

Consultation Response

Home Office proposals on 'Reforming support for failed asylum seekers and other illegal migrants'

Key points

- Many more children and families will be made destitute and homeless as a direct consequence of these proposed changes
- The Home Office's own evidence strongly suggests that this approach will be ineffective in making families more likely to leave the UK or that others will be put off from coming here, and therefore will not achieve its stated objective
- There is no evidence that the Government has taken into consideration its duty under Section 55 of the Borders, Citizenship and Immigration Act 2009 or the UN Convention on the Rights of the Child and we believe that the harm caused to children as a result would render this policy is unlawful
- The cashless support system under Section 4(2) of the Immigration and Asylum Act 1999 should not be used as a means of support for children and these should all be supported under the Section 95 support system until they leave the UK or are granted refugee status or another form of leave to enable them to work.
- Costs for support will be transferred onto local authorities who also have a duty to support children in need in their area under Section 17 of the Children Act
- Forcing children into destitution creates serious child protection risks and we know from our work with destitute families that this leaves children exposed to abuse, violence, and exploitation. Past serious case reviews such as that of Child EG and Child Z clearly demonstrate how serious removing support from already vulnerable families can be

Introduction

The Children's Society is a national charity that runs local projects to support children and young people who are at risk of exploitation or harm, living in care or let down by the systems meant to protect them.

In the UK there are 10,000 children who receive asylum support and an estimated 120,000 undocumented migrant children who are at risk of destitution, social exclusion and exploitation¹. Many of these children were born in the UK or arrived here alone. The Children's Society helped 873 migrant and refugee children and young people last year. These children are extremely vulnerable, with many experiencing severe mental health difficulties and homelessness.

¹ Sigona, N. and Hughes, V. (2012) 'No way out, no way in: Irregular migrant children and families in the UK': https://www.compas.ox.ac.uk/fileadmin/files/Publications/Reports/NO_WAY_OUT_NO_WAY_IN_FINAL.pdf

Consultation Questions

- 1. The proposal to close off support for failed asylum seekers who make no effort to leave the UK at the point that their asylum claim is finally rejected, subject to continued support in cases with a genuine obstacle to departure at that point or in which further submissions are lodged with the Home Office and are outstanding (paragraphs 20-21).**
 - 1.1. While we welcome the Government's proposal to close the Section 4 support route and merge this with existing support under Section 95, we strongly believe that this support must be open to all families who would otherwise be destitute, from when they arrive until they settle or if they are refused protection, until they are able to and it is safe for them to return to their country of origin with assistance. This should include families and young people who need to re-enter the support system, as these are particularly likely to be vulnerable – for example, single mothers with young children and care leavers who applied for asylum as unaccompanied children. We believe that support should continue to be provided in cash and with accommodation where families need this in order to safeguard and protect children.
 - 1.2. It is welcomed that the Government has explicitly stated that it will continue to provide support in cases when there has been a genuine obstacle to departure and assume from the consultation that this will mean that these cases will receive Section 95 support. The Children's Society and the Refugee Children's Consortium, that we co-chair, have long raised concerns about the use of Section 4 to support children as this cashless support system takes no account of the additional needs of children.
 - 1.3. We welcome the closure of Section 4(2) for this reason but only if it would mean that all children previously supported under this regime are able to access cash-based support and accommodation under Section 95 to meet children's welfare needs. As long as they are not allowed to work, families should be able to get adequate cash-based support from the moment they arrive until they are granted refugee status and can transition into employment or until they leave the UK through the family returns process, voluntarily and with assistance.
 - 1.4. There is a presumption that all families who have been refused protection by the Home Office have had a fair hearing and that the decision made about their asylum claim is an accurate one. In fact, the poor quality of Home Office support decisions is reflected in the fact that around a third of asylum decisions are overturned at appeal and for some nationalities the rate is much higher. In 2014, the UK refused asylum to 189 Syrian asylum seekers yet they will not be able to return home. For many families in similar circumstances, their fear of returning is so great they would rather stay destitute in the UK.
 - 1.5. One current example of this protection gap concerns Eritrean nationals who are increasingly being refused protection by the Home Office. Between April and June of 2015, just 34% of decisions on Eritrean asylum claims were grants of protection,

compared to 73% in the first quarter of 2015². But in the second quarter of this year, appeals by Eritrean nationals were overturned in 63% of cases. The UN has recently condemned the country's Government for 'gross human rights violations' which could be tantamount to 'crimes against humanity'. The UN has strongly urged continued international protection for Eritrean refugees fleeing human rights violations, and warns against sending them back to danger in a country that punishes anyone who tries to leave without permission³. However, as a result of Home Office decision-making, there are many Eritreans in the UK who have been refused asylum, but who will be expected to return despite having legitimate fears of what might happen to them on return, or will under current proposals be left in the UK facing destitution.

- 1.6. Research from Refugee Council⁴ shows that many of those whose asylum claims are refused have fled violence and conflict and are often unable to leave the country immediately and therefore should be supported through a cash-based system of support when they remain in this country. Many families will feel that destitution in this country is preferable to returning to their country of origin as this may put their health or safety at serious risk, or even if the families does wish to return they may be unable to obtain the necessary documentation. Research by Refugee Council and Refugee Action highlights that where families have been forced into destitution at the end of the asylum process, overwhelmingly they believed it was unsafe for them to return to their home country.⁵ This is also evidenced through analysis of the Home Office's Independent Family Returns Panel overseeing the returns process of families, who the Home Office considers to have no right to be in the UK, has also called into question Home Office decision-making. For example, of the 1,193 families that the Home Office considered to be in the UK unlawfully and were being expected to return through the Family Returns Process between 2012 and 2014, 242 families – 20% - could not actually be returned and needed to be granted leave⁶.
- 1.7. The experience of families we work with is that families come to UK to seek safety and in many cases are fleeing war and persecution, feeling they are unable to return to their country of origin even if their claim for asylum is turned down. From their perspective, remaining in the UK is synonymous with doing what is in their child's best interests. Many families who find themselves at the end of the asylum process will have very real fears about return including where their home may be a war zone.

2. The proposed changes for failed asylum seekers with children (paragraphs 29-33).

2.1. The scale of children not supported

- 2.2. Although some families with children will be supported under Section 4, the majority of children whose families have been refused protection will be on Section 95 support, as the Government has previously maintained that families with children should receive this higher level of support. There is no precise figure available for the number of children this

² Refugee Council briefing on Eritrea (2015):

http://www.refugeecouncil.org.uk/latest/news/4410_uk_paves_way_to_return_asylum_seekers_to_eritrea

³ UN Report on Human Rights Abuses in Eritrea (2015):

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16054&LangID=E>

⁴ Refugee Council and Refugee Action, *Inhumane and Ineffective - Section 9 in Practice*, 2006, page 7.

⁵ Refugee Council and Refugee Action, *Inhumane and Ineffective - Section 9 in Practice*, 2006, page 7.

⁶ Independent Family Returns Panel: 2012 – 2014: <https://www.gov.uk/government/publications/independent-family-returns-panel-annual-report-2011-to-2012>

policy will affect, though we know that children make up around 25% of those in receipt of Section 95 altogether. We have raised serious concerns that the cuts to Section 95 that came into force on 10 August 2015 represent a significant risk to children's wellbeing with families now living 60% below the poverty line⁷. For the Government to now go one step further and remove support entirely for children whose parents have not been granted asylum is alarming and places children at significant risk of harm, homeless and destitution. The Children's Society does not support this proposal.

2.3. Safeguarding risks

2.4. The Children's Society has serious concerns that despite the assertion that the consultation proposals will 'retain important safeguards for children' this is not evident from the proposals. Given the implications for children of having Section 95 support terminated as proposed in the consultation and the risk that children and families, who are not allowed to work and are wholly dependent on this support, will be left homeless and destitute as a result, it is hard to see how children's welfare has been taken into account and we do not see how this policy could be lawful.

2.5. Not supporting families to return to their country of origin

2.6. In 2013 a cross-party parliamentary inquiry, supported by The Children's Society, examined the asylum support system with respect to children and young people. From the information received through this inquiry, the panel found that there is no correlation between levels of support, permission to work and access to healthcare, and the numbers of asylum applications a country receives. For example, in 1999 when support payments were reduced and vouchers were introduced, asylum applications increased; when cash was reintroduced, the numbers went down steadily for years afterwards. In addition, this policy has done little to increase voluntary returns. Instead evidence suggests that asylum seekers do not make choices about where they end up, and rarely do so on the basis of welfare support.

2.7. Previous government policies of forced destitution have been severely criticised by various segments of civil society and parliamentarians for being ineffective at encouraging those who have no leave to remain to return home or from acting as an incentive to others to claim asylum in the UK. For example, in its review of the asylum system in 2008, the Centre for Social Justice stated that "*immediate removal of support is inhumane and makes final resolution harder. It does not allow time for individuals to make alternative plans and encourages illegal working and destitution... Making refused asylum seekers homeless and penniless is hugely counterproductive.* Removing support from families will place their children at significant risks of destitution and harm and will not encourage those families to return to their country of origin. If families are left destitute this actually establishes additional barriers to return and raise greater concerns for the family.

2.8. This is evidenced in the data from a pilot that the Government ran between December 2004 and December 2005 in which families who were appeal rights exhausted had their accommodation and financial support removed if they failed to take "reasonable steps" to

⁷ http://www.childrenssociety.org.uk/sites/default/files/Asylum%20Support%20briefing%20stats_further%20cuts_2015_after%20regs%20laid.pdf

leave the UK (implementing Section 9 of the Asylum and Immigration Act 2004). The Section 9 pilot involved a cohort of 116 families who were living in Leeds, London and Manchester and it found that in nearly a third of cases families disappeared in order to avoid the risk of being returned to their country of origin. The Home Office evaluation found that none of the families in the pilot returned to their countries of origin as a direct result of this policy. Should families that have been refused asylum have their support removed by the new proposed policy, it is extremely likely that these findings will be replicated for a larger number of families and their children.

3. The length of the proposed grace period in family cases (paragraph 31).

- 3.1. We have significant concerns that the grace period does not reflect a realistic time of how long it takes for families who have been refused protection to return to their countries of origin or to otherwise resolve their claims. Any change in support for failed asylum seekers needs to work with the Government's Family Returns Process (FRP) and therefore support should continue until families have gone through the FRP. The 'Evaluation of the new family returns process' published in 2013 assessed timescales of families within the Family Returns Process (FRP) against the UKBA's aspirational target of returning families within ten weeks of their entry into the new FRP. Of the 188 families who had returned for whom timescales are known 72% did not meet this target, with 28% taking over six months or longer to return⁸. These statistics show that the 28 days is not a sufficient time period for families to be supported to return to the country of origin.
- 3.2. We agree that some form of review process should be considered where families have been refused asylum but remain in the UK and on Section 95 support. The woeful levels of support provided to children under Section 95 mean that these children are already living in severe poverty facing serious hardship over significant periods of time⁹. And the recent cut to children's support of 30% means that children are suffering even more. Therefore, we agree that families should not remain on this support for as short a time as possible. However, we do not believe that terminating support to families after 28 days is the solution. Instead the Home Office could consider a review of the case every 6 months, and to make sure that cases are referred through the family returns process if this is applicable or if not, to reconsider whether the family can be granted a status to remain in the UK lawfully and exit the asylum support system with transitional support into employment and mainstream benefits where necessary.

4. The assessment of the impact of the proposals on local authorities (paragraphs 38-45).

- 4.1. Local authorities have a duty – and will continue to have a duty to provide support under current proposals – under Section 17 of the Children Act 1989. Under this provision local authorities have a general duty to support children in need in their area and, so far as is consistent with that duty, to promote the upbringing of such children by their families. Destitute children with no access to alternative support are undisputedly 'in need' and under the Children Act 1989 local authorities have duties to safeguard and promote their welfare of children in their area through the provision of accommodation and other services that are assessed as necessary.

⁸ Home Office (2013) Evaluation of the new family returns process. Pg. 21

⁹ Briefing on the asylum support flat rate (2015):

http://www.childrenssociety.org.uk/sites/default/files/Asylum%20Support%20briefing%20stats_further%20cuts_2015_after%20regs%20laid.pdf

- 4.2. The Government's own Impact Assessment for changes to asylum support assumes that local authorities might only have to support destitute individuals and families for 'three months while the leave to remain application is decided.' Yet a recent University of Oxford report¹⁰ highlighted that more than a third of migrant families supported by local authorities while waiting for a decision on their immigration case receive this support for between one and three years. Local authorities are already supporting significant numbers of families under this provision with no reimbursement for this support leaving significant funding shortfalls. Additional pressures will only work to exacerbate existing problems. According to information provided by the NRPF network as of 15 January 2015 the number of households recorded as in receipt of financial support across 28 local authorities using NRPF Connect was 1,946 with 3,354 dependants. Currently it is estimated that 3% of families on Section 17 are refused asylum seeking families – this small number is due to the fact that currently these families are supported by the Home Office under Section 4¹¹ or Section 95. Should these families be cut off from this centrally administered support then local authorities, under their duties in the Children Act 1989 will be required to support these children at risk of destitution. Some local authorities may therefore be unwilling to comply with duties to support children under Section 17 due to budgetary pressures leading to further litigation and a greater risk of child protection concerns arising.
- 4.3. Human Rights Assessments have become a method for local authorities to fulfil the legal requirement to consider the human rights implications of refusing Section 17 support where Schedule 3 NIAA precludes local authorities from providing that support to nationals of EEA countries, refugees granted status in EEA countries, families unlawfully in the UK and refused asylum seekers that have refused to comply with removal directions. This is because local authorities must consider whether withholding or withdrawing Section 17 support as a result of the Schedule 3 NIAA exclusion would cause a breach of rights under the European Court of Human Rights. We are concerned that with the proposed changes more local authorities will be conducting these assessments and it cannot be in doubt that removing or withholding support from children and their families leaving them destitute will constitute a breach to the child's human rights. Indeed most local authority interviewees for a recent report by Compas argued that it was difficult to withhold or withdraw support under Section 17 using the Human Rights Assessment.
- 4.4. Single mothers with children and pregnant women are likely to be a particularly vulnerable group of families who will need continuous support from local authorities and health services to maintain their own health and the health of their children, but who would under these proposals be cut off from asylum support and unable to re-enter the support system. This would include cases of women, who had fallen pregnant as a result of rape while destitute and street homeless. We also believe that care leavers turning 21 or 25, who had arrived in the UK as unaccompanied children, are another group of vulnerable individuals who are likely to be at risk of destitution if they are prevented from re-entering the asylum support system.

¹⁰ Price, J. and Spencer, S. (2015) 'Safeguarding children from destitution: Local authority responses to families with 'No Recourse to Public Funds'' COMPAS, University of Oxford: https://www.compas.ox.ac.uk/fileadmin/files/Publications/Reports/PR-2015-No_Recourse_Public_Funds_LAs.pdf

¹¹ Compas (2015) No Recourse to Public Funds pg.27

4.5. The Home Office will be aware of several serious case reviews which have been conducted in relation to extremely vulnerable children whose families had been left without any support. For example, a 2011 Serious Case Review involving Child Z, noted that the circumstances of the child's mother - a refused asylum seeker facing removal, with a life threatening illness, and caring for a young child with few support networks - *"would challenge any individual's coping strategies."* It stressed the *"need for high levels of support for someone with such vulnerabilities was clear"*. The review identifies the loss in continuity in medical care due to her frequent moves to different part of the country as a major factor leading to the woman's death and her child needing to be looked after.

5. Whether and, if so, how we might make it clearer for local authorities that they do not need to support migrants, including families, who can and should return to their own country (paragraph 42).

5.1. The Children's Society has significant concerns that this consultation question implies local authorities will be encouraged by the Home Office to rescind on their legal duties under the Children Act 1989 to protect children in need in their local area. This is not the case and will leave local authorities open to legal challenge. This would also leave children in their local area at risk of destitution and homelessness.

5.2. Should local authorities be encouraged, either directly or indirectly, to withhold support to families then children in these families may have to be taken into care. This would not be because their parents could not protect them but may be because their parents are unable to return to their home country and see their child's best interest being protected by remaining in the UK. The ethos of children's legislation and guidance on children and families would lead local authorities in general, subject to the facts of each case, towards a view that the separation of children from their parents solely due to the potential for destitution would be a breach of Article 3 and Article 8 (ECHR) and would be likely to have an adverse impact upon the well-being of individual children. This relates particularly to Section 17(1) of the Children Act 1989 - the duty to promote the upbringing of children by their families. Taking children into care would be costly for local authorities but similarly costs would arise if children are left destitute, street homeless, and exposed to abuse and exploitation.

6. Any suggestions on how the Home Office, local authorities and other partners can work together to ensure the departure from the UK of those migrants with no lawful basis to remain here and minimise burdens on the public purse (paragraph 47).

6.1. The removal of legal aid for advice and representation in non-asylum immigration cases through the Legal Aid, Sentencing and Punishment of Offenders Act 2012 will mean that thousands of children and families, including those with mixed cases – claims made on asylum, human rights and Section 55 welfare grounds - will not be able to access legal support to have their claims fairly considered. While asylum continues to be covered by legal aid, mixed cases are not fully covered and where families have been in the UK for significant periods of time, they may well have a right to remain in the UK but be unable to present their case fairly.

7. Any information or evidence that will help us to assess the potential impacts of the changes proposed in this consultation document and to revise the consultation stage Impact Assessment (paragraph 48). Any information or evidence that will help us to assess the potential impacts of the changes proposed in this consultation document on persons who have any of the protected characteristics as defined in the Equality Act 2010 (paragraph 49).

- 7.1. There is no evidence in the consultation document that the Government has given due consideration to the interests, needs and rights of children in their own right. The Government is a signatory of the UN Convention on the Rights of the Child which states that all children, irrespective of their nationality, status or their parents status, are protected by its articles including the need to ensure that their best interests are a primary consideration in decisions made about them and that States Parties shall ensure to the maximum extent possible the survival and development of the child. Despite the Government's commitment as a signatory the consultation makes no mention of its international obligations to protecting children under the UNCRC nor its domestic responsibilities under Section 55 of the Borders, Citizenship and Immigration Act 2009 which places a duty on the Home Secretary to have regard to the need to safeguard and promote the welfare of children within its immigration, asylum and other functions.
- 7.2. The Refugee Children's Consortium, which The Children's Society co-chairs, has previously written to Sarah Rapson, Director General, UK Visas and Immigration on 24 August 2015 to express our concern that the proposals and consultation document contain no consideration of the interests, needs and rights of children in their own right.
- 7.3. The UK's highest courts have continuously emphasised the need to give specific consideration to the best interests of children – which must include recognition that they are not mere adjuncts of the adults with parental responsibility for them, their interests may not always be the same as those adults and any moral failings of those adults are not to be applied to the children: see *ZH (Tanzania) v SSHD* [2011] UHSC 4; *EM (Lebanon) v SSHD* [2008] UKHL 64; *Zoumbas v Secretary of State for the Home Department* [2013] UKSC 74.
- 7.4. There is no mention of the number of children that will be affected by these provisions though the impact assessment states that 2,900 families will be affected by the proposal to remove support under Section 95. Nevertheless this will have a significant impact on children, who make up approximately 25% of those supported under Section 95 overall. Importantly there is no consultation question specifically directed to the interests and needs of children. To fully understand the implications for children and on its Section 55 duty, the Home Office should be seeking views on how its proposals the best interests of children and how those interests will be addressed.

8. Conclusion

- 8.1. The Government's current proposals do not assess the impact of the change on children's rights in their own right and if implemented would leave children and their families at risk of destitution and homelessness. The proposals stem from a belief that by creating a 'hostile environment' for migrants is an effective means of encouraging them to leave the UK. There is no evidence to support this is the case. The majority of

those seeking asylum are from Syria, Eritrea, Sudan and Afghanistan - there is a clear correlation between the highest numbers of applicants and countries that are war torn or under political oppression.

- 8.2. It is particularly disappointing and concerning to see the Home Office describe children whose asylum claims have been refused being described as “*illegal migrants*” who are “*no more deserving of welfare support than any other migrant in the UK unlawfully*”. We do not agree with this assertion. The majority of children who are undocumented in the UK were born here and often their immigration histories are incredibly complex¹². Many of these children’s families will have come to the UK fleeing war and persecution, but would not have received the protection they need due to the reasons detailed above. A significant number may also have been trafficked into the UK for exploitation and therefore will not have a regular immigration status. To refer to these children as ‘illegal immigrants’ is inflammatory and attempts to simplify what is ultimately a very complex issue. We also do not agree with the premise that children are ever undeserving – this is contrary to the Government’s duties under the UNCRC and domestic law, and contradicts other communication which is very clear about the Government’s priorities for extending opportunities and improving the life chances of all children in this country¹³.
- 8.3. While designed to send a tough message, these changes will not guarantee cost-savings, nor will they guarantee that more people leave the UK. Instead they will push these already vulnerable children further into the margins of society, leaving them at significantly higher risks to exploitation and abuse. The UK has a duty under both international and domestic legislation to protection all children, regardless of where they have come from or what decisions their parents made, and these children should not be punished in an attempt to look ‘tough’ on immigration.

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¹² Sigona, N. and Hughes, V. (2012) ‘No way out, no way in: Irregular migrant children and families in the UK’: https://www.compas.ox.ac.uk/fileadmin/files/Publications/Reports/NO_WAY_OUT_NO_WAY_IN_FINAL.pdf

¹³ Prime Minister’s speech on opportunity on 22 June 2015: <https://www.gov.uk/government/speeches/pm-speech-on-opportunity>