the only appropriate response:

> To those who say the problem is too great for nation states to resolve themselves, I say it can only be resolved by nation states taking responsibility themselves – and protecting their own national borders. (The Independent 2015)

While on occasion, documents mention the participation of the UK in joint control efforts in the Mediterranean (Home Office 2015d; 2015c), controlling borders and migration is conceptualised as a right of the state and an activity guided by the national interest, which is presented as being at odds with EU policies (Home Office 2016f; Bennet 2018). While some of documents examined correspond to the 2015 events, there is a limited use of the frame of crisis (n=2), which is linked to development in other European countries (Home Office 2016f). One interpretation is that the UK is seen as far removed from Southern European borders (Home Office 2016f). Another explanation is the desire of the Conservative government to appear in control of migration, in contrast to the crisis discourse of other political actors, especially during the Brexit referendum (Bennet 2018).

Narratives of migration control incorporate a number of tropes. First, they are concerned with preventing entry, a core notion of migration control (Anderson 2013; Boswell 2011). The aim of 2014 Immigration Act, according to a press release is to 'limit the factors which draw illegal immigrants into the UK' (Home Office 2014d), while the aim of controls at Calais is 'to deter migrants from entering Britain' (Home Office 2016f; see also Home Office 2013a; 2013b; 2011a). Another stated aim of control is to reduce net migration (Home Office 2013c; 2012b; 2015e; 2017h), which reflects another key theme in British politics of migration, the preoccupation with the numbers of migrants arriving or staying in the country (Anderson 2013; Mulvey 2011).

## 5.2 Securing the border

The notion of the border features heavily in constructions of controlling migration. Border management and migration control measures introduced by the government are directly linked with a 'safe' and 'secure' border that needs to become even more so (Home Office 2012c; 2015e). The establishment of the Border Force, for example, was argued to make the UK border 'amongst the safest borders in the world' (Home Office 2012d) while the opt in to the PNR directive is justified on the basis that PNR data is 'a vital tool in securing our borders' (Home Office 2011b). The juxtaposed border is again a key area, where the government 'invested tens of millions of pounds to bolster security at the ports' (Home Office 2016g; 2016h; 2011a). Thus, there is a close association between the border – which includes less tangible forms such as e-borders - and the notion of security (Vollmer 2019). The maintenance is an ongoing project requiring continuous policy efforts – the border is to become 'more secure' (Home Office 2016i; 2015e; 2016h). Border management and control policies are thus constructed as essential to protect the country against threats.

> A safe and secure border means not just better immigration control, but safer streets and more secure citizens. There can be no compromises on border security. In a dangerous world, our border is one of our main protections (Home Office 2012c).

## 5.3 Narratives of illegality and threat

The perceived need to control the border and migration is legitimated by a number of narratives of implicit or explicit threats and illegality. Perceptions of threat are also supported by a narrative of illegality. The label 'illegal immigrants' is used extensively (n=20), while there is little evidence of use of more neutral labels such as 'irregular or 'undocumented' migrants. Migrants stopped at the border or beyond it are designated as 'illegal' (Home Office 2011a; The Independent 2015), notwithstanding whether they are seeking protection. 'Illegal (im)migration' is directly linked to smuggling – including in references to the 2015 migration movements – organised crime and terrorism (Home Office 2015c; Home Office 2015d). According to a 2011 press release, it must be 'tackled' along with 'the criminal gangs behind it' (Home Office 2012e; similarly, Home Office 2015f). Migrants arriving at the border without appropriate documentation are depicted as 'a security risk as individuals wishing to come here for organised crime of terrorism purposes may view this as a potential method of entry' (Home Office 2013d). Thus, terrorism and crime are constructed as interconnected with unauthorised migration movements, feeding into processes of securitising migration in the UK context (Boswell 2008; Squire 2015).

In other documents constructions of threat pertain to broader conceptualisations. Prime Minister May for example mentioned effects of migration 'on social cohesion, on our infrastructure and public services, and on jobs and wages' to argue that it's important that we do control immigration.' The use of 'we' in her statement creates an impression of consensus (Wodak *et al* 2000; Van Dijk 1993), while the statement evokes threats to the economy, societal security and ethnic relations – suggested by the term social cohesion – and commonly shared resources. In another press release, 'illegal working' is argued to 'cheat the taxpayer, has a negative impact on the wages of lawful workers and allows rogue employers to undercut legitimate businesses' (Home Office 2017i; see also Home Office 2015c). While the theme of cultural threat does not feature prominently in the selected documents – it is mostly associated with integration – the themes of burden and economic threat reflect the emphasis placed on internal control measures targeting irregular employment.

## 5.4 Narratives of abuse

While the theme of abuse has been predominantly associated with asylum seeking in the British context (see Gabrielatos and Baker 2008; Tyler 2013; Mulvey 2011), it is also evident in relation to migration controls, with migrants depicted as 'abusing' policies of control – ranging from entry requirements to removal procedures (Home Office 2011c; 2012b; 2014e; 2012f; e 2011d Green). One particular variant concerns the perceived abuse of the appeals system:

> Should immigration detainees who have already been refused bail be permitted to make repeat applications day after day? The Bill will bring sense to the law in this area and stop this abuse (Home Office 2013c; also Home Office 2015g).

Constructing the use of appeals rights against detention and removal betrays a hostility towards regimes of rights. In a 2014 speech, the then Home Office minister, T. May, stated that:

> We have changed the law to make clear to the courts that Article Eight of the European Convention on Human Rights, the right to a family life, is a qualified and not an absolute right. We have changed the law to reduce the number of appeal rights in immigration law from seventeen down to four (Home Office 2014f).

The tension between what is seen as imperative to control migration and regimes of human rights and international protection is a recurring theme in the documents analysed here, and the broader politics of migration in Britain (Anderson 2013; Mulvey 2011; Tyler 2013). Applying for protection, for example, is seen as a way to frustrate the process of removal, while the detention of asylum seekers 'is an essential tool to help the agency process asylum claims quickly and effectively' (Home Office 2012f).

## 5.5 Protecting the public

Another legitimating narrative consists of arguing that migration controls protect the public – which includes citizens but sometimes also 'deserving' migrants – from threats posed by migration (n=13). The following quote from a David Cameron 2015 speech exemplifies this trope:

> I said on the steps of Downing Street we would be a 'one nation' party. That means governing for every single person in Britain: for the mum worrying about her child getting a school place; for the pensioner fearing he won't get the hospital appointment he needs; for the Asian family whose business is being undercut by illegal traders; for the young couple praying that someone won't jump ahead of them on the housing list and yes – for the migrants trafficked here to live in appalling conditions on pitiful wages. We are for them. We are for working people. For them, we will control immigration (Home Office 2015c).

Evoking various perceived threats faced by the public, Cameron depicts the government as their defender though controlling migration. While the above statement builds an inclusive body of people to be protected – regardless of class, ethnicity and migration status – other statement are less so, referring for example to 'governments' that 'must exercise greater vigilance to keep their citizens safe from harm' (Home Office 2011b). Such narratives thus reproduce national sovereignty, whereby the state is perceived as the protector of citizens (Castles 2003; Soguk 1999). References to the 'public' are also an entrenched trope in British political discourse that helps legitimate border and migration controls, and more specifically policies hostile to migration, by evoking the 'will of the people' as a source of legitimacy for government actions (Capdevilla and Callaghan 2008; Mulvey 2011).

# 6. Implementation

## 6.1 Actors

The Home Office is the Ministry that has overall responsibility for border management and migration control. Different agencies within the Home Office have responsibility over implementing different aspects of border and migration controls, frequently in cooperation with other state and non-state actors.

- Border checks are currently conducted by the Border Force, and until 2012 the UK Border Agency.
- Border Surveillance measures are conducted by the Border Force. Sea surveillance measures are also implemented by the Maritime and Coastguard Agency and the Royal Navy.
- The Home Office Visas and Immigration service oversees the visa application and entry clearance process as well as asylum related control functions such as the DFT and later Asylum Detention Casework.
- Home Office Immigration Enforcement is responsible for internal control measures and removals. A number of subdivisions have responsibilities over specific aspects of implementation, such as the Family Return Panels, Immigration and Compliance Enforcement (ICE) teams, Detention Case Work teams.

A number of other state agencies and public services are involved in the implementation of internal controls and apprehension measures, such as:

- Police forces
- The National Health Service (also responsible for commissioning healthcare in IRCs
- The Department of Education, schools and universities
- The Department of Work and Pensions
- Local Authorities, in particular social services
- Her Majesty's Revenue and Customs (HMRC)
- The Driver and Vehicle Licencing Authority (DVLA)

There is limited involvement of IGOs in border management and migration control, with the exception of IOM which implements assisted return programmes. Likewise, the (at least formal) involvement of NGOs is limited, partly as many are reluctant to co-operate with the Home Office and 'hostile environment' policies (ICIBI 2016c). Two exceptions were Barnardo's, a children-focused charity, which ran the now closed Cedars Immigration Removal Centre [IRC], and Refugee Action which ran an AVR programme between 2011 and 2015 (Compas 2014; ICIBI 2015a).

In contrast, there is extensive involvement of for-profit actors in all aspects of implementing border management and migration control policies, under outsourcing contracts with the Home Office.

- In what concerns pre-entry controls, visa applications are processed by a private company, currently VFS Global.

- Private contractors (Tascor and Eamus Cork solutions) operate detention facilities at control zones in Calais (Boswell 2016).
- Airlines operating both scheduled and charter flights are involved in API/PNR policies, as well as in removals (Corporate Watch 2018).
- The Voluntary Returns hotline is run by Capita (ICIBI 2015a).
- Security service companies such as G4S and Serco have been involved in running IRCs and removal operations (Corporate Watch 2018). Escorts for removals have been provided by Tascor (a subsidiary of Capita) and Mitie (ICIBI 2016c; Corporate Watch 2018).
- Healthcare providers such as G4S Med-Co Secure and Tascor provide health services in detention centres (Shaw 2016; BMA 2017).
- Travel agency Carlson Wagonlit Travel has provided tickets for removal flights (ICIBI 2016c; Corporate Watch 2018).

Private actors such as employers, banks and landlords have distinct responsibilities in implementing internal controls as discussed in section 4.3.2.

## 6.2 Key issues in implementing border and migration controls

### 6.2.1 Pre-entry

The implementation of visa policies is beyond the scope of this report as it primarily concerns legal migration. From the perspective of allowing entry to the UK for the purpose of seeking protection, the complex system of visas for pre-admission – which in many instances does not constitute a guarantee that a person will be granted leave to enter at the border – renders access to the UK extremely difficult. While the PBS and family visas cater for economic and family migration respectively, both these categories and in particular visitor visas were informed by the policy aim to prevent unwanted immigration and asylum seeking (Clayton and Firth 2018; Partos and Bale 2015).

One of the key issues regarding the implementation of carrier sanctions policies concerns the role of staff who implement migration controls and may be called to make decisions affecting access to UK territory, without necessarily having the training or expertise to consider human rights obligations (Nicholson 1987; Clayton and Firth 2018). According to formal Home Office guidance they are not expected to act as immigration officers, although in practice such decisions have an impact on access to protection and safety (Bloom and Rise 2014; Scholten 2015). Other implementation issues touch on the relation between state authorities and private actors. Changes to the level of penalties were opposed by carriers and criticised by the UK Regulatory Authority (Baird 2017; Regulatory Policy Committee 2013). Although the Home Office sought to increase fines through a consultation process in 2012 (EMN 2012; Home Office 2012g) there is no evidence that the proposed changes were carried through.

While there is little information on the activities of Immigration Liaison Managers, Scholten (2015) has argued that while their role is advisory and they cannot make decisions on allowing passengers to embark, their advice tends to be followed by airlines. The regime of carrier sanctions acts as a further contributing factor for carriers to preventing embarkation while

passengers have no right to appeal ILM's or carriers' decisions. Consequently, it has significant implications for reaching UK territory and applying for protection (Scholten 2015). There are also concerns regarding the dual role of ILMs in controlling migration but also being involved in crime prevention and enforcement activities (Home Office 2016j; 2012a).

In what concerns the implementation of API and passenger information provisions, issues have been raised in relation to the Home Office's system *Semaphore*, which is used to manage API & PNR data (NAO 2017; Police Scotland 2018). The system is used to check for information on 'persons of interest', including those who are deemed to pose a threat to national security (ICIBI 2018a; NAO 2017:15; Police Scotland 2018). Despite its many failures (ICIBI 2018a; The Guardian 2015) it can thus be used to prevent entry if, for instance, a person seeking international protection, is also identified as a 'person of interest' in *Semaphore*. Further, while it is presented as a border control instrument, police forces have access to it (Police Scotland 2018), illustrating the nexus between border management and migration control activities on the one hand, and law enforcement of the other.

### 6.2.2. Border checks and surveillance

UK law does not stipulate a border asylum procedure and asylum applications are submitted and examined by the Home Office Visas and Immigration inland (AIDA 2017). Thus, there is little information on the impact of border or entry checks on access to international protection, while official bodies such as ICIBI and National Audit Office inspections are largely concerned with security and customer relations issues (ICIBI 2018b; 2018c; 2017a). Yet, some reports note inadequacies in the manner that Border Force personnel address potential vulnerable migrants such as child victims of trafficking, who might have claims to international protection (ICIBI 2018c; 2017a). The Exit Checks system introduced in 2015 was criticised by ICIBI for weaknesses in data collection but after an initial pilot phase it was rolled out by the Home Office (ICIBI 2018a; Home Office 2018j).

The implementation of border management policies and border checks in the context of 'juxtaposed controls' has, however, along with pre-entry measures, significant impact on the possibility of accessing UK territory for asylum (AIDA 2017; Migration Observatory 2014). Juxtaposed controls explicitly target unauthorised migration into the UK (Bosworth 2016; Clayton and Firth 2018; Home Office 2017b). UK border control arrangements in cooperation with the French authorities, including the dismantling of camps, practices of detention, and 'handing over' asylum applicants to French authorities, have had a significant impact in restricting the possibility of applying for international protection in the UK (Mc Donnell 2018; Reinisch 2015; Welander 2019). Further, one of the effects of implementing policies of juxtaposed controls was the displacement of migration movements to other routes – through Belgium, other areas of France - rather than succeeding in preventing entry to the UK (ICIBI 2018b; House of Commons 2016a). Other issues related to implementation have been a lack of procedures for responding to vulnerable groups, including unaccompanied minors (Bosworth 2016; Interview, Just Right Scotland), shortcoming in terms of documenting decisions regarding entry and detention (ICIBI 2013a) and a lack of cooperation from the French authorities (House of Commons 2016a).

In response to the 2015 'crisis' – concerning mainly the camps in Calais - the government decided to strengthen control and surveillance measures through increased investment and

deployment of police in control zones (House of Commons 2016b; 2017b). While powers of maritime surveillance increased by the Immigration Act 2016, the implementation of these provisions appeared to be hindered by a lack of resources such as patrol vessels (House of Commons 2016b; 2017b). UK vessels participated in the EUNVFOR MED and Sophia operations (House of Commons 2016a) as part of the UK's cooperation with Frontex.

## 6.2.3 Internal controls: Stay, internal control and apprehension measures

### 6.2.3.1 Stay

In relation to conditions of stay of recipients of international protection, a report by the Chief Inspector of Borders and Migration found significant inconsistencies in the application of cessation and revocation provisions by two different Home Office units involved in the process, the Status Review Unit and the Cancelation Cessation and Revocation (CCR) team with criminal Casework (ICIBI 2017b; McKinney 2018). While the first withdrew protection status in 25 cases between January 2015 and March 2017, the latter, which has responsibility over migrants who have committed criminal offenses, did so in 309 cases (McKinney 2018). The discrepancy illustrates that safety in the country of origin is interpreted differently by caseworkers, and that CCR prioritised considerations of criminality and security, and removed refugee status even for minor offences (McKinney 2018). This has significant implications, as it renders individuals liable to be removed (ICIBI 2017b). The report also noted the absence of communication between the two units (ICIBI 2017b). Other implementation problems have included delays and errors in issuing the Biometric Residence Permits attached to the 5-year leave to remain status (APPG 2017; British Red Cross 2014). In what concerns travel documents, the Home Office has on occasions denied their issuance on the grounds of security threats, but without these being communicated to the applicant or their legal representatives (Wilsons 2017).

The detention of asylum seekers under the Detained Fast Track system was criticised for prioritising administrative convenience over both legal stipulations and human and asylum rights considerations (House of Commons 2015a; Liberty 2019; Shaw 2016; Interview, Asylum Welcome) and was suspended in 2015 after legal challenges. Practices of detention are often contradictory to the Home Office guidance discussed in section 4.3.1.2 (AIDA 2017). Analysis of casework decisions by Amnesty International has shown that factors that would weigh against detention – such as a realistic chance of removal, experiences of torture, health and mental health conditions or the welfare of children – are disregarded in decision making processes, at odds with the Home Office's Adult at Risk Policy (Amnesty International 2017; AIDA 2017). Given the wide-ranging powers to detain with a view to removal, asylum seekers can be detained for the duration of their claims (Clayton and Firth 2018). Women asylum seekers are regularly detained even despite being victims of gendered and other forms of violence (Asylum Aid 2018).

In what concerns migrants with no legal status, the further curtailment of rights introduced under the 'hostile environment' policy did have significant effects in producing illegality. This was the case, for example, with the Windrush Scandal, whereby long-term residents and citizens were illegalised by both changes in legislation but also the implementation of checks

by employers, the NHS and other public authorities. Communication of information between the Home Office, DWP and employers has a significant impact on the livelihood of irregularly employed migrants, facing destitution because of their status (Liberty 2018). However, research has demonstrated that despite the expansion of bordering practices and controls, migrants with no status adopt strategies that allow then to work and live in the UK, albeit in conditions of insecurity and rights violations (Bloch, Sigona and Zetter 2014; Duvell, Cherti and Lapshyna 2018).

#### 6.2.3.2 Apprehension and internal control measures

In terms of enforcement, the expansion of apprehension and internal control measures since 2014 has been characterised both by implementation problems and human rights issues. Cooperation between Home Office and the Police has been established for a longer period than with public agencies and combined apprehension measures performed by the police – such as raids, stop and searches and ID checks – with the Home Office policy aim of expanding deportation and removal (Home Office 2016k; House of Commons 2017a). The flagship project of this category was Operation Nexus, which started in 2012 in London and was gradually implemented in other areas of the UK (House of Commons 2017a; ICIBI 2016b; 2014a). It targeted 'foreign offenders' who were arrested or identified as 'high harm' – a term referring to conduct that 'incurs significant adverse impact, whether physical, emotional or financial, upon individuals or the wider community' (Duvell, Cherti and Lapshyna 2018). This definition was criticised for vagueness that led to a focus on low-level criminality as well (Home Office 2015b; Ikegwuruka 2017). In fact, the Home Office response to the ICIBI report indicated that interpretations of 'high harm' differed among police forces (Home Office 2016k). However, a legal challenge to Operation Nexus was unsuccessful, as the court upheld the legality of using police enforcement powers for immigration purposes (House of Commons 2017a).

The impact of initiatives such as Operation Nexus and the broader statutory obligations for cooperation between the Home Office and the Police was illustrated by one of the stakeholders:

> the lady who's staying with me at the moment was also picked up and taken to Dungavel and that was very shocking because she was being interviewed by the police and […] and another woman had accused her of pushing her, or something, and the police interviewed her and they said, well, oh, this seems like nonsense, it's just two women falling out. You know, there's nothing to it. And then they said to her, you know, and where do you live […] then it came out that she was a failed asylum seeker, and they phoned the Home Office. (Interview, Maryhill Integration Centre)

Similar to the criticisms raised in relation to operation Nexus, this example illustrates involvement with police, even for insignificant events, can lead to detention and potentially deportation.

Measures concerning 'illegal working' have been equally contentious. A pilot operation conducted in 2014, 'Skybreaker' was ostensibly focused on community engagement, with emphasis placed on informing employers of their legal obligations, rather than immigration enforcement (ICIBI 2015b; Yuval-Davis, Wemyss and Costello 2018). According to the Home Office, it increased voluntary returns. Yet, this objective was seen by ground -level personnel

as ‘cost-cutting’, undermining the aim of immigration enforcement (Yuval-Davis, Wemyss and Costello 2018: 234). Further, Operation Skybreaker took place in some of the most ethnically diverse boroughs in London, raising concerns over racism and the impact on local communities (Yuval-Davis, Wemyss and Costello 2018; Duvell, Cherti and Lapshyna 2018). Operational guidance given by the Home Office was deemed insufficient and unclear by ICIBI (2015b), which also raised concerns over the adherence of ICE officers to legal requirements and guidance, including the use of warrants, informed consent to entering premises, apprehending ‘suspects’, enforcement powers such as questioning and handcuffing, safeguarding and record-keeping (ICIBI 2015b; Duvell, Cherti and Lapshyna 2018; Liberty 2018). Other criticisms raised concern the use of intelligence which often consisted of unreliable and incomplete information given by members of the public (Duvell, Cherti and Lapshyna 2018; ICIBI 2015b). Further, employers, especially small businesses, do not necessarily have the resources or knowledge to implement the type of checks required by law, prioritise economic considerations, or even oppose migration control measures (Duvell, Cherti and Lapshyna 2018). While civil penalties concerning illegal working have increased, they are not always collected by the Home Office or reduced in contradiction to existing guidance (Aliverti 2016; House of Commons 2016c; ICIBI 2015b).

Another flagship ‘hostile environment’ policy, the obligation imposed on landlords to check immigration status, resulted in 265 civil penalties by 2017, but has been characterised by miscommunications among Home Office divisions responsible for implementing it, insufficient guidance and consequently knowledge of the policy by implementing divisions, lack of meaningful engagement and communication with landlords, and insufficient evaluation and monitoring. (ICIBI 2018d). More importantly, migrant support organisations raised concerns over the potential for discrimination by landlords and effects on homelessness (ICIBI 2018d; Duvell, Cherti and Lapshyna 2018). In 2019, the High Court confirmed the validity of those concerns, ruling that the Right to Rent scheme was unlawful and incompatible with the Human Rights Act 1998 (The Guardian 2019). Similarly, the implementation provisions concerning bank accounts and driving licenses bans were characterised by errors, leading to penalisation of persons wrongly identified (House of Lords 2018a; ICIBI 2016a).

The implementation of the provision for the public sector to provide information to the Home Office has been particularly contentious. In practical terms, it has taken the form of data-sharing arrangements between the Home Office and other ministries or agencies. The Department of Education entered such an agreement in 2015 obliging schools to provide it with data on the nationality of students (Home Office 2015i; Guardian 2016; Liberty 2018). While this was ostensibly for educational purposes, it allowed for the DfE to pass on information to the Home Office which could be used for enforcement (Guardian 2016; Liberty 2018; House of Lords 2018a). The agreement was scrapped in 2018 after public outcry (The Guardian 2018b). A similar memorandum of understanding was entered with the NHS concerning the sharing of immigration data of patients and was again withdrawn in 2019 (Home Office 2016l; 2019c; Wemyss 2018). A participant who worked for two major destitution and healthcare focused NGOs observed that recent legal changes were

> extending borders into social work and healthcare […] And that was something we definitely saw in social work, working with social workers in X and having real concerns about information sharing between the local authority and the Home Office […] I know it happens in education and police, but I think social work would be the one that is

actually most frightening because of the implications it has for children and potentially parents […] (Interview, Red Cross former employee)

Similarly, an ICIBI report on such arrangements demonstrates that information was passed between agencies and the Home Office, despite the unclear aims of such arrangements and major concerns regarding their impact on migrants' – and in the case of Windrush generation, citizens' rights – and the practices of the Home Office vis-à-vis cooperating partner authorities (ICIBI 2019a). However, responses by the Home Office in the ICIBI report suggest that such arrangements have been scaled down or amended rather than stopped (ICIBI 2019a).

While the measures discussed above primarily targeted migrant populations deemed deportable, they are also exercised on asylum seekers. While there is no prohibition to travelling within the UK (see section 4.3.1.2), the Home Office has tracked journeys made by asylum seekers outside their city of dispersal through their use of the 'Aspen' card – the debit card which contains the allowance provided to asylum seekers. Subsequently, asylum seekers had benefits removed as a penalty for breaking rules attached to the provision of accommodation and income support (The Independent 2019; Right to Remain 2019).

## 6.2.4 Return, readmission and detention

### 6.2.4.1 Return and readmission

There are two broad areas of issues raised in relation to the implementation of deportation and removal law and policy, touching respectively on efficiency and human rights issues. Reports by formal scrutiny institutions and parliamentary committees largely emphasise the organisational and logistical inefficiencies related to the perceived imperative of deporting 'foreign criminals' or persons without legal status (House of Commons 2017a; 2015b; NAO 2015; ICIBI 2015a), rather than the human rights implications of removal[12]. In fact, these reports considered human rights instruments and appeal provisions as impediments to powers to deport or remove (NAO 2015).

Poor communication and cooperation among Home Office divisions and different understanding of policy priorities have been argued to undermine the implementation of removals policies and increase costs (Duvell, Cherti and Lapshyna 2018; NAO 2015; ICIBI 2015a; House of Commons 2015b). For example, Noticed and Confirmed removals were prioritised over assisted returns in an effort to meet targets, despite the fact that enforced removals are generally costlier than voluntary returns (ICIBI 2015a; IPPR 2013). Cooperation between the Home Office and the police – in their capacity of identifying migrants liable to deportation or removal – have also been criticised (NAO 2015). Lack of cooperation from third countries – for example in issuing travel documents – was identified as another factor

[12] For example, the ICIBI report on removals (2015) criticises the Family Returns process for prioritising 'easier' family cases over complex refused asylum seeker families cases, without referring on human rights issues or risks upon return.

preventing the implementation of deportation and removal policies (House of Commons 2017a; NAO 2015).

The capacity of the Home Office to manage efficiently the removal system has frequently been called into doubt (ICIBI 2016c; House of Commons 2016b; House of Commons 2015b). One of the frequently repeated criticisms is the reliance on incomplete or low -quality data (Migration Observatory 2016; House of Commons 2015b). Administrative deficiencies and lack of capacity were seen as preventing the full use of deportation and removal powers and resulting in delays in removal processes (House of Commons 2015b; 2017a; NAO 2015). Lack of clear Home Office guidance in certain areas – such as how to deal with 'non-compliant children' – is identified as affecting implementation (ICIBI 2015a:6). In a similar vein, one of the interviews stakeholders, a NHS doctor, expressed the belief that Home Office do not have the capacity to implement removals to the extent they wish to (Interview, doctor, NHS).

The involvement of for-profit actors through outsourcing contracts has been contentious, noting the failure of the Home Office to manage the process effectively or supervise the activities of the private contractors (ICIBI 2016c). The private contracting of removal flights tickets and escorts for example, both increased costs and delayed removal schedules because of the lack of coordination (ICIBI 2016c). According to data released under Freedom of Information requests, the number of people removed through charter flights is significantly lower than originally planned (Home Office 2018k; Home Office 2016m).

The politically-led drive for increasing returns has translated into both law and policies that often disregard human rights. UK law on deportation and removal leaves a lot of discretion to the executive, in this case the Home Office, to interpret and implement legal provisions. The interpretation of the right to family life under Article 8 of the ECHR is, at a first stage, the remit of the Home Office. Although UK courts elaborated in cases such as *RU (Bangladesh) v SSDH* and *Masih (deportation-public interest-basic principles) Pakistan [2012] UKUT 00046 (IAC)* balancing the public interest stipulation with ECHR Article 8 rights has remained problematic (Clayton and Firth 2018). Weak safeguards are another detrimental factor. As Home Office (2015b: 13) guidance states, the burden of proof to demonstrate why a deportation order breaches human rights or convention grounds is on the applicant deportee (also interview, Voluntary organisation, London). Thus, legal provisions have been found contrary to international and domestic human rights law by courts. The *Supreme Court in R (Kiarie and Byndloss) v Secretary of State for the Home Office* found the certification of appeals under NIAA 2002 unlawful on the grounds that it does not provide a meaningful right of appeal and breaches Article 8 of ECHR (Clayton and Firth 2018; Jones 2018). The rights of British family members have often been violated in the process (Griffiths and Morgan 2017). While the provision remains in law, the Supreme Court case limited the scope for 'deport first, appeal later' practices (Jones 2018).

The scope of human rights violations engendered by the British enforcement and justice system is equally significant. One of the criticisms addressed to Operation Nexus, discussed in the previous section, was that it targeted third country nationals on the basis of charges or police reports. Such information was passed to the Home Office for deportation, even in the absence of criminal conviction (House of Commons 2017a). According to a Home Office statement, it specifically targeted 'those lawfully here (both EU and non-EU nationals) but whose conduct merits their removal or deportation from the United Kingdom' (Home Office 2014g:2). The Home Office tried to deport stateless people and victims of trafficking, both against policy and law (The Guardian 2018c). An interviewee referred to a case of a human

trafficking victim who was found guilty of drug offences related to his trafficking. He was to be deported on the grounds of the criminal offense, despite applying for asylum (Interview, Councillor, Green Party). Equally questionable is the practice of removing refused asylum seekers to countries with widespread conflict and violence, such as Afghanistan; as one stakeholder observed, Foreign Office guidance advises British citizens against travelling there at the same time that Home Office guidance allows for deportations (Interview, Voluntary Organisation, London).

Research has also shown that there are significant risks of rights violations post deportation, given the lack of interest or scrutiny of what happens after removal (Onyoin 2017; Schuster and Majidi 2015). AVR projects have been critiqued for not being truly voluntary as migrants, including unaccompanied minors, are forced to return contrary to their wishes (Robinson and Williams 2015). In the case of the Refugee Action programme Choices, Afghani unaccompanied minors were offered training in exchange for signing up to AVRs, but this conditionality led to the failure of the project (Robinson and Williams 2015). In what concerns readmission, bilateral Memoranda of understanding have been extensively criticised. While the UK government position has been that they allow them to obtain assurances regarding the treatment of removed nationals of these countries, these assurances provide an insufficient level of human rights guarantees since they are not binding in law (Grozdanova 2015; House of Commons 2017a; Liberty 2017). Further, some of the countries with which the UK has entered MoUs have regimes which violate human rights, to the extent that arrangements with Libya were 'deemed insufficient protection' by a House of Commons report (House of Commons 2017a; Liberty 2017b).

#### 6.2.4.2 Detention

The expanding use of detention attracted considerable criticism regarding its implementation and shortcomings in terms of human rights safeguards (Amnesty International 2017; House of Commons 2015a; British Red Cross 2018; Shaw 2016). One criticism is that the stated goal of using detention sparingly is undermined by the relevant Home Office guidance, which is geared towards privileging detention decisions, despite stating that 'detention should be used sparingly, and for the shortest period necessary' (Home Office 2018d). While referring to individual assessment, EIG guidance directs caseworkers in favour of detention by emphasising generalised risks of absconding and harm to the public (Amnesty international 2017; House of Commons 2015a). Factors that could lead to not detaining or ending detention such as how realistic the prospect of removal is– for example if travel documents have not been secured – or welfare and health considerations are not always taken into account in decision making (Amnesty International 2017; House of Commons 2015a). Further, alternatives to detention are not fully considered despite the fact that they might be more cost efficient and effective in terms of compliance (House of Commons 2015a; Red Cross 2018). Yet, lack of detention spaces was found to lead to decisions not to detain (ICIBI 2015a removal), despite the utilisation of prisons for detention for immigration offences (Interview, voluntary Sector, London).

Given the wide statutory powers to detain granted by British law, the key issue relating to implementation is when a detention order is unlawful or can be challenged legally (Clayton and Firth 2018). Several court judgements challenged decisions to detain because of failures

to follow legal provisions but also adherence to policy guidance[13]. Yet, the scope for allowing challenges to detention decisions is limited (Interview Voluntary Sector Organisation, London). As there is no automatic appeal right or judicial oversight dictated by the legal framework, it is down to detainees to challenge their detention (House of Commons 2015a; Interview, Voluntary Sector Organisation, London). This is impeded by shortcomings in accessing legal aid, which in detention centres in England and Wales is available through legal aid contracts (House of Commons 2015a; Shaw 2016; Interview, Voluntary Sector Organisation, London; interview Asylum Support). Even in Scotland, where lawyers can access migrants in detention, the remote location of Dungavel IRC has been raised as an impediment to legal support (Interview JA). Practices that exacerbates access to legal and other support for migrants is that of detaining in IRCs far from the detainees' place of residence or moving them between centres (House of Commons 2015a; Shaw 2016). Stakeholders brought up several examples:

> The Home Office said put her in a cell and we'll collect her in the morning. They put her in a police cell with no food, no water, nothing, overnight, and in the morning the Home Office picked her up and took her to Dungavel. [….] she was then transferred to Yarl's Wood down at Bedford (interview Maryhill Integration Centre).
>
> They took her down to England. Of course, that's crafty then because the Scottish lawyer can't operate, you have to get an English lawyer, and we got an English lawyer but they still deported her (interview Maryhill Integration Centre).
>
> He was moved on the Saturday morning down to a detention centre in England on Saturday morning so that he couldn't get in touch with his lawyer of course. (Interview, Councillor, Green Party).

The immigration bail system, in addition, has been criticised for privileging detention rather than release, often on unsubstantiated reasons (House of Commons 2015a; Shaw 2016).

Further, a number of reports and legal cases have raised concerns regarding conditions of detention. Conditions at IRCs have been described as prison-like; some were previously used as prisons (Boswell and Slade 2014; House of Commons 2015a). Apart from insufficient access to legal aid, deficiencies identified include access to interpretation and healthcare and their lack of adequacy (House of Commons 2016; Red Cross 2018; Shaw 2016). Restrictions to the use of mobile phones and the internet also impede communication (House of Commons 2015a; Red Cross 2018). Detention conditions often disproportionately affect women (Boswell and Slade 2014). A stakeholder raised this issue in relation to Dungavel IRC:

The problem with Dungavel is there's about 100 men there and only two dormitories for women with, I think, eight women in each dormitory and so ... she said when they went to get their meals, they felt like chickens walking through foxes, you know. Apparently, they used to collect their food and they were allowed to take it into the lounge. They didn't actually eat it in the dining room with all these men staring at them. And there is a little exercise yard/garden and I said did you go out and get some fresh air? Oh no, because all the men go out there (Interview Maryhill Integration Centre).

[13] Such as *Tan te Lam v SSDH and R (on the application of I) v SSDH* (In *R v SSDH [2011] EWHC 2249, R v SSDH ex p Khan [1985*], Karas and Miladinovic [2006] and Kambadzi v SSDH [2011] Medical Justice & Ors v SSDH [2017] (Clayton and Firth 2018).

The issues raised by the stakeholder are mirrored in other reports, which documented instances of sexual harassment by IRC staff and practices such as body searches by male staff (House of Commons 2015a; Shaw 2016).

Practices related to the detention of vulnerable groups, including pregnant women and children, has been an area that attracted particular criticism, even after the introduction of the 'Adults at Risk' policy. Women who are survivors of gendered forms of violence and torture are regularly detained (Asylum Aid 2018; Shaw 2016). Particularly controversial has been the detention of survivors of torture, rape and trafficking and persons with mental health conditions (Asylum Aid 2018; House of Commons 2016c; House of Commons 2015a). The use of Article 35 of the Detention Centre Rules 2001 in identifying vulnerable persons who should not be detained has been largely ineffective (Amnesty international 2017; Shaw 2016; Interview, Councillor Green Party; Interview, voluntary Sector Organisation, London). Further, there is no mechanism to evaluate the implementation of the Adults at Risk-policy (Asylum Aid 2018). While one interviewee has observed that the detention of children has been reduced (interview, Partner, Just Right Scotland), children are still detained despite calls to change this practice by official inquiries and NGOs (Amnesty International 2017; Shaw 2016). Similarly, there is no statutory duty for the Home Office to follow the recommendations of the Independent Family Returns-Panel - which advises the Home Office on family returns - regarding detention, thus rendering legal stipulation on taking into account the welfare of children ineffective (Clayton and Firth 2018).

Given that many services are contracted out, the role of private contractors has been associated with both shortcomings in services and human rights abuses such as the mistreatment of detainees (Home Office 2018l; Shaw 2016). While for-profit actors are contracted to provide services – ranging from security to healthcare - they are also considered public authorities in the context of detention, alongside the Home Office (Clayton and Firth 2018). This has implications for obligations under the Human Rights Act 1998 and the Detention Rules, for example, in providing adequate healthcare serves as contracted or mistreating detainees (Clayton and Firth 2018). Contracted staff has been criticised both for lacking training and operating based on a culture of disbelief towards reported health and mental health problems (House of Commons 2015a; Shaw 2016). In the words of one stakeholder, 'there are concerns that private contractors engage in human rights abuses in the context of running those detention centres, also in the context of enforcing removals' (Interview, Partner, Just Right Scotland).

## 6.3 Relations among actors

One area that has been identified is poor communication and cooperation among the different Home Office divisions involved in the implementation of different policies (Duvell, Cherti and Lapshyna 2018; House of Commons 2015b; ICIBI 2018d; 2016b; 2016c; 2015a). The identified causes for these difficulties are numerous: logistical constraints – for example detention capacity – lack of coordination, different priorities, a culture of targets, and insufficient knowledge of government policy and initiatives (House of Commons 2015b; ICIBI 2015a; 2016b; 2016c; 2018d). Research has also highlighted the perception of immigration officers that the highly centralised yet complex structure and organisation of Home Office enforcement units has undermined capacity for cooperation and the role of both local

intelligence and experience, and the professionalism of immigration enforcement officers (Duvell, Cherti and Lapshyna 2018). Organisational change, driven by political demands was identified as a further factor undermining relations between the Home Office and immigration enforcement personnel, often leading to low morale (Duvell, Cherti and Lapshyna 2018).

Accounts of the cooperation between the police and immigration officers are generally contradictory. Sometimes they suggest effective cooperation (Duvell, Cherti and Lapshyna 2018; Interview, Social worker). One stakeholder in Scotland, for example, pointed to good working arrangements between social work services and the Border force in one of the major airports (Interview, Social Worker). However, they also point to different agendas, priorities and work cultures, as well as strongly opposing Home Office agendas, policies and work practices (Duvell, Cherti and Lapshyna 2018; interview, Social Worker; Interview, Police Scotland). This is also true in the case of private actors such as employers and landlords (Duvell, Cherti and Lapshyna 2018; ICIBI 2015b; ICIBI 2018d). Similarly, implementing AVR programmes raised concerns over the lack of their promotion by Home Office Departments (ICIBI 2015a).

However, the main reason stakeholders were critical of migration control policies and practices was because they undermined their service provision objectives of public authorities and conflicted with their professional ethics (also Duvell, Cherti and Lapshyna 2018). A police respondent raised the issue of maintaining the trust of migrants in their multiple roles in dealing with crime, participating in integration initiatives and doing enforcement work (Interview, Police Scotland). A social worker similarly argued that 'our role is to support people, not to try to make life so uncomfortable for them that they don't want to be here and they'll go home' (Interview, Social Worker).

The 'hostile environment' policy in particular is pointed as a factor for the worsening of relations between enforcement and other public agencies. In the words of a stakeholder:

> R: Hostile environment. So this guy comes to meet us. I've been appointed to work with you, to help create this hostile environment. These are the things we want to do and, you know, you need to work with us…and I'm sitting there going to him, I'm a social worker. What you're asking me to do to people is inhumane. It would be against my code of conduct in terms of my professional conduct to behave that way. […] What you're asking us both professionally and as a local authority to do is completely at odds with what we are meant to do. (interview, Social Worker)

Echoing the opposition to Home Office MoUs with other ministries and agencies regarding immigration enforcement (see section 4.3.2), a doctor and voluntary worker, clearly suggested that opposition to Home Office policies because of their incompatibility to professional ethics has led to partial non-compliance. Commenting on the duty to report, she stated that while she would cooperate if safeguarding was the aim of Home Office or police requests but:

> If they're wanting to arrest people, I'll say you have no right to know that […] If we know the patient, I'll get the message to them telling them that you're looking for them […] (Interview, doctor, NHS).

# 7. Conclusion and recommendations

The UK context presents certain particularities in terms of legal arrangements and policy practices. Given its island geography, the UK border is better conceptualised as an amalgamation of border check points – both in ports within the UK territory and beyond such as in France and Belgium but also in consular services worldwide – and 'smart borders' relying on the use of information technologies and information databases (Vaughn Williams 2010; Vollmer 2019). British border management practices rely heavily on pre-entry measures such as API and PNR information, the visa and entry clearance regime and biometric data, which prevent access to UK territory and produce the information that enables the conduct of at-the-border checks as well as internal controls, detention and return. There is considerable continuity among the different domains of control examined in this report. Data collected and stored through information technologies and databases before and at the border feed into both the exercise of internal control measures and return and deportation.

The UK border management and migration control regime is characterised by a high level of complexity of law and policy. There are at least 15 statutes regulating migration, in addition to statutory instruments implementing legislation (both domestic and EU), other legislative acts pertaining to criminal law, and the Immigration and Detention rules (Clayton and Firth 2018; Law Commission 2019). According to research done by the Guardian, there have been around 5,700 changes in the IR, which doubled in length (The Guardian 2018d). Added to these is a great number of Home Office guidance documents concerning the implementation of legal provisions (Home Office 2019d). Equally, the implementation of policies encompasses agreements between the Home Office and public authorities, which are subject to change and often not easy to access, as well as arrangements between the Home Office and private contractors.

This complexity explains some of the implementation issues raised by stakeholders and existing research, concerning efficiency, co-operation and communication among both Home Office agencies and between the Home Office and other actors, and as well as lack of comprehensive and reliable data (ICIBI 2016c; 2016b). Yet as Boswell (2011) suggest, a lack of data can serve UK policy aims. More significantly, a consistent theme concerning the implementation of legal provisions is the non-adherence of Home Office actors, such as case workers and ICE personnel, to the ministry's own guidance – albeit often unclear – or its application in an inconsistent manner (from example, Amnesty International 2017; Clayton and Firth 2018; ICIBI 2015b; Shaw 2016).

There are considerable tensions between human rights and asylum obligations on the one hand, and the border management and migration control regime on the other. As in many national contexts and EU wide, border management and migration controls in the UK result in human rights violations and inhibit access to protection (Bosworth 2016). The extensive overlap between migration and criminal law and the criminalisation of migration (Provera 2015). Practices undertaken during the process of unauthorised migration – unauthorised entry, the use of forged documents or not having documents – are not merely administrative offences but criminal ones. The expansion of both migration and criminal offences has led to widening the scope for border and migration control (Aliverti 2015; Ikegwuruka 2017), a development which has underpinned the expansion of powers and practices of detention, deportation and removal (Ikegwuruka 2017). This is also evident at the discursive level, where

migration control is continuously linked to crime and security threats. Political agendas, in particular the 'hostile environment', have had an adverse impact on policy implementation. Especially at the level of devolved administration structures, it has created tensions among public agencies operating at the local level, and the centralised agendas and command of the Home Office (Duvell, Cherti and Lapshyna 2018; interview SB; Interview police). These were seen as undermining work with migrant communities, leading to distrust and thus rendering the immigration enforcement work of public agencies more difficult (Duvell, Cherti and Lapshyna 2018; interview SB; Interview police). The implementation of deportation and removal policies frequently disregards human rights and protection claims, exacerbated by a political drive to increase their rate and a focus on criminality while simultaneously weakening legal safeguards (Ikegwuruka 2017).

The UK context is also characterised by an active hostility and opposition to human rights and asylum regimes. At the government level, this is manifested in 'hostile environment' policies such as the near-extinction of the appeals system and limiting the scope for judicial review. Public bodies with responsibility over evaluating policy such as the NAO and House of Commons Committees have considered human rights obligations and legal safeguards such as appeals and judicial reviews as impediments to migration control, especially in relation to the deportation, removal and detention regime (ICIBI 2015a; NAO 2015). These views are also shared by immigration enforcement personnel (Duvell, Cherti and Lapshyna 2018).

Further, the 'hostile environment' policies considered in this report have had an extremely negative and widespread impact. They curtailed the rights and increased the insecurity of one of the most vulnerable groups in the UK – migrants with no legal status – but also had adverse consequences on migrants in general regardless of status (Yuval-Davis, Wemyss and Costello 2018). Such consequences range from erroneously excluding refugees and migrants from rental accommodation and opening bank accounts to the criminalisation and penalisation of predominantly non-white British residents and citizens (House of Lords 2018a; United Nations 2018). There has been a limited acknowledgment of these implications by the UK government, and no indication that they have led to a reconsideration of 'hostile environment' measures.

Given the findings of this report, the following policy recommendations are made:

## Policy recommendations

- A simplification of border management and migration control legislation, rules and guidance
- An expansion of legal routes for entry and removal of practical and financial impediments
- Laws, policies and their implementation should adhere to international, domestic and human rights instruments to which the UK has acceded
- Institutional bodies overseeing policy implementation should take into account human rights and international protection obligations in their tasks
- Ending, or at least limiting, the use of detention and deportation
- A review of cooperation arrangements between the Home Office and public sector agencies
- Abolishing the hostile environment

# Appendix 1: Legislation

**Statutes – migration control**

Immigration Act 1971

Immigration (Carriers' Liability) Act 1987

Asylum and immigration Act 1996

Immigration and Asylum Act 1999

The Asylum Support Regulations 2000

The Detention Rules 2001

Nationality, Immigration and Asylum Act 2002

Asylum and Immigration (Treatment of Claimants. Etc) Act 2004

Immigration, Asylum and Nationality Act 2006

UK Border Act 2007

Borders, Citizenship and Immigration Act 2009

Immigration Act 2014

Immigration Act 2016

Immigration Rules 2018

**Statutes - other**

Forgery and counterfeiting Act 1981

Tribunals, Courts and Enforcement Act 2007

Criminal Justice and Immigration Act 2008

Equality Act 2010

Identity Documents Act 2010

Legal Aid, Sentencing and Punishment of Offenders Act 2012

Crime and Courts Act 2013

Counter Terrorism and Security Act 2015

**Statutory instruments**

The Channel Tunnel (International Arrangements) Order 1993

The Channel Tunnel (Miscellaneous Provisions) Order 1994

The Immigration (Leave to Enter and Remain) Order 2000

Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) Order 2003

The Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) (Amendment) Order 2006

The Immigration (Provision of Physical Data) Regulations 2006 SI 2006/1743

The Refugee or Person in Need of International Protection (Qualification) Regulations 2006, s.7

The Channel Tunnel (International Arrangements and Miscellaneous Provisions) (Amendment) Order 2007

Immigration and Police (Passenger, Crew and Service Information) Order 2008, SI 2008/5

**Treaties**

International Convention for the Safety of Life at Sea 1974

Protocol between the Government of United Kingdom and Northern Ireland and the government of the French Republic Concerning Frontier Controls and Policing, Cooperation in Criminal justice, Public safety and Mutual assistance relating to the Channel fixed Link (1991)

Protocol on the Schengen acquis Integrated into the Framework of the European Union 2001

Frontier Control Treaty (le Toucquet) 2003

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# Appendix 3: Coding Frame and results

| | |
|---|---|
| Abuse | 9 |
| Asylum & refugee protection | 2 |
| Burden | 8 |
| Controlling migration/borders | 19 |
| Cooperation with the EU | 1 |
| Crisis | 2 |
| Humanitarian | 9 |
| Illegality | 20 |
| Numbers | 6 |
| Protecting the public/citizens | 13 |
| Securing/strengthening the border | 12 |
| smuggling | 9 |
| Threat - terrorist | 5 |
| Threat - crime | 16 |
| Threat – social cohesion | 2 |
| Threat – cultural Identity | 3 |
| Threat –national security | 5 |

# Appendix 4: List of Interviewees

| | | | |
|---|---|---|---|
| 1 | Scottish Government | | Scotland |
| 2 | Red Cross | Former Employee | Scotland |
| 3 | Maryhill Integration Centre | Member | Scotland |
| 4 | Scottish Green Party | Councillor | Scotland |
| 5 | Local authority | Social worker | Scotland |
| 6 | Just Right Scotland | Partner | Scotland |
| 7 | NHS/Voluntary Sector? | Doctor | Scotland |
| 8 | Voluntary Sector (RC) | Manager | Scotland |
| 9 | Govan Community Centre | | Scotland |
| 10 | Asylum Welcome | | London |
| 11 | Voluntary Sector Organisation | | London |
| 12 | Police Scotland | | Scotland |
| 13 | The Asylum Seeker housing Project (ASH) | | Scotland |

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