
An ACH workshop on...

The Nationality and Borders Act: The impact so far

We'll delve into the impact so far for people seeking sanctuary, and what it will mean for the support and law professionals advocating for the right to asylum.



8th December 2022
12pm-1:30pm | Online

The logo for the Asylum Commission for Human Rights (ACH), consisting of the letters 'ACH' in a bold, orange, sans-serif font. The background of the slide features a low-angle photograph of classical stone columns and a pediment against a blue sky with light clouds.



The Nationality and Borders Act: The impact so far

We'll delve into the impact so far for people seeking sanctuary, and what it will mean for the support and law professionals advocating for the right to asylum.



Chaired by David Jepson, Policy Advisor at ACH



Colin Yeo, Immigration barrister and author



Emma Gaspar Yates, Senior Support and Integration Team Leader at ACH



Policy wrap-up by Rosie McLellan, Communications Team Leader at ACH



Beth Wilson, CEO of Bristol Refugee Rights



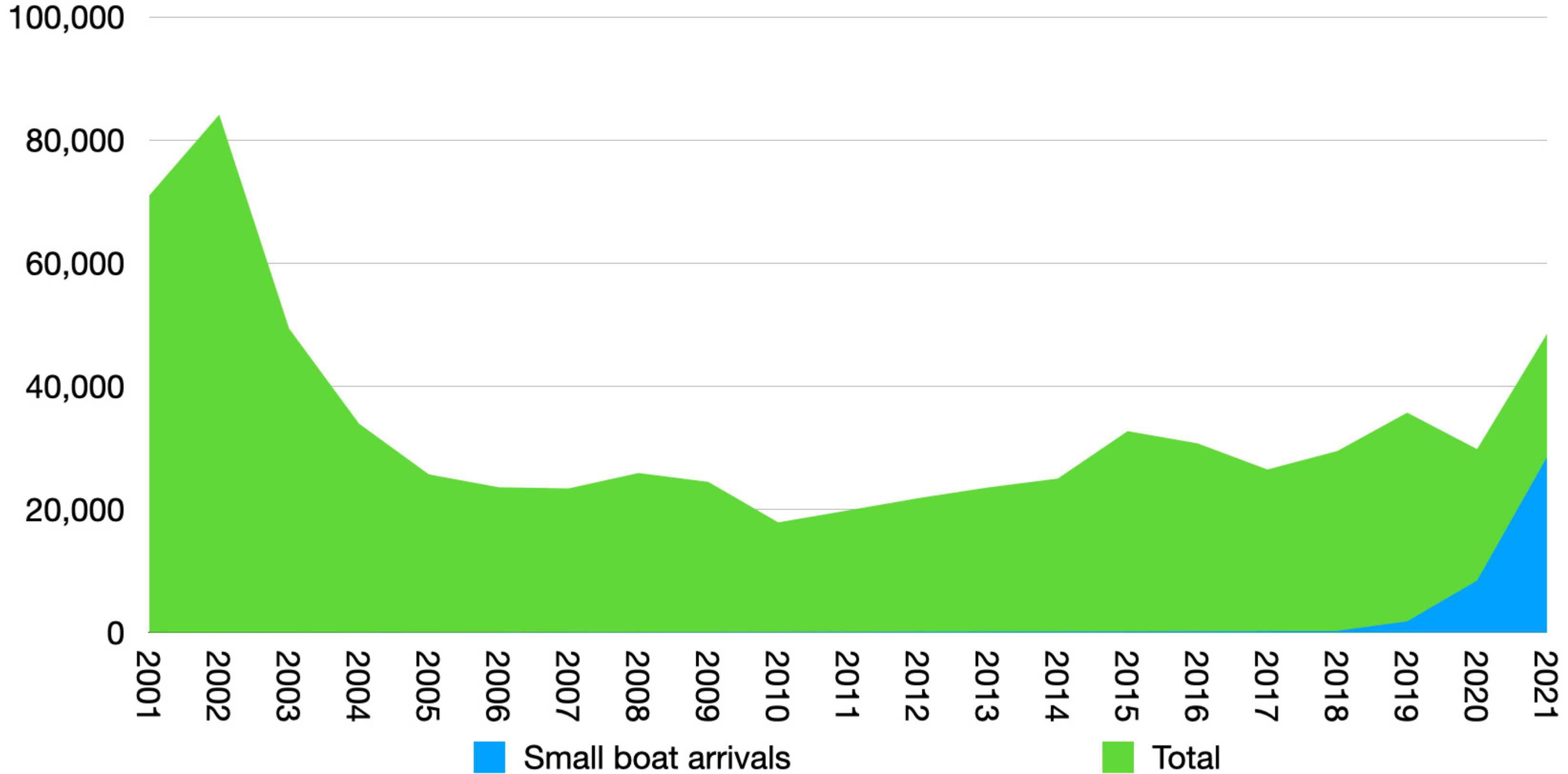


Nationality and Borders Act 2022

Summary...

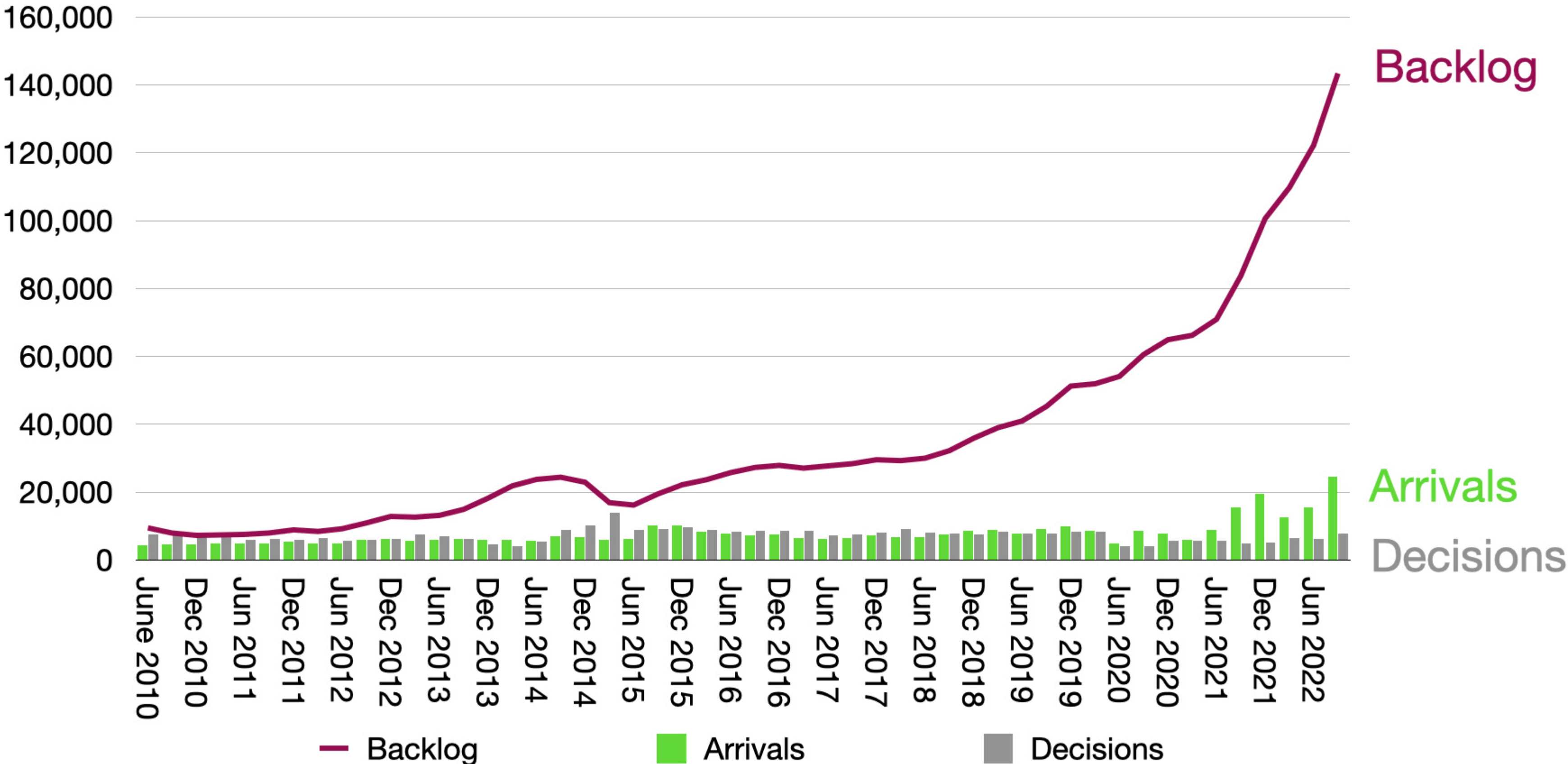
- There are serious problems with the asylum system
 - Small boat crossings
 - Asylum backlog
 - Obstacles to integration
- Nationality and Borders Act 2022 does nothing to address these
- But it does add some misery to the lives of some refugees

Asylum applications per year



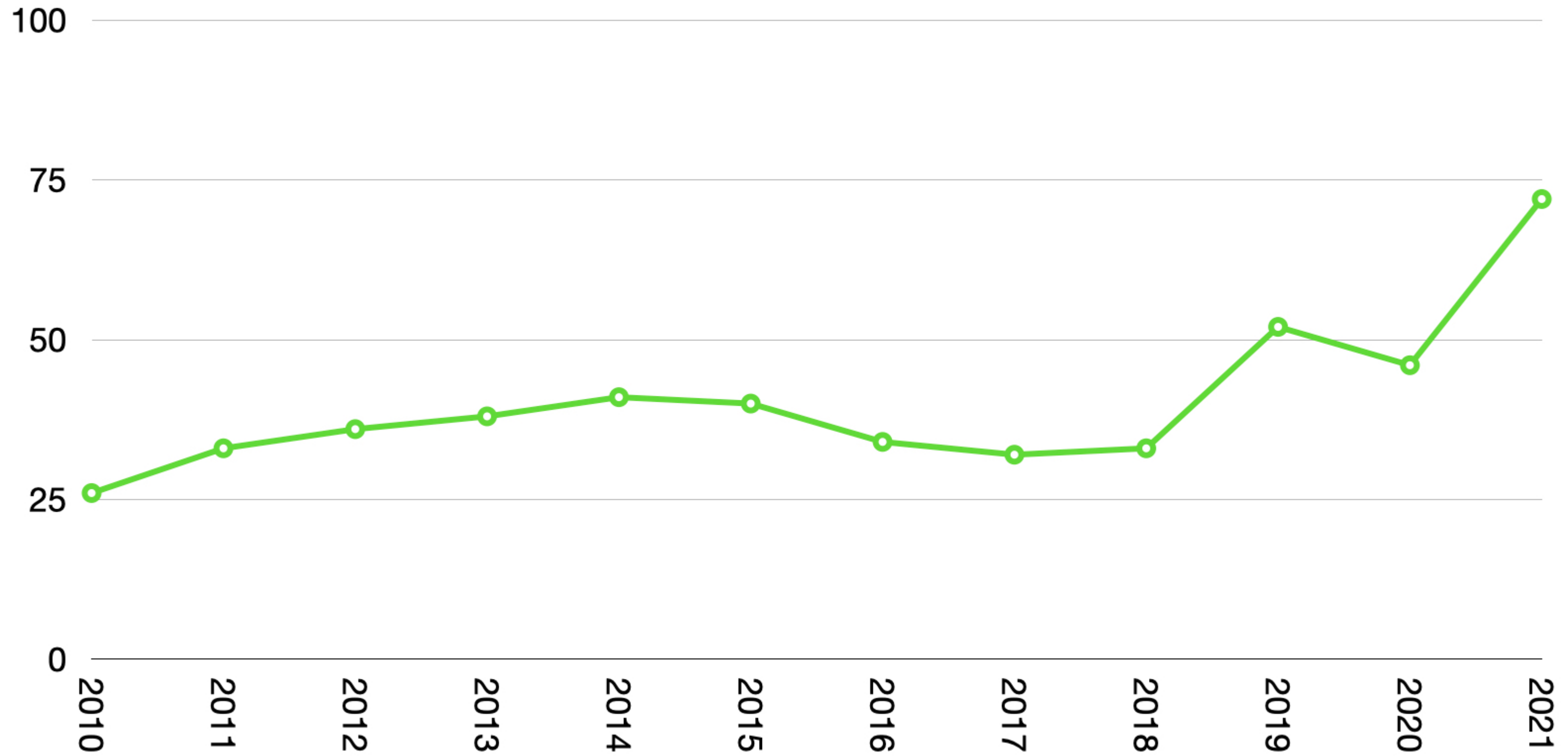
Source: Home Office, immigration statistics year ending December 2021, table ASY_D01. Excludes dependents.

Asylum applications vs asylum backlog



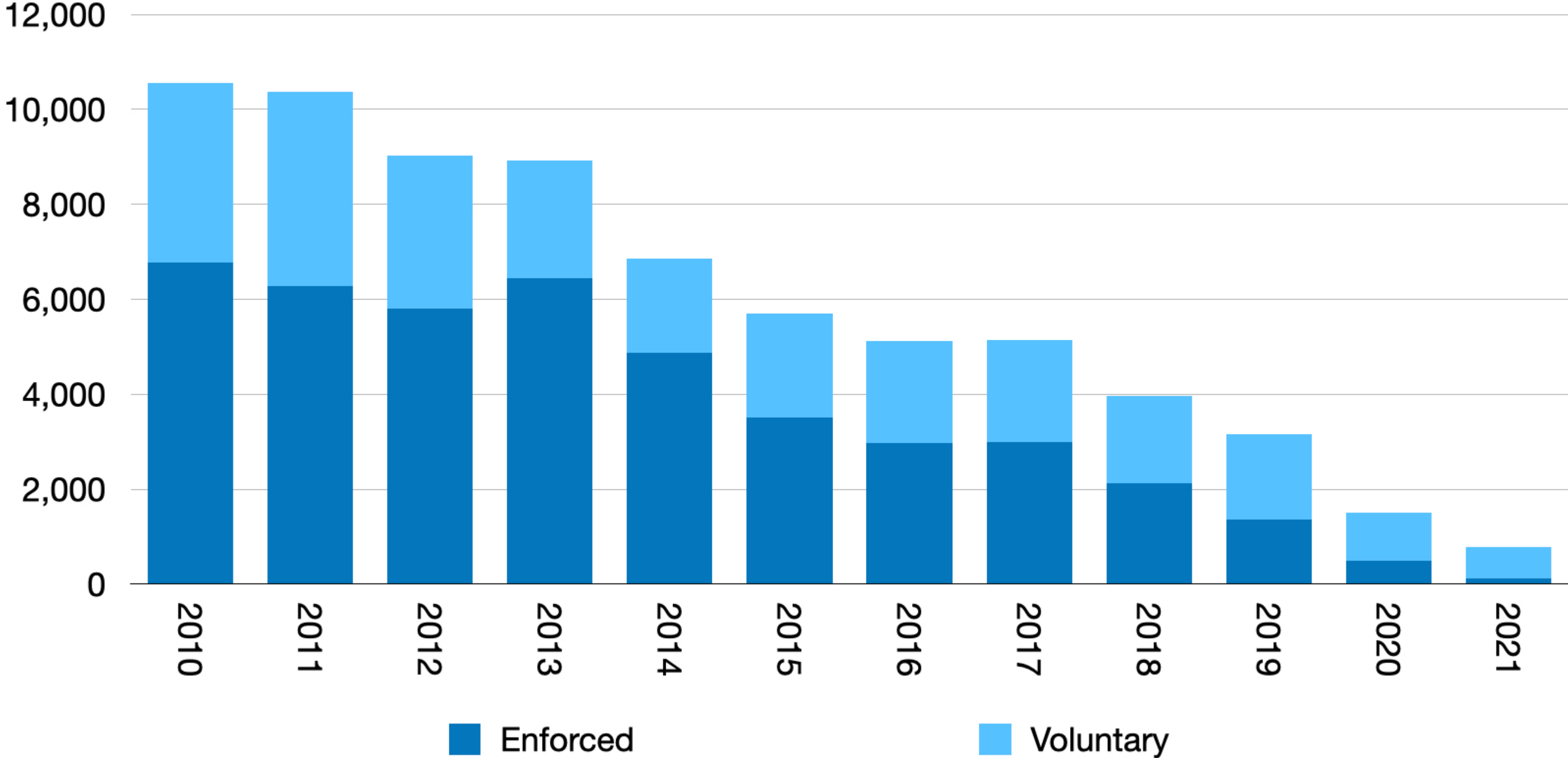
Source: Home Office, tables Asy_D01, Asy_D02 and Asy_D03, published November 2022

Grant rate for initial decisions (%)




Source: Home Office, immigration statistics year ending December 2021, table ASY_02a

Returns of former asylum seekers



Source: Home Office, immigration statistics year to December 2021, table Ret_05

Rwanda

- Didn't wait for NABA to come into force
 - Relying on law from 2004 instead
 - Even if/when some people are removed it will make little difference to the system as a whole
 - Other third country deals may follow, which could activate the 'inadmissibility' process
- 
- A British Airways airplane is shown in flight against a dark blue background. The aircraft is white with red and blue stripes on the tail and wings. The words "BRITISH AIRWAYS" are visible on the side of the fuselage. The plane is angled upwards and to the right.

Differential treatment


- Did not need Act of Parliament to implement this
- New 10 year route to refugee settlement already implemented
- Could be years before anyone is on it given delays
- Creates emotional but not real insecurity: no-one likely to be removed during or after that 10 year period

No recourse to public funds

- Article 23 of the Refugee Convention:
“The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.”
- See also Article 21 on housing and Article 24 on labour legislation and social security

Criminalising asylum

- Entering UK to claim asylum previously not an offence
- It is now:
Immigration Act 1971 section 24:
A person who—
(a) requires entry clearance under the immigration rules, and
(b) knowingly arrives in the United Kingdom without a valid entry clearance,
commits an offence.



“We will be targeting for prosecution those migrants in cases where there are aggravating factors—where they caused danger to themselves or others, including rescuers; where they caused severe disruption to services such as shipping routes, or the closure of the channel tunnel; or where they are criminals who have previously been deported from the UK or persons who have been repeatedly

Reinterpreting the Convention

- Mainly very minor in greater scheme of things
- Standard of proof toughened
- Membership of particular social group tightened
- Article 31 protection against penalization for those “coming directly” attacked
- (Also slight changes to trafficking legislation)

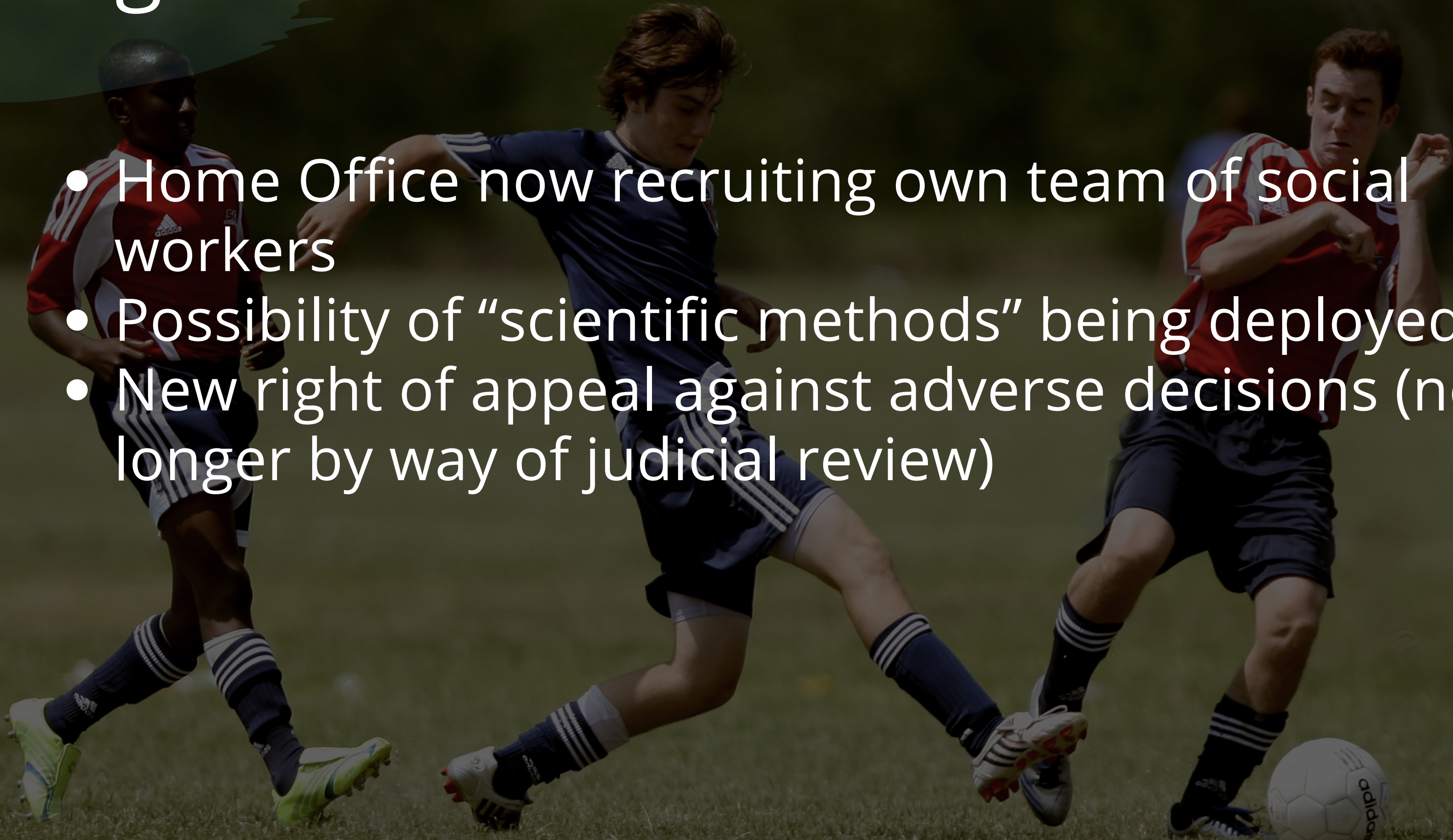
Rights of appeal



- New procedure for single appeal to the Upper Tribunal only
- Given 76% of asylum seekers currently getting asylum from Home Office, this appears not to matter much in short term
- Delays are caused by Home Office not appeals
- Bigger problem is collapsing legal aid market

Age assessments

- Home Office now recruiting own team of social workers
- Possibility of “scientific methods” being deployed
- New right of appeal against adverse decisions (no longer by way of judicial review)



Likely outcomes

- Unlikely to affect numbers of arrivals
- No impact on asylum backlog or delays
- Does not make removals any easier
- Does make integration harder

Nationality and Borders Act 2022 – Impact on Asylum Seekers

**Beth Wilson, Chief
Executive Officer**

Bristol Refugee Rights
Safety • Solidarity • Action for Change



Accommodation and Support



If an asylum seeker is placed in contingency accommodation such as a hotel, which offers meals, they are eligible for £8.24 per week to cover clothes, non-prescription medication and travel. They are not eligible for mainstream benefits.



UK asylum seekers with diphtheria symptoms to be held in 'isolation hotels'

Facilities similar to those used during Covid pandemic will house people showing signs of contagious disease



Refugee on 28th day of hunger strike accuses Serco of 'inhuman and degrading treatment' of asylum-seekers



Asylum Process

Notice of Intent of Inadmissibility Process

Notice of Inadmissibility Decision



Fast Track

Removal to Rwanda

Group 2 Refugee

Group 1 Refugee

Priority Removal Notice



Mental Health



'Staying here is intolerable': the truth about asylum seeker hotels

Ali, who has been trapped in a hotel for nearly 500 days, tells of his frustration and his desire to contribute to society



Separated Children and Victims of trafficking



Only one of these three is an adult – can you tell which one?

Nationality and Borders Act 2022

Emma Gaspar Yates | Senior Support
Team Leader at ACH

Dec 2022



#RethinkingRefugee

@ACHIntegrates

www.ach.org.uk



What will NABA mean for future Refugees?

- At ACH we mainly work with people that have recently been granted their Refugee status in the UK.
- We provide accommodation, training and general integration support.
- This presentation aims to assess what the possible impact of NABA will be on our future service users.
- Closer look at the changes to Refugee Status in the UK.



Differential treatment of refugees

- (1) For the purposes of this section—
 - (a) a refugee is a Group 1 refugee if they have complied with both of the requirements set out in subsection (2) and, where applicable, the additional requirement in subsection (3);
 - (b) otherwise, a refugee is a Group 2 refugee.
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- (2) The requirements in this subsection are that—
 - (a) they have come to the United Kingdom directly from a country or territory where their life or freedom was threatened (in the sense of Article 1 of the Refugee Convention), and
 - (b) they have presented themselves without delay to the authorities.
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- (3) Where a refugee has entered or is present in the United Kingdom unlawfully, the additional requirement is that they can show good cause for their unlawful entry or presence.

A Two-Tier Asylum System

- The NABA will implement a two-tier asylum system for those who are granted protection in the UK. Group 1 Refugees will continue to enjoy the same rights as Refugees did pre-28 June 2022 whereas Group 2 Refugees will be granted Temporary Refugee Permission to Stay.
- Due to a lack of safe and legal routes to seek protection most asylum seekers arrive irregularly. In order to claim asylum currently one must be in the UK. There is no way to apply for asylum from outside the UK for most people.
- The vast majority of those that have claimed asylum since 28 June 2022 will fall into the Group 2 category, even if they are recognised as Refugees in need of protection.





Group 1 and Group 2: Conditions

Group 1 (Refugee Permission to Stay)

- An initial period of 5 years' permission to stay
- Immediate and unrestricted access to the labour market
- Recourse to public funds
- full access to the family reunion route for their family members
- The opportunity to apply for a refugee integration loan
- A 5-year route to settlement for those who continue to need protection on the settlement protection route
- No requirement to demonstrate a knowledge of language and life in the UK when applying for settlement

Group 2 (Temporary Refugee Permission)

- An initial period of 30 months permission to stay
- Right to work
- Access to the family reunion route for their family members where there are insurmountable obstacles to continuing family life without family reunification
- Recourse to public funds
- The opportunity to apply for a refugee integration loan
- The ability to apply for settlement after 10-years under the Long Residency Rules

Downgrading of Humanitarian Protection

- Anyone granted Humanitarian Protection under rule 339C of the Immigration rules will now be granted Temporary Humanitarian Protection.
- The conditions attached to this will be similar to those of Temporary Refugee Permission to stay.
- Notably an initial grant of 30 months leave to remain.
- Settlement only possible via 10 Year Long Residency Route.

Temporary Refugee Permission to Stay

- The most striking difference is that of the 'temporary' nature of these new types of leave.
- Under the new system Group 2 Refugees will need to make applications to extend their leave every 2.5 years. they will need to renew their leave multiple times before they have a chance to apply to settle in the UK under the Long Residency route.
- Applications for Refugee Settlement on the 5 year refugee route are free of charge.
- Applications under the Long Residency route have high fees, currently £2,389.

Safe Return Reviews

- The Home Office have stated that they will conduct Safe Return Reviews when someone with Temporary Permission to Stay applies to extend their stay. This policy already applies to Refugees when they apply for ILR.
- The purpose of these reviews is to allow the Home Office to decide whether that person continues to need protection in the UK.
- Someone granted Temporary Refugee Permission to Stay will be subject to a Safe Returns Review each time they renew their status - this could be up to several times before applying for Settlement under the Long Residency Rules.
- Currently it is very rare for Refugees to have their status revoked following a Safe Return Review.

What are the consequences for integration?

- Increased uncertainty about the future.
- Prolonged legal limbo before people feel that their status is secure.
- Minimum of 11 years before people will be able to apply for British Citizenship.
- It is likely that this will create further barriers to people's integration in the UK.
- Possible impact on long term planning and decision making.
- How easy is it for someone to commit to long term goals like attending university or establishing a business when your future in the country is not guaranteed?

Further considerations

- Possibility of people missing immigration deadlines and losing their legal rights in the UK.
- People can miss deadlines for a variety of reasons such as insufficient access to affordable legal representation and mental and physical health emergencies.
- Even for those who apply on time it can be difficult to prove your legal status when waiting for an immigration decision. The Home Office normally state that decisions can take up to 6 months.
- During this 6 months it can be hard for people to prove that they still maintain the right to work and rent. This can be an obstacle for people who are starting a new job or trying to rent a property.
- There is constant reporting about the backlog in the asylum system - under NABA Home Office caseworkers will need to reassess Refugee claims every 2.5 years.
- This may add to further delays in decision making.

Family Reunion changes

- For Group 2 Refugees: They will need to show that there are insurmountable obstacles to family life continuing elsewhere and that refusal would breach Article 8 Rights.
- An extra legal test and is the main difference between Group 1 and Group 2.
- This could present a challenge to people whose families are living in third countries.
- For majority this is unlikely to be an issue as families often living in country of origin.

Inadmissibility and safe country removals

- Assessing inadmissibility and removal to safe third country.
- Inadmissibility criteria already existed in previous immigration rules but under NABA anyone who has been present in a safe third country and would have been eligible to make an asylum claim their claim may be declared inadmissible.
- This would be anyone who has arrived in the UK from Europe.
- NABA has introduced the possibility to remove someone whose claim has been declared inadmissible to any safe third country.
- However, removal would need to be agreed with the government of safe third country (see Rwanda Memorandum of Understanding)
- If the government is not able to remove to safe third country, then the HO will have to assess applicants' asylum claim.

Increased delays in decision making

- It is unclear how many people will be removed to safe third countries.
- Currently no one has been removed to Rwanda due to ongoing legal challenges.
- However, this added layer of assessing inadmissibility and attempting removal is likely to increase delays in decision making.
- It is thought that there are up to 150,000 pending cases in the asylum system currently.
- Increased waiting times for decisions means people lose more of their time in legal limbo.
- People are unable to work and even study is restricted in this time .
- Living with uncertainty is psychologically difficult and is harmful for people's mental health.
- Anecdotally, we see that people that have spent more time in the asylum system have worse mental health and face greater barriers to their integration in the UK.

What can we do to prepare?

- For providers such as ACH who mainly work with Refugees, it will be some time before we begin seeing people granted Temporary Refugee Permission to Stay.
- It will be even longer before service users and clients need to extend their stay.
- In the meantime we can work towards increasing our capacity to advise our service users on immigration matters linked to the Nationality and Borders Act.
- Stay up to date with changes to the law and guidance on how NABA will be implemented.

Sources / further reading

<https://www.legislation.gov.uk/ukpga/2022/36/part/2/enacted>

<https://www.gov.uk/government/publications/permission-to-stay-on-a-protection-route-caseworker-guidance/permission-to-stay-on-a-protection-route-for-asylum-claims-lodged-on-or-after-28-june-2022-accessible>

<https://righttoremain.org.uk/what-does-the-nationality-and-borders-act-mean-for-uk-asylum-and-immigration-law/#inadmissibility>

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1114144/Family_reunion.pdf

