Asylum seekers and refugees

Policy

Policy summary
West Yorkshire Police complies with Authorised Professional Practice (APP) which contains information to assist policing, and has established a local policy procedure on asylum seekers and refugees to provide clear standards and guidelines.

The policing need of asylum seekers and refugees represents one of the greatest challenges to the police service today.

It is only by careful planning and preparation that forces, in partnership with other agencies, will help successfully integrate asylum seekers into their communities during the determination of their claims and avert the community tensions and disorder.

Aims
The aims of this policy procedure are to explain:
- when an application for asylum can be made and how it should be recorded;
- your powers of arrest;
- how to confirm someone’s immigration status; and
- how to prepare media statements.

Scope
This policy procedure applies to all police officers and police staff.

Compliance
APP Intelligence management
APP Investigation

Chapter 1 Legislation

Introduction
The Home Office has prepared explanatory notes to aid the understanding of the Nationality and Immigration and Asylum Act 2002.

Nationality, Immigration and Asylum Act 2002
They do not form part of the act and have not been endorsed by Parliament. The notes can be accessed through this link below:
Nationality, Immigration and Asylum Act 2002

The notes need to be read in conjunction with the act. They are not, and are not meant to be, a comprehensive description of the act. So where a section or part of a section does not seem to require any
Immigration Act 1971 Section 24 creates offences in relation to illegal entry. It states:

<table>
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<tr>
<th>Section</th>
<th>in part</th>
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<td>24(1)</td>
<td>a person who is not a British citizen shall be guilty of an offence in any of the following cases:</td>
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<td></td>
<td>a) if contrary to this act they knowingly enter the United Kingdom (UK) in breach of a deportation order or without leave;</td>
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<td></td>
<td>b) if having only a limited leave to enter or remain in the UK, they knowingly either;</td>
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<td>(i) remains beyond the time limited by the leave; or</td>
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<td>(ii) fails to observe a condition of the leave.</td>
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<td>c) if, having lawfully entered the UK without leave by virtue of section 8(1), they remain without leave beyond the time allowed by section 8(1);</td>
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<td>d) if, without reasonable excuse, they fail to comply with any requirement imposed on them under Schedule 2 to this Act to report to a medical officer of health, or to attend, or submit to a test or examination, as required by such an officer;</td>
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<td>e) if, without reasonable excuse, they fail to observe any restriction imposed on them under Schedule 2 or 3 to this Act as to residence, as to their employment or occupation or as to reporting to the police or to an immigration officer;</td>
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<td></td>
<td>f) if they disembark in the UK from a ship or aircraft after being placed on board under Schedule 2 or 3 to this Act with a view to their removal from the UK;</td>
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<td></td>
<td>g) if they disembark in contravention of a restriction imposed by or under an Order in Council under section 3(7) of this Act.</td>
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**Note:** No power of arrest is provided by the Act in relation to 24(1) (d); the exercise of a power of arrest is available under Section 24 PACE as amended by Sect 110 of the Serious Organised Crime and Police Act 2005.


For further details consult: Police National Legal Database or Codes of Practice Code C1.12. Relevant extracts only are listed.

The Codes of Practice does not apply to the following groups of
people in custody:

- ii) people arrested under section 3(5) of the Asylum and Immigration Appeals Act 1993 for the purpose of having their fingerprints taken; and
- iii) people who have been served a notice advising them of their detention under powers contained in the Immigration Act 1971.

Sections 8 and 9 on the provisions on conditions of detention and treatment must be considered as the minimum standards of treatment for such detainees.

Chapter 2 Definitions

Definition of a refugee

Article 1 A (2) of the 1951 United Nations Convention on refugees, defines a person who owing to well founded fear of being persecuted for reasons of:

- race;
- religion;
- nationality;
- membership of a particular social group; or
- political opinion,

is outside the country of their nationality and is unable or, owing to such fear, unwilling to avail themselves of the protection of that country.

Definition of an asylum seeker

An asylum seeker is:

- a person who is generally at least 18 years old;
- is in the UK;
- whose claim for asylum has been made and is being dealt with at a place designated by the Secretary of State (Croydon or Liverpool);
- the Secretary of State has recorded the claim; and
- whose application has not yet been determined.

Chapter 3 Asylum process

Introduction

An application for asylum can be made at any time, either on arrival in the UK, at a port of entry, or ‘in country’ with the Immigration and Nationality Directorate (IND).

IND will carry out an initial assessment and interview, take:

- fingerprints; and
- photographs,

of all persons claiming asylum and release the majority into the community with an:

- immigration form IS96; or
• an Application Registration Card (ARC) which is a credit card sized laminated document confirming their status and identity.

A small proportion are held in detention centres or given signing on restrictions to local police stations or United Kingdom Visas and Immigration (UKVI) reporting centres.

### Claims for asylum

Any claim for asylum must be recorded by the Secretary of State, in practice by an immigration officer or at the Immigration and Nationality Directorate (IND) in Croydon or Liverpool.

Persons who have already been granted asylum in another European Union country are not free to travel to the UK without a visa. If they do they may be returned to the granting country.

**An asylum claim cannot be recorded by a police officer.**

### Claims for asylum under 18 years old

A person under the age of 18 years without an appropriate adult can be dealt with via the asylum process.

The United Kingdom Human Trafficking Centre (UKHTC) is interested in these cases as minors may at risk of exploitation or abuse.

### Applicant interview

Most asylum applicants are interviewed in depth by specially trained IND staff, so that they can provide details of their claim.

Each application is considered on its individual merits. The applicant needs to demonstrate a well-founded fear of persecution in a particular country based on any of the reasons listed in the 1951 United Nations Convention on refugees.

### Refugee status

Refugee status is granted to those who satisfy the convention criteria.

Once recognised as a refugee, they are entitled to remain in the country indefinitely, apply for travel documents and eventually citizenship.

### Fail to meet criteria

When an applicant does not meet the criteria for recognition as a refugee, consideration is given to any humanitarian factors which might justify the grant of leave to remain in the UK, exceptionally outside the rules.

### Humanitarian protection

Humanitarian Protection (HP) or Discretionary Leave (DL) is normally granted for an initial period of four years, for reasons for example of civil war in their home country or other mitigating factors.
After which an application for Indefinite Leave to Remain (ILR) would normally be granted.

**Exceptional leave to remain**

Exceptional Leave to Remain (ELR) or Indefinite Leave to Remain (ILR) is being phased out for HP and DL although some people may still be covered under the old procedures.

**Application refused**

Where an application for asylum is refused, the person will be expected to leave the country or face removal action.

All failed asylum seekers have a right of appeal before removal to a country where they have expressed a fear of return. They will not be enforced to return to unsafe countries for either political or safety concerns.

**Legal basis of stay**

If the subject has a legal basis of stay such as a student then they should be directed to contact the Home Office or make representations to the UKVI.

In exceptional cases, they should be directed to the nearest UKVI reporting centre.

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### Chapter 4 Power of arrest

**Introduction**

If you suspect that a person may be an illegal immigrant then that person should be arrested under Section 24 of the Immigration Act 1971.

**Not an arrestable offence**

All offences under Section 24 of the Immigration Act 1971 are arrestable under Section 24a of the Police and Criminal Evidence Act and Immigration Officers also have a power of arrest but there is no power of:

- entry to premises to arrest; or
- search, under Section 18 PACE Act 1984, for this offence, other than on a warrant obtained from a Magistrate.

**Detentions**

All detentions, on arrest and prior to UKVI attendance will be subject to PACE procedures.