

**ILPA response to the Home Office Statistics consultation on the publication of monthly asylum application statistical data:**

1. ILPA is a professional association with around 900 members, who are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-government organisations and others working in this field are also members. ILPA exists to promote and improve the giving of advice on immigration and asylum through training, disseminating information and providing evidence-based research and opinion. ILPA is represented on numerous government and other stakeholder and advisory groups.
2. We recall our February 2008 response to the review of Border and Immigration Agency statistics on Control of Immigration. The response remains available on our website ([www.ilpa.org.uk](http://www.ilpa.org.uk)) in the Submissions section.

**The proposals set out in the invitation document of 25 February 2010:**

3. The current consultation specifically addresses proposals to supplement the Control of Immigration statistics to include data that is to be made available to the European Commission for the purposes of Article 4 of EC Regulation No. 862/2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No. 311/76 on the compilation of statistics on foreign workers.
4. We support the proposal to supplement the data available on the Home Office Research Development Statistics website with data that is presented to the European Commission. We agree that this would accord with Principle 2 Practice 3 of the Code of Practice for Official Statistics, which directs that official statistics should be "*equally available to all*". It would also accord with Principle 8 Practices 3-5 of the Code by extending the detail of the statistics available on the Home Office site and thereby ensuring that the additional data is more readily available and comparable to current data.
5. We support the proposal to publish distinct data sets on principal applicants only and on applicants including dependants. As stated in the document inviting responses to this consultation, UK figures are currently, in the main, presented by reference to principal applicants only. This is a useful format, and retaining this format while adding a format that includes dependants will accord with Principle 8 Practices 3-4 of the Code by extending the detail that is available and retaining the capacity to compare new data with earlier data.

6. While the proposals include supplementing the data available on the Home Office website with data that is presented to the European Commission, it is proposed that some of the data to be presented to the Commission will only be available from the Commission's EUROSTAT website. Specifically, it is not proposed to make certain disaggregations by age, gender and nationality available on the Home Office website. There is no explanation for this provided. It does not seem to accord with the principles of the Code to which we have made reference and to which reference is made in the consultation paper. If data is being prepared and presented to the Commission, why is it not also presented on the Home Office website? If the answer to that question is that the disaggregations are only to be undertaken in respect of data including dependants (as opposed to principal applicants only), we would suggest that consideration be given to extending the current data on the Home Office website to disaggregate by age and sex in accord with the data to be presented to the Commission.
7. It is a requirement of Article 4 that data be disaggregated by age, sex and nationality. Questions that arise are:
  - a. how age disputes are best recorded?
  - b. how cases of disputed nationality are to be dealt with?
  - c. the clear identification within the data of stateless persons
8. The European Commission identified in COM(2005) 375 final,<sup>1</sup> its proposal for what has become Regulation EC 862/2007 that:

“There are also serious problems relating to a lack of harmonisation—both in terms of the data sources used *and the definitions applied to the statistics.*” [emphasis added]

As to disputed age, in ILPA's experience most age disputes concern whether or not a person is under 18 and, in particular in the case of a child, how old that child is. Article 3(3)(a) of Regulation 862/2007 requires the collection of statistics on applicants for international protection 'who are considered by the responsible national authority' to be unaccompanied minors. While unaccompanied minors is defined in the instrument, 'responsible national authority' is not and nor does the regulation set out what it means to be 'considered' to be an unaccompanied minor. In disaggregating data by age, all cases where age is a matter of dispute should be clearly identified. This should include both those cases that the UK Border Agency considers 'borderline' and those where it is treating the applicant as an adult as well as cases where it is not disputed that the child is under 18, but his/her exact age is unknown. This is also required for the UK to respond to the recommendation of the UN Committee on the Rights of the child that the UK

**“71 (d) Provide disaggregated statistical data in its next report on the number of children seeking asylum, including those whose age is disputed”<sup>2</sup>**

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<sup>1</sup> Brussels, 14.9.2005, 2005/0156 (COD), *Proposal for a Regulation of the European Parliament and of the Council on Community statistics on migration and international protection*

There is a need for clear protocols as to how disputed age cases are identified in the statistics as without this comparisons between States on the basis of age will not be possible.

9. As to disputed nationality, such disputes may take different forms. To give just two examples, there are cases where the dispute centres on which of two nationalities the applicant holds. There are cases where the applicant asserts that s/he is of a particular nationality and this is disputed, but without the authorities having asserted their view as to the person's nationality. As with disputed age, if the statistics are to permit of meaningful comparisons between states then there is a need for clear protocols as to how disputed nationality cases are identified.

#### **Additional comments on the Control of Immigration: Quarterly Statistical Summary:**

10. As set out in COM (2005) 375 Final  
*“Article 285 provides the legal basis for Community statistics. The Council, acting in accordance with the codecision procedure, shall adopt measures for the production of statistics where necessary for the performance of the activities of the Community. This Article sets out requirements relating to the production of Community statistics and requires conformity to standards of impartiality, reliability, objectivity, scientific independence, cost-effectiveness and statistical confidentiality”*

Ministers have voiced their commitment to similar standards and David Matz, then Head of Statistics of the Asylum and Appeals, Immigration and Appeals Research and Statistics Service wrote to Alasdair Mackenzie, then Co-ordinator of Asylum Aid, as long ago as 5 April 2002 recalling that:

*“In September the Home Secretary publicly stated our commitment to transparency, clarity and reliability. We have continued to make efforts to expand the presentation, coverage, and reliability of the figures to meet users' needs”*

We set out below some of the steps we consider could usefully be taken to ensure UK statistics comply with these standards.

11. Article 4(1) of Regulation 862/2007 requires statistics on the numbers of applications that have been withdrawn during the reference period. The word ‘withdrawn’ is not defined in the Directive. It would be helpful if statistics identified those persons whose application is automatically withdrawn (for example because they leave the UK) and then divided those who have acted to withdraw their applications and who are granted leave to remain in the UK and those who are not.

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<sup>2</sup> Committee on the Rights of the Child, Forty-Ninth Session, *Consideration of Reports submitted by States Parties under Article 44 of the Convention, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/Gbr/Co/4*, 20 October 2008

12. No mention is made in the consultation paper of the implementation of Article 4(2)(e) of regulation 862/2007 which requires the UK to supply the Commission with statistics on:

‘4(2)(e) persons covered by other first instance decisions granting or withdrawing authorisation to stay for humanitarian reasons under national law concerning international protection, taken by administrative or judicial bodies during the reference period’

This is not a reference to subsidiary protection, which is covered separately. We identify a difficulty in that ‘humanitarian reasons’ is not defined. Thus it is for example unclear whether the Regulations intend to identify a grant of discretionary leave to give effect to obligations under Article 8 of the European Convention on Human Rights as a grant for ‘humanitarian reasons’ or to give effect to a State’s legal obligations. Similarly where leave is granted to a stateless person who is not a refugee under the 1951 Convention but is accorded the status of a stateless person under the 1954 UN Convention Relating to the Status of Stateless Persons. It would appear to be necessary for there to be common agreement on what is to be captured under Article 4(2)(e). We suggest that the Home Office seek clarification of, or agreement as to, what is to be collected under this heading.

13. Ministers have emphasised the importance of statistics on detention. The Lord West of Spitfield stated:

*“Statistics are a crucial tool in enabling us to monitor and understand the number of occasions on which detention takes place....Statistics on age, nationality, place of detention and length of detention are currently included in the quarterly publication to which I have already referred. However, they are published as a snapshot of those in detention at the end of the relevant quarter. Further statistics are published on those leaving detention, but only for the purpose of removal. We recognise that it would be helpful to have fuller information of this kind. We accept that this is an area where we must achieve more to develop confidence in how children are being treated.”<sup>3</sup>*

14. On 21 May 2009, ILPA attended a meeting hosted by the UK Border Agency for discussion between ‘stakeholders’ and Home Office Migration Statistics as to data on detention. At that meeting, Migration Statistics indicated ongoing work to:

- Provide the total numbers of people who have been in detention during the year, broken down by age, nationality, gender and initial place of detention;
- Provide a total number of those leaving detention during the year, broken down by reasons for leaving detention;
- Provide details of the full length of detention, including time spent in prisons post-sentence under immigration powers (though excluding time spent in prison cells under immigration powers).

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<sup>3</sup> Hansard HL 10 Mar 2009, Col 1147

Of these three objectives, the final two remain outstanding.

15. In our February 2008 response to the review of Border and Immigration Agency statistics on Control of Immigration we drew attention to the recommendation made by the National Statistics Quarterly Review Series, Report No. 46 that there was a greater need for cohort-based statistics. The Control of Immigration statistics continue to provide snapshot data and cumulative data, which do not permit analysis that would be permitted by cohort-based data. The report had highlighted the specific recommendation as having a “*substantial priority*”. However, no significant progress has been made towards including cohort-based data in the Control of Immigration statistics.
16. In our February 2008 response we also drew attention to need for greater transparency in relation to management information. We note that the Control of Immigration statistics has since included more management information as a means to providing greater information and transparency, particularly in connection with detention, the Workers Registration Scheme for A8 nationals and the schemes available for A2 nationals. This is welcome. Consideration could usefully be given to greater use of management information. In our February 2008 response we highlighted that this may assist with providing data by which comparison could be made across related operational centres (e.g. between different UK Border Agency regions, different entry clearance offices) and may assist with the aim of providing cohort-based data.
17. We suggest that statistics on forced removals and voluntary departures should be disaggregated. The UK Border Agency has repeatedly drawn attention to its preference for voluntary departures over forced removals and disaggregation of the statistics would allow success in achieving this to be monitored. As observed by the Earl of Sandwich:  
*“Under the Freedom of Information Act, it is apparently possible to obtain a general table headed: “Removals, voluntary departures and assisted returns of asylum applicants, by country of nationality, age and sex, 2007.”*<sup>4</sup>
18. ILPA has repeatedly drawn attention to ways in which Ministers’ and the UK Border Agency’s use of statistics pertaining to judicial review applications in asylum and immigration cases do not meet the standards of impartiality, reliability and objectivity required under European law, for example in our letter of 24 April 2009 to Lin Homer, Chief Executive of the UK Border Agency. In a high number of judicial reviews the UK Border Agency either concedes the substantive issue and/or makes a fresh decision, following which the judicial review is withdrawn, but this is not captured in the statistics and Government pronouncements frequently highlight the number of judicial reviews of immigration decisions that were successful in that they went to a full hearing and succeeded, without drawing attention to the substantial number of judicial reviews that did not

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<sup>4</sup> Hansard HL report 10 March 2009 Col 1147

proceed to a full hearing because the Secretary of State agreed to withdraw the decision. This misrepresentation has then affected other publications, for example the National Audit Office report *Management of Asylum Applications by the UK Border Agency*.<sup>5</sup> We recommend that urgent attention be given to improving the statistics collected on this subject.

Immigration Law Practitioners' Association

30 April 2010

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<sup>5</sup> Report by the Comptroller and Auditor-General, January 2009, HC 124 of session 2008-2009. See pages 21-22