

Title: Permission to work for asylum seekers and failed asylum seekers Lead department or agency: Home Office Other departments or agencies: HM Treasury, Department for Work and Pensions, Cabinet Office	Impact Assessment (IA)
	IA No: HO0017
	Date: 26/07/2010
	Stage: Final
	Source intervention: Domestic
	Type of measure: Secondary legislation
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Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

The Supreme Court have found that Article 11 of the EU Reception Conditions Directive (RCD) applies to failed asylum seekers who make further asylum based submissions (where they put forward information which they assert amounts to a fresh claim for consideration), and therefore that these individuals are entitled to apply for access to the labour market if a decision has not been taken within one year of them making the further submission and where the delay cannot be attributed to the applicant. It is therefore necessary to implement a policy to give effect to the Supreme Court's judgment.

What are the policy objectives and the intended effects?

The objectives of the new policy are to ensure the judgment is implemented in a way which is consistent with wider immigration and labour market policies, ensuring that foreign workers are diverted to occupations where a national shortage of skilled labour has been identified and thereby offer the greatest value to the UK. The policy should also protect the asylum system, guarding against abuse so that all cases are processed quickly and fairly so that those with a genuine protection need can integrate quickly.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

There is no "do nothing" option, the Supreme Court's findings compel us to take action, so we have considered the following options:

Option 1 - Extend the current permission to work policy for asylum seekers to failed asylum seekers;

Option 2 - Introduce a permission to work policy for both asylum seekers and failed asylum seekers who have been waiting 12 months or more for a decision on their asylum claim or further submission respectively that restricts employment to jobs included on the shortage occupations list published by the United Kingdom Border Agency.

Other options were considered, for example granting permission to work subject to the resident labour market test, but this was found not to be operationally viable at the current time.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?	It will be reviewed 2011
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes

SELECT SIGNATORY Sign-off For final proposal stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible SELECT SIGNATORY:..... Date:.....

Summary: Analysis and Evidence

Policy Option 1

Description:

Option 1 – Extend the current permission to work (PTW) policy for asylum seekers to failed asylum seekers

Price Base Year 2010	PV Base Year 2010	Time Period Years 5	Net Benefit (Present Value (PV)) (£m)		
			Low: -£0.4m	High: £0.8m	Best Estimate: -£0.06m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£0.49m	£4k	£0.51m
High	£1.48m	£44k	£1.70m
Best Estimate	£0.92m	£15k	£0.99m

Description and scale of key monetised costs by 'main affected groups'

UKBA - Costs of processing Permission to Work Applications

UKBA - Costs of issuing Permission to Work Documentation including replacement ARC card

Other key non-monetised costs by 'main affected groups'

DWP and HMRC will need to issue/register National Insurance Numbers to those granted permission to work. The majority of applicants who will qualify for permission to work in year one come from the CRD caseload and a significant proportion of these will be granted leave before CRD conclude their caseload in summer 2011 and will therefore require a NINO in any case. So, there will be few additional NINOs for DWP/HMRC to issue/register, but they may need to be issued in a quicker timeframe than would otherwise

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	£0.10m	£0k	£0.10m
High	£2.23m	£55k	£2.51m
Best Estimate	£0.90m	£5k	£0.93m

Description and scale of key monetised benefits by 'main affected groups'

UKBA - Reduced asylum support costs for those granted Permission to Work, finding employment and coming off asylum support

Other key non-monetised benefits by 'main affected groups'

There may be some benefits to businesses and the labour market by allowing the pool of failed asylum seekers who qualify for permission to work to take employment in jobs included on the shortage occupation list.

Key assumptions/sensitivities/risks

Discount rate (%)

3.5%

Key assumptions/sensitivities: Key assumptions are: volumes affected, application rate for permission to work, employment rate of those seeking employment, and the percentage that leave asylum support.

Key risks:

1. That extending a permission to work policy to failed asylum seekers will encourage further submissions and asylum applications from those without a well-founded fear of persecution
2. That demand for permission to work is greater than what we can deal with within current resources
3. That legal challenges increase as a result of the change in policy/delays in granting PTW applications if application numbers are high

Impact on admin burden (AB) (£m):			Impact on policy cost savings (£m):	In scope
New AB: 0	AB savings: 0	Net: 0	Policy cost savings: 0	No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			United Kingdom		
From what date will the policy be implemented?			09/09/2010		
Which organisation(s) will enforce the policy?			UK Border Agency		
What is the total annual cost (£m) of enforcement for these organisations?			£0		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			No		
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: 0	Non-traded: 0	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs: 0	Benefits: 0	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro n/a	< 20 n/a	Small n/a	Medium n/a	Large n/a
Are any of these organisations exempt?	n/a	n/a	n/a	n/a	n/a

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...	Impact	Page ref within IA
Statutory equality duties¹? <u>Equality and Human Rights Commission: General guidance</u>	Yes	18
Economic impacts		
Competition? <u>Competition Impact Assessment</u>	No	N/A
Small firms? <u>Small Firms Impact Test</u>	No	N/A
Environmental impacts		
Greenhouse gas assessment? <u>http://www.defra.gov.uk/environment/index.htm</u>	No	N/A
Wider environmental issues? <u>Guidance has been created on the Defra site</u>	No	N/A
Social impacts		
Health and well-being? <u>Health: Health Impact Assessment</u>	No	N/A
Human rights? <u>Ministry of Justice: Human Rights</u>	No	N/A
Justice?	No	N/A
Rural proofing? <u>Commission for Rural Communities</u>	No	N/A
Sustainability? <u>Defra: Think sustainable</u>	No	N/A

¹ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence

Policy Option 2

Description:

Option 2 - Introduce a PTW policy for both asylum seekers and failed asylum seekers that restricts employment to jobs included on the shortage occupations list published by the UKBA

Price Base Year 2010	PV Base Year 2010	Time Period Years 5	Net Benefit (Present Value (PV)) (£m)		
			Low: -£0.4m	High: £0.6m	Best Estimate: -£0.16m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£0.49m	£1k	£0.50m
High	£1.51m	£15k	£1.58m
Best Estimate	£0.93m	£5k	£0.96m

Description and scale of key monetised costs by 'main affected groups'

UKBA - Costs of processing Permission to Work Applications

UKBA - Costs of issuing Permission to Work Documentation including replacement ARC card

Other key non-monetised costs by 'main affected groups'

DWP/HMRC will need to issue/register National Insurance Numbers to those granted permission to work. The majority of applicants who will qualify for permission to work in year one come from the CRD caseload and a significant proportion of these will be granted leave before CRD concludes its caseload in summer 2011 and will require a NINO in any case. Therefore, there will be few additional NINOs for DWP/HMRC to issue/register, but they may need to be issued in a quicker timeframe than would otherwise be the case.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	£0.06m	£0k	£0.06m
High	£2.09m	£17k	£2.17m
Best Estimate	£0.79m	£1k	£0.79m

Description and scale of key monetised benefits by 'main affected groups'

UKBA - Reduced asylum support costs for those who are granted Permission to Work, find employment and consequently come off asylum support

Other key non-monetised benefits by 'main affected groups'

There may be some benefits to businesses and the labour market by allowing the pool of failed asylum seekers who qualify for permission to work to take employment in jobs included on the shortage occupation list.

Key assumptions/sensitivities/risks

Discount rate (%)

3.5%

Key assumptions/sensitivities: Key assumptions are: volumes affected, application rate for permission to work, employment rate of those seeking employment, and the percentage that leave asylum support.

Key risks:

1. That extending a permission to work policy to failed asylum seekers will encourage further submissions and asylum applications from those without a well-founded fear of persecution
2. That demand for permission to work is greater than what we can deal with within current resources
3. That legal challenges increase as a result of the change in policy/delays in granting PTW applications if application numbers are high

Impact on admin burden (AB) (£m):		Impact on policy cost savings (£m):		In scope
New AB: 0	AB savings: 0	Net: 0	Policy cost savings:	No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	United Kingdom				
From what date will the policy be implemented?	09/09/2010				
Which organisation(s) will enforce the policy?	UK Border Agency				
What is the total annual cost (£m) of enforcement for these organisations?	£0m				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: n/a		Non-traded: n/a		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs: 0		Benefits: 0		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro n/a	< 20 n/a	Small n/a	Medium n/a	Large n/a
Are any of these organisations exempt?	n/a	n/a	n/a	n/a	n/a

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...	Impact	Page ref within IA
Statutory equality duties²? <u>Equality and Human Rights Commission: General guidance</u>	Yes	18
Economic impacts		
Competition? <u>Competition Impact Assessment</u>	No	N/A
Small firms? <u>Small Firms Impact Test</u>	No	N/A
Environmental impacts		
Greenhouse gas assessment? <u>http://www.defra.gov.uk/environment/index.htm</u>	No	N/A
Wider environmental issues? <u>Guidance has been created on the Defra site</u>	No	N/A
Social impacts		
Health and well-being? <u>Health: Health Impact Assessment</u>	No	N/A
Human rights? <u>Ministry of Justice: Human Rights</u>	No	N/A
Justice?	No	N/A
Rural proofing? <u>Commission for Rural Communities</u>	No	N/A
Sustainability? <u>Defra: Think sustainable</u>	No	N/A

² Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

References

No.	Legislation or publication
1	UK BORDER AGENCY (15/07/2010) Home Office Research Report 35 - Summary of the Survey of New Refugees December 2005–March 2009 http://rds.homeoffice.gov.uk/rds/pdfs10/horr35b.pdf
2	UK BORDER AGENCY (15/07/2010) Home Office Research Report 36 - Helping new refugees integrate into the UK: baseline data analysis from the Survey of New Refugees http://rds.homeoffice.gov.uk/rds/pdfs10/horr36c.pdf
3	MIGRATION ADVISORY COMMITTEE REPORT (October 2009) Skilled Shortage Sensible: Second review of the recommended shortage occupation lists for the UK and Scotland: Autumn 2009
4	COUNCIL DIRECTIVE 2003/9/EC (27 January 2003) Laying down minimum standards for the reception of asylum seekers
5	ZO (Somalia) and others v Secretary of State for the Home Department [2010] UKSC 36 - http://www.supremecourt.gov.uk/docs/UKSC_2009_0151_Judgment.pdf

Evidence Base

Option 1 Annual Profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄
Transition costs	£921,000				
Annual recurring cost	£15,000	£15,000	£15,000	£15,000	£15,000
Total annual costs	£936,000	£15,000	£15,000	£15,000	£15,000
Transition benefits	£903,000				
Annual recurring benefits	£5,000	£5,000	£5,000	£5,000	£5,000
Total annual benefits	£908,000	£5,000	£5,000	£5,000	£5,000

* For non-monetised benefits please see summary pages and main evidence base section

Option 2 Annual Profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄
Transition costs	£931,000				
Annual recurring cost	£5,000	£5,000	£5,000	£5,000	£5,000
Total annual costs	£936,000	£5,000	£5,000	£5,000	£5,000
Transition benefits	£785,000				
Annual recurring benefits	£1,000	£1,000	£1,000	£1,000	£1,000
Total annual benefits	£786,000	£1,000	£1,000	£1,000	£1,000

* For non-monetised benefits please see summary pages and main evidence base section

Evidence Base (for summary sheets)

A. Strategic Overview

A.1 Background

The Supreme Court has ruled in the case of *ZO (Somalia) and others v Secretary of State for the Home Department [2010] UKSC 36* that, in addition to asylum seekers, the employment provision in the EU Reception Conditions Directive (RCD) applies to failed asylum seekers who have made further asylum based submissions. In applying this policy, Article 11 of the RCD (the employment provision) allows Member States to decide the conditions for granting access to the labour market for these applicants and also, for reasons of labour market policies, Member States may give priority to EU citizens and nationals of States parties to the Agreement on the European Economic Area and also to legally resident third-country nationals.

Currently, asylum applicants can apply for permission to work if they have been waiting for an initial decision for 12 months or more. The only conditions we place on their employment are that they are not allowed to be self-employed or set up their own business. A permission to work policy for failed asylum seekers must be introduced to give effect to the Supreme Court's judgment.

The UK Border Agency is committed to making fast and fair decisions on asylum claims. In 2006, 400-450 000 unconcluded asylum cases were identified and a commitment was made to deal with these cases within five years, by summer 2011. These cases are managed by the Case Resolution Directorate (CRD). In March 2007, a regional approach to managing asylum casework with end-to-end case ownership for newer asylum cases was introduced (the New Asylum Model – NAM), ensuring that fast and fair decisions are made on initial applications.

There are currently an estimated 45,000 failed asylum seekers in the CRD caseload who have had a further submission outstanding for 12 months or more and therefore who would potentially qualify for permission to work now. New processes have recently been introduced to speed up the way in which UKBA makes decision on further submissions. Therefore, the number of individuals who become eligible to apply for permission to work under the Reception Conditions Directive is expected to decrease.

However, given the potential number of applicants who could qualify for permission to work, particularly during the first year of the policy, consideration has been given as to how this policy can be developed in a way which is consistent with wider immigration and labour market policy, diverting foreign workers to jobs which need filling.

The new permission to work policy is to be applied to both asylum seekers and failed asylum seekers who qualify (i.e. those who have been waiting 12 months or more for a decision on their asylum claim or further submission respectively) as it is not administratively viable at the current time to operate two different systems.

A.2 Groups Affected

Those affected by the policy are:

- Government departments, including the UK Border Agency which is responsible for deciding the permission to work applications and DWP/HMRC who are responsible for issuing/registering National Insurance Numbers;
- Asylum seekers and failed asylum seekers;

- UK-based employers.

A.3 Consultation

Within Government

The other government departments consulted include: the Home Office, HM Treasury, Department for Work and Pensions and Cabinet Office.

Public Consultation

This policy has not been the subject of a public consultation exercise.

B. Rationale

The Government believes it is important to maintain a distinction between economic migration and asylum. Allowing asylum seekers and failed asylum seekers permission to work is likely to encourage asylum applications and further submissions from those without a well-founded fear of persecution.

This is why asylum seekers are not generally allowed to work. The exception is where they have been waiting 12 months or more for a decision on their asylum claim. This is in accordance with the minimum standards set out in the Reception Conditions Directive which stipulates that Member States must grant access to the labour market if an initial decision on an asylum claim has not been made within 12 months. Giving permission to work to asylum seekers and failed asylum seekers (with further asylum based submissions outstanding) at an earlier stage in the process would be likely to encourage abuse of the asylum system by economic migrants.

The Reception Conditions Directive also stipulates that the delay in deciding the asylum claim must not be the fault of the applicant. Therefore, where an applicant has purposefully frustrated the system, for example by failing to remain in contact with the UKBA, permission to work will not be granted, even if the application has been outstanding for 12 months.

The Reception Conditions Directive allows Member States to decide the conditions for granting applicants access to the labour market and also, for reasons of labour market policies, allows Member States to give priority to EU citizens and nationals of States parties to the Agreement on the European Economic Area and also to legally resident third-country nationals. We intend to utilise this provision to introduce a permission to work policy for asylum seekers and failed asylum seekers who have an outstanding further asylum based submission which restricts employment to jobs included on the shortage occupation list published by UKBA.

Allowing access to the labour market subject to the Shortage Occupation List was the preferred option as it is the most effective way to achieve the stated objective; to ensure the judgment is implemented in a way which is consistent with wider immigration and labour market policies, ensuring that foreign workers are diverted to occupations where a national shortage of skilled labour has been identified and thereby offer the greatest value to the UK.

The Shortage Occupation List is formulated by the Migration Advisory Committee, who were asked by the Government to provide independent, transparent and evidence based advice on where labour market shortages exist that can sensibly be filled by migration. The Migration Advisory Committee formulate the list by analysing relevant national labour market data and using other evidence submitted to them and through engagement with a variety of corporate partners. The list is already used as part of the eligibility criteria under Tier 2 of the Points Based System. Its use in diverting foreign workers to occupations where a national shortage of skilled labour has been identified is therefore well established.

The Government is currently consulting on limiting economic migration from outside the EU and has introduced interim limits on Tiers 1 and 2 of the Points Based System. It would not however be lawful to make eligible asylum seekers and failed asylum seekers subject to interim and annual limits.

The current permission to work policy for asylum seekers does not permit applicants to become self-employed or engage in business activity. The new policy replicates those restrictions but the new Immigration Rule will clarify the latter element by expressing that applicants are not permitted to set up a business. It is necessary to maintain these restrictions as permission to work for these applicants will only be temporary; the permission to work only remains while the asylum claim or further submission remains outstanding. Further, many of the applicants will not likely have a future in the UK (the majority of asylum claims and further submissions are refused) and therefore these applicants should be prevented from becoming self-employed or setting up a business until their right to remain in the UK has been established.

The immediate impact of this policy change will be predominantly felt in the Case Resolution Directive. They are responsible for the older 'legacy' caseload and have a commitment to conclude this caseload by summer 2011. Once this caseload has been concluded, very few applicants will build up an entitlement to apply for permission to work. The casework required to consider a permission to work application under the new policy is minimal. This was a deliberate feature of the policy to ensure CRD could manage the impact without it affecting the rate at which they conclude cases.

Restricting permission to work to jobs included on the shortage occupation list published by the UKBA is consistent with wider migration and labour market policies, whose aim it is to direct foreign workers to jobs which cannot be filled by the resident work force and thereby offers the greatest value to the UK. It is also consistent with the recent steps taken to limit the number of economic migrants from outside the EU, indeed a more generous policy may encourage asylum applications from economic migrants who are deterred from applying through the PBS routes because of the limits.

The Shortage Occupation List is sufficiently varied that it is conceivable that asylum seekers and failed asylum seekers hold the skills or qualifications necessary to obtain employment in one of the occupations listed. UK Border Agency research shows that nearly half of newly recognised refugees held qualifications before coming to the UK and we believe that this can reasonably be expected to be the case for asylum seekers and failed asylum seekers. Further, the top ten nationalities recruited via the shortage occupation route from Nov 2008 to Aug 2009 include nationalities which appear prominently in our asylum and failed asylum seeker caseload, e.g. India, China, Zimbabwe, Pakistan, and Nigeria. It is reasonable therefore to expect that some asylum seekers and failed asylum seekers will have the necessary experience and qualifications to obtain employment in a job in a shortage occupation.

C. Objectives

The objectives of the new policy are to ensure the judgment is implemented in a way which is consistent with wider immigration and labour market policies, ensuring that foreign workers are diverted to occupations where a national shortage of skilled labour has been identified and thereby offer the greatest value to the UK. The policy should also protect the asylum system, guarding against abuse so that all cases are processed quickly and fairly and those with a genuine protection need can integrate quickly.

D. Options

There is no 'do nothing' option. The Supreme Court's findings compel us to introduce a permission to work policy for failed asylum seekers who make further asylum based submissions.

Option 1 – Extend the current permission to work policy for asylum seekers to failed asylum seekers

Extending the current permission to work policy for asylum seekers to failed asylum seekers does not fully meet the objectives outlined above. The only conditions we currently place on asylum seekers who are granted permission to work is that they are not allowed to be self-employed or set up their own business. There are no restrictions on which sectors of the labour market in which they may take up employment and they essentially have unlimited access to the labour market. Given the number of failed asylum seekers who may potentially apply for permission to work in year one, it would not be reasonable to allow them unlimited access to the labour market at a time when the Government are limiting the number of economic migrants from outside the EU. If the policies were not consistent with each other it would likely result in economic migrants displacing into the asylum route if they believed they had greater access to the labour market than applying through the Points Based System.

Option 2 - Introduce a permission to work policy for both asylum seekers and failed asylum seekers who have been waiting 12 months or more for a decision on their asylum claim or further submission respectively that restricts employment to jobs included on the list of shortage occupations

This policy option best achieves the objectives and is the most efficient. It does not require any more UKBA or DWP/HMRC resource than extending the current policy, but fits better with the overall Government labour market policy, ensuring that foreign workers are directed towards jobs where the UK needs the skills. Setting clear criteria to restrict employment to the shortage occupation list as published by the UKBA is likely to ensure that only those with the relevant skills apply for permission to work, thus making best use of UKBA caseworking resource and ensuring that fast and fair substantive decisions are made in every case. Introducing a more restrictive permission to work policy combats the potential pull factor associated with allowing failed asylum seekers and asylum seekers unlimited access to the labour market.

E. Appraisal (Costs and Benefits)

This section sets out the estimated economic costs and benefits across options. The analysis is based on a number of assumptions and aims to set out the scale of expected economic costs and benefits of the proposals. There are a number of uncertainties, and actual impacts will depend on the extent of behavioural change that arises due to the proposed changes. Ranges have been set out in the summary boxes and in the Evidence Base below to show the sensitivity of key assumptions. It is important that the impacts set out below are treated as indicative only and subject to change. The impacts will be carefully monitored post-implementation to help understand and evaluate the policy.

Option 1 – Extend the current permission to work (PTW) policy for asylum seekers to failed asylum seekers

General Assumptions and Data

We estimate that each year around 1,000 to 2,000 New Asylum Model (NAM) cases do not receive an initial decision within 12 months and hence become eligible for PTW. In addition, we estimate that option 1 would lead to an increase in NAM cases that make a further submission above current levels. We estimate around an additional 100 to 450 of these cases may not be decided within 12 months each year.

In the first year, we also estimate that between 40,000 and 60,000 legacy failed asylum seekers with further submissions that have not been decided within 12 months may qualify for permission to work (PTW). We assume that after the end of 2011 all asylum legacy cases will be concluded, so only NAM cases will therefore be eligible for PTW.

We assume that a large proportion, but not all, of those eligible will apply for PTW and there will be a relatively high grant rate, in line with current operations.

We assume that due to capacity constraints on Asylum Registration Card (ARC) production, UKBA will only be able to process a maximum of 300 PTW cases per week, or 15,600 per year.

We assume that of the additional pool of failed asylum seekers eligible for and looking to work, there will be an employment rate of between 5% and 25%.

Key Costs and Benefits

There will be a number of impacts associated with granting PTW to asylum seekers and failed asylum seekers with further submissions whose cases have not been decided within 12 months. The key impacts are set out in Table 1 below:

Table 1 – Key Costs and Benefits of Option 1

<u>Costs</u>	<u>Benefits</u>
<p><u>Monetised Costs</u></p> <p><u>Set-up costs:</u></p> <ul style="list-style-type: none"> • Increase in volume of UKBA casework due to increase PTW applications from legacy cases • Increase in costs of PTW documentation including replacement ARC cards for legacy cases <p><u>Ongoing Costs:</u></p> <ul style="list-style-type: none"> • Increase in volume of UKBA casework due to increase PTW applications for NAM cases • Increase in costs of PTW documentation including replacement ARC cards for NAM cases 	<p><u>Monetised Benefits</u></p> <p><u>Set-up benefits:</u></p> <ul style="list-style-type: none"> • Reduction in asylum support costs for those granted PTW and coming off asylum support for legacy cases <p><u>Ongoing Benefits</u></p> <ul style="list-style-type: none"> • Reduction in asylum support costs for those granted PTW and coming off asylum support for NAM cases
<p><u>Non-Monetised Costs</u></p> <ul style="list-style-type: none"> • There are potential set-up costs to UKBA of familiarising case-owners with the new PTW policy and processes • Possible increase in costs to DWP/HMRC for issuing additional National Insurance Numbers, and for providing advice at Job Centre Plus • There are possible costs to UK and EEA workers in the short-run if more asylum seekers and failed asylum seekers are allowed to compete in the labour market • There are possible costs to employers of recruiting asylum seekers or failed asylum seekers but then having to release them if their asylum cases are refused or further 	<p><u>Non-Monetised Benefits</u></p> <ul style="list-style-type: none"> • Increase in economic and social contribution of asylum seekers and failed asylum seekers to the UK economy • Fairer application of PTW legislation between asylum seekers and failed asylum seekers, in line with the Supreme Court's judgment

Discussion of costs and benefits

The key areas of monetised costs fall to UKBA – these are costs associated with processing applications for PTW, and distributing the required PTW documentation including a replacement ARC card.

There will be one-off processing costs of allowing PTW for legacy asylum cases. In addition, there will be ongoing costs of allowing PTW for all newer asylum cases.

Similarly, there could be a one-off benefit to UKBA of reduced asylum support costs as legacy asylum seekers that find employment and earn sufficient funds will leave asylum support. In addition, there will ongoing benefits of reduced asylum support costs for the new asylum cases of over 12 months that find employment and leave asylum support. Any benefits are however limited. Those who are granted permission to work and who then go on and secure employment will need to earn enough to take them and their dependants out of destitution (i.e. they need to earn the same or more than the total value of the package of support which is provided by the UKBA). Only then would we terminate support and see any benefit in terms of support savings.

The overall impacts are relatively low, however, and there are no significant net costs or benefits to UKBA. There is however a significant risk to asylum and further submission intake, and intake of permission to work applications associated with this option. The costs of a sharp increase in asylum claims, further submissions or permission to work applications would quickly outweigh out any benefits in terms of support savings, causing costs to accelerate at a greater pace than possible support saving benefits. Further, we anticipate that more applicants will apply for permission to work under option 1 as applicants may be deterred from applying under option 2 if they do not have the skills required to obtain employment in a shortage occupation. If demand for permission to work exceeds UKBA's capacity to process applications (15,600 applications annually within current processes), the application process may need to be re-engineered, or the resources dedicated to processing applications increased. This may result in additional costs to UKBA, or in lost productivity, compromising the summer 2011 target for conclusion of the Legacy caseload.

Discussion of Wider Non-Monetised Impacts

There are potential set-up costs to UKBA of familiarising case-owners with the new PTW policy and processes. However, case-owners are already aware of the PTW process, and hence the impacts should be minimal.

There is potential for a small increase in costs to DWP/HMRC for issuing/registering additional National Insurance Numbers to those seeking permission to work, and for providing advice and support at Job Centre Plus. However, a significant proportion of cases would eventually qualify for National Insurance Numbers and Job Centre Plus support without the proposed policy change. The additional costs are difficult to accurately quantify, and hence are not included in the summary monetised costs and benefits.

There are possible costs to UK and EEA workers in the short-run if more asylum seekers and failed asylum seekers are allowed to compete in the labour market in all occupations. The impact here will be greater under option 1 than option 2 as the applicants will be competing with UK and EEA workers across the labour market.

There are possible costs to employers of recruiting asylum seekers or failed asylum seekers but then having to release them if their asylum cases are refused. However, risks of recruitment will

be taken by employers when deciding whether to employ an asylum seeker or failed asylum seeker. We therefore do not quantify any additional cost impacts on employers.

There are also a number of non-monetised benefits associated with the proposals. Firstly, there will be an increase in overall economic and social contribution of asylum seekers and failed asylum seekers to the UK economy, as some will enter employment and hence increase UK output. In addition, there will be a fairer application of PTW legislation between asylum seekers and failed asylum seekers, in line with the Supreme Court’s judgment.

Option 2 - Introduce a permission to work policy for both asylum seekers and failed asylum seekers who have been waiting 12 months or more for a decision on their asylum claim or further submission respectively that restricts employment to jobs included on the list of shortage occupations

General Assumptions and Data

We estimate that each year around 1,000 to 2,000 New Asylum Model (NAM) cases do not receive an initial decision within 12 months and hence become eligible for PTW. In addition, we estimate that option 2 would lead to an increase in NAM cases that make a further submission above current levels. We estimate that around an additional 75 to 300 of these cases may not be decided within 12 months each year.

In the first year, we estimate that between 40,000 and 60,000 legacy failed asylum seekers with further submissions that have not been concluded within 12 months may qualify for permission to work (PTW). We assume that after end of 2011 all legacy cases will be concluded, so only NAM cases will therefore be eligible for PTW.

We assume that a large proportion, but not all, of those eligible will apply for PTW and there will be a relatively high grant rate, in line with current operations.

We assume that due to capacity constraints on Asylum Registration Card (ARC) production, UKBA will only be able to process a maximum of 300 PTW cases per week, or 15,600 per year.

We assume that of the additional pool of failed asylum seekers eligible for and looking to work, there will be a marginally lower employment rate than for option 1 as their employment needs to be in a job included in the list of shortage occupations published by UKBA.

Key Costs and Benefits

There will be a number of impacts associated with granting PTW for asylum seekers and failed asylum seekers with further submissions whose cases have not been decided within 12 months. The key impacts are set out in Table 1 below:

Table 1 – Key Costs and Benefits of Option 2

<u>Costs</u>	<u>Benefits</u>
<p><u>Monetised Costs</u></p> <p><u>Set-up costs:</u></p> <ul style="list-style-type: none"> • Increase in volume of UKBA casework due to increase PTW applications from legacy cases • Increase in costs of PTW documentation including replacement ARC cards for legacy cases <p><u>Ongoing Costs:</u></p>	<p><u>Monetised Benefits</u></p> <p><u>Set-up benefits:</u></p> <ul style="list-style-type: none"> • Reduction in asylum support costs for those granted PTW and coming off asylum support for legacy cases <p><u>Ongoing Benefits</u></p> <ul style="list-style-type: none"> • Reduction in asylum support

<ul style="list-style-type: none"> • Increase in volume of UKBA casework due to increase PTW applications for NAM cases • Increase in costs of PTW documentation including replacement ARC cards for NAM cases 	<p>costs for those granted PTW and coming off asylum support for NAM cases</p>
<p><u>Non – Monetised Costs</u></p> <ul style="list-style-type: none"> • There are potential set-up costs to UKBA of familiarising case-owners in the new PTW proposals • Possible increase in costs to DWP/HMRC for issuing/registering additional National Insurance Numbers, and for providing advice at Job Centre Plus • There are possible costs to native UK and EEA workers in the short-run if more asylum seekers and failed asylum seekers are allowed to compete in the labour market in occupations on the Shortage Occupation List • There are possible costs to employers of recruiting asylum seekers or failed asylum seekers but then having to release them if their asylum cases are refused 	<p><u>Non – Monetised Benefits</u></p> <ul style="list-style-type: none"> • Increase in economic and social contribution of asylum seekers and failed asylum seekers to the UK economy • Fairer application of PTW legislation between asylum seekers and failed asylum seekers, in line with the Supreme Court’s judgment

Discussion of costs and benefits

The key areas of monetised costs fall to UKBA – these are costs associated with processing applications for PTW, and distributing the required PTW documentation including a replacement ARC card.

There will be one-off processing costs of allowing PTW for legacy asylum cases. In addition, there will be ongoing costs of allowing PTW for all new asylum cases.

Similarly, there will be a one-off benefit to UKBA of reduced asylum support costs as failed asylum seekers whose cases are managed by CRD that find employment in jobs included on the list of shortage occupations published by UKBA and earn sufficient funds will leave asylum support. In addition, there will ongoing benefits of reduced asylum support costs for the new asylum cases of over 12 months that find employment and leave asylum support. Any benefits are however limited. Those who are granted permission to work and who then go on and secure employment will need to earn enough to take them and their dependants out of destitution (i.e. they need to earn the same or more than the total value of the package of support which is provided by the UKBA). Only then would we terminate support and see any benefit in terms of support savings.

The overall impacts are relatively small however, and there are no significant net costs or benefits to UKBA. This option does mitigate the risk of increased asylum, further submissions and permission to work applications intake associated with option 1. The more restrictive policy may deter applicants from making an asylum claim or further submission as it does not offer unlimited access to the labour market. In addition, this option may deter individuals applying for permission to work if they do not believe they have the skills required to secure employment in a job included on the list of shortage occupations published by UKBA. If demand for permission to work exceeds what UKBA can process (15,600 applications annually within current processes) there will be additional costs to UKBA to process these applications. This option better mitigates

this risk than option 1 as it is less likely to lead to higher intake rates of permission to work applications.

Discussion of Wider Non-Monetised Impacts

There are potential set-up costs to UKBA of familiarising case-owners in the new PTW proposals. However, case-owners are already aware of the PTW process, and hence the impacts should be minimal.

There is potential for a small increase in costs to DWP/HMRC for issuing/registering additional National Insurance Numbers to those seeking permission to work, and for providing advice and support at Job Centre Plus. However, a significant proportion of the cases would eventually qualify for National Insurance Numbers and Job Centre Plus support without the proposed policy change. The impact here is slightly reduced in this option as it is likely fewer applicants will apply for permission to work if they do not believe they have the skills required to secure employment in a job included on the list of shortage occupations published by UKBA. The additional costs are difficult to accurately quantify, and hence are not included in the summary monetised costs and benefits.

There are possible costs to UK and EEA workers in the short-run if more asylum seekers and failed asylum seekers are allowed to compete for jobs included on the list of shortage occupations published by UKBA. However, by targeting those granted permission to work to jobs included in the list of shortage occupations published by the UKBA, there will be a lower impact on UK and EEA workers as these are jobs that have been identified as requiring skills that the resident work force are unable to fill.

There are possible costs to employers of recruiting asylum seekers or failed asylum seekers but then having to release them if their asylum cases are refused. However, risks of recruitment will be taken by employers when deciding whether to employ an asylum seeker or failed asylum seeker. We therefore do not quantify any additional cost impacts on employers.

There are also a number of non-monetised benefits associated with the proposals. Firstly, there will be an increase in overall economic and social contribution of asylum seekers and failed asylum seekers to the UK economy, as some will enter employment in jobs in shortage occupations, and hence increase UK output. In addition, there will be a fairer application of PTW legislation between asylum seekers and failed asylum seekers, in line with the Supreme Court's judgment.

SUMMARY

The table below outlines the costs and benefits of the proposed changes.

Table 8 – Total Costs and Benefits		
Option	Costs	Benefits
1	Set up Costs - £0.92m (£0.49m to £1.48m)	Set up benefits - £0.90m (£0.1m to £2.20m)
	Ongoing Costs - £15k (£4k to £44k)	Ongoing Benefits - £5k (£0k to £55k)
2	Set up Costs - £0.93m (£0.49m to £1.56m)	Set up benefits – £0.79m (£0.06m to £2.17m)
	Ongoing Costs - £5k	Ongoing Benefits - £1k

	(£1k to £15k)	(£0k to £17k)
Source: Internal Analysis		

F. Risks

There is a risk that introducing a permission to work policy for failed asylum seekers who have made a further asylum based submission may encourage other failed asylum seekers to make further submissions, undermining UKBA's ability to deliver fast and fair decisions in all cases. To be eligible for permission to work the further submission must have been outstanding for 12 months or more and the delay not attributable to the applicant. Recently introduced initiatives have improved the way we manage further submissions, such that the majority now receive a decision well within the 12 months and therefore they would never build up entitlement to permission to work in the future. This may deter people from making a further submission if they don't think they will ever get permission to work. Therefore, this risk is difficult to quantify.

UK Border Agency can deal with up to 300 extra permission to work applications a week within current processes. There is a risk that if the demand for permission to work greatly exceeds this number there will be delays in granting permission to work. There is an additional risk of increased JRs if there are delays in deciding permission to work applications. This risk is more pronounced in option 1 as it will likely lead to a higher rate of permission to work applications.

There is a key risk that there will be an increase in Judicial Reviews associated with the PTW proposals. This risk is more likely to materialise if we receive a higher volume of PTW applications than expected. A higher volume of applications may lead to delays in determining the applications and therefore an increase of JRs challenging this delay. We believe that option 2 offers some protection against this risk, as the more restrictive policy may deter applicants from applying for permission to work if they do not hold the skills necessary to obtain employment in a job in a shortage occupation. Our best estimates suggest around 2% of current PTW cases bring a JR (for a number of different reasons). Assuming this rate stays constant, an increase in the pool of Asylum Seekers and Failed Asylum Seekers that apply for PTW will lead to a significant increase in the volumes of JR's. We estimate that the impacts on UKBA and MOJ could range between **£330k and £4.1m** over 5 years.

G. Enforcement

UKBA already decides permission to work applications from asylum seekers and will do so for failed asylum seekers. The policy change does not alter any of UKBA enforcement and management activities and therefore it will continue to conduct its business in line with Hampton principles.

H. Summary and Recommendations

Option 1 and Option 2 cost almost the same to set up. Option 1 has the potential to yield marginally greater benefits in terms of support savings if those who are granted permission to work find employment and earn enough to take them out of destitution. However, Option 1 also poses a more significant risk to the intake of further submissions which, if realised, will increase cost the UK Border Agency in the longer term and would eventually outweigh any benefits. It is also likely to attract greater numbers of permission to work applications than Option 2, which again has administrative costs for UKBA and, if capacity is exceeded, may lead to more significant resource implications as processes are reviewed. For these reasons, and as set out in the evidence above, Option 2 is the preferred Option 2 as it the most efficient and cost effective way to meet all the policy objectives.

I. Implementation

The new permission to work policy will be implemented from 9 September 2010.

J. Monitoring and Evaluation

The effectiveness of the new policy will be monitored by UKBA through the collection of MI data.

K. Feedback

We will use the established forums to invite corporate partners to provide feedback on the policy. This will be used as part of the monitoring and evaluation of the policy.

L. Specific Impact Tests

See **Annex 2** for details.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added to provide further information about non-monetary costs and benefits from Specific Impact Tests, if relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their actual costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p>Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];</p> <p>The policy will be reviewed in 2011 to establish how effective the policy has been and if it has achieved the policy objective.</p>
<p>Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]</p> <p>It is primarily designed to check if the policy objective has been met.</p>
<p>Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]</p> <p>The review will analyse PTW MI data and a scan of corporate partners' views.</p>
<p>Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]</p> <p>Position at August 2010.</p>
<p>Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]</p> <p>That the policy enables FASs to obtain PTW in certain circumstances without increasing intake of further submissions.</p>
<p>Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]</p> <p>Existing arrangements will be used - collection of MI data and attending corporate partner forums.</p>
<p>Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here]</p>

Add annexes here.

Annex 2. Specific Impact Tests

Statutory Equality Duties

Equality Impact Assessment

The UK asylum system has a very wide pool of potential applicants who can come from anywhere in the world outside of the EU.

The Equality Impact Assessment (EIA) is focussed solely on the impacts of introducing a permission to work policy for asylum seekers and failed asylum seekers restricted to employment in a job included on the list of shortage occupations published by UKBA. It does not address the difficulties some groups may have in obtaining a job in a shortage occupation owing to a wide range of social, educational and economic inequalities in different societies around the world. This EIA considers such inequalities outside its scope.

Some groups may also face discrimination in the UK workplace but we consider this to be outside the scope of this EIA.