

Refugee Council briefing on the Second Reading of the Immigration Bill in the House of Commons

October 2015

Introduction

1. The Second Reading of the Immigration Bill takes place against the backdrop of the greatest refugee crisis since the end of the Second World War. Globally, the United Nations High Commissioner for Refugees reports there are 20 million refugees, with a further 40 million people displaced within their own countries. The outpouring of concern shown by the British public in response to the crisis has been considerable, with people up and down the country offering their spare rooms to refugees, donating clothing and money, and making public declarations that refugees are welcome in the UK.

2. The Refugee Council has welcomed the Government's commitment to resettle 20,000 Syrian refugees in the UK by the end of the current parliament. We urge the Government to ensure this commitment is frontloaded and to also explore other policy options for ensuring refugees fleeing war and persecution from around the world have access to safe and legal routes to find protection.

3. However, while acknowledging the commitment the Government has made in providing protection for refugees currently outside the UK, this cannot be at the expense or detriment of those who apply for asylum after reaching the UK. We are concerned that provisions in the Immigration Bill, in particular the changes to asylum support, will result in refused asylum seekers, particularly refused asylum seeking families, being left destitute.

Clause 29 – Immigration Bail

4. Clause 29(1) gives effect to Schedule 5, which the explanatory notes to the bill describe as providing a "new consolidated framework" for people who could otherwise be held in immigration detention to either be released from detention or not be detained in the first place. One ramification of this consolidated framework is that it will no longer be possible for an individual awaiting a decision on their asylum case to be granted "temporary admission" to the UK. Instead, individuals awaiting a decision will be on "immigration bail". This is a wholly inappropriate term to use for those seeking asylum in the UK. The right to seek asylum is set out in the Universal Declaration of Human Rights and the 1951 Refugee Convention protects those claiming asylum from being treated as criminals. Associating the process of applying for asylum with the criminal terminology of "bail" is unacceptable.

Clause 34 – Support for certain categories of migrant

5. Clause 34 gives effect to Schedule 6 of the bill, which concerns support provided to refused asylum seekers. On 4 August, the Home Office launched a consultation that contained proposals for the reform of support available to refused asylum seekers.¹ The consultation closed on 9 September and the Immigration Bill was published six days later. It is disappointing the response to the consultation was not available at the time the bill was published.

6. Currently, there are two systems of support for asylum seekers under the Immigration and Asylum Act 1999 ('the 1999 Act'), known as Section 95 and Section 4 support. Asylum seekers are not eligible for mainstream benefits whilst waiting for a decision on their asylum application. Instead, if they would otherwise be destitute, they can apply to the Home Office for accommodation and/or financial support under Section 95 of the 1999 Act. Since 10 August 2015, the financial support available has been £36.95 per adult or child.

7. Asylum seekers whose application for asylum is unsuccessful and who become appeal rights exhausted cease to be eligible for section 95. Section 95 support is terminated 21 days after the claim has finally been determined. In certain circumstances, destitute refused asylum seekers can apply for section 4 support (under the provisions of section 4 of the 1999 Act). Unlike section 95 support, section 4 support is not paid in cash but instead an 'Azure' payment card is provided. The card is credited with £35.39 per person per week and can only be used in a number of specified retail outlets to buy food and essential toiletries.

Stopping support to asylum seeking families with children

8. Under the 1999 Act, refused asylum seeking families with children under the age of 18 who were part of the family before the final decision was made on the asylum application can continue to receive section 95 support until the youngest child turns 18 or the family leaves the UK. Paragraph 3 of Schedule 6 will remove this entitlement for refused asylum seeking families. As a result, support under section 95 for families with children will be stopped once they have been refused and had any appeal rejected.

9. These families may be eligible for a new form of support created by this bill, section 95A, which replaces section 4 support. The bill allows for section 95A support to be paid either in cash or in vouchers. To qualify for support under section 95A, individuals and families who have had their asylum application refused will need to demonstrate that they are destitute and face "a genuine obstacle to leave the United Kingdom". Much of the detail of what section 95A support will look like will be set out in regulations, including what constitutes a genuine obstacle to leaving. However, the Home Office's Memorandum on the European Convention on Human Rights accompanying the bill states that the criteria for provision under 95A will be "very narrowly drawn" and will be more narrowly defined than section 4.² Given that section 4

¹ See <https://www.gov.uk/government/consultations/reform-of-support-for-failed-asylum-seekers-and-other-illegal-migrants>

² Paragraphs 103 and 104, Immigration Bill European Convention on Human Rights, Memorandum by the Home Office

operates in a very restrictive way currently, failing to recognise the many barriers former asylum seekers face in planning a safe and sustainable return to their country of origin, this would potentially leave many families and individuals without support.³

10. The Government state that the aim behind this policy is to encourage people, including families, to leave the UK if they become appeals rights exhausted. However, there is no evidence to support the assertion that removing support from families will result in their leaving the UK. The proposed new system of support is very similar to section 9 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004. In 2005, the Government ran an unsuccessful pilot of clause 9. The government's own evaluation of the pilot states there "was no significant increase in the number of voluntary returns or removals of unsuccessful asylum seeking families. It shows that in the form piloted section 9 did not influence behaviour in favour of co-operating with removal".⁴

11. Additionally, evaluations of the pilot by organisations such as Refugee Council, Refugee Action and Barnardos clearly showed the detrimental impact the policy and the shift of responsibility to meet the basic needs of children to local authority children's social services.⁵ The Joint Committee on Human Rights shared these concerns, concluding "The section 9 pilot has caused considerable hardship and does not appear to have encouraged more refused asylum seeking families to leave the UK... We believe that using both the threats and the actuality of destitution and family separation is incompatible with the principles of common humanity and with international human rights law and that it has no place in a humane society. We recommend that section 9 be repealed at the earliest opportunity."⁶

12. The Refugee Council is in no doubt that the failures of the section 9 pilot would be repeated if the provisions in this bill come into force. All available evidence suggests that people whose support is cut off following a refusal of asylum are not more likely to return to their country of origin as result. The key factor for those considering return will be the situation to which they will be returning. The Refugee Council's research report *Between a rock and a hard place* explores in detail why many people whose claims have been refused fail to return, despite facing the alternative of being destitute in the UK.⁷ Similarly the work of the coalition *Still Human Still Here* has continued to highlight the complex reasons why it is unhelpful to classify those refused asylum as 'no more deserving of welfare support than any other migrant in the UK unlawfully'. Continuing to take this simplistic approach will, in our view, neither help the UK government in its aims nor reduce the number of destitute former asylum seekers. Without

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/462206/Immigration_Bill_ECHR_Memo.pdf

³ For example, even when the Iranian Embassy to the UK was closed, leaving Iranian nationals unable to obtain travel documents, the Home Office still refused support to a number of destitute Iranian asylum seekers.

⁴ Home Office, The Section 9 Implementation Project

<http://webarchive.nationalarchives.gov.uk/20140110181512/http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithasylumseekers/section9implementationproj.pdf>

⁵ Refugee Council and Refugee Action, 2006, Inhumane and Ineffective – Section 9 in Practice

http://www.refugeecouncil.org.uk/assets/0001/7040/Section9_report_Feb06.pdf; Barnardos, 2005, The end of the road http://www.barnardos.org.uk/end_of_the_road_asylum_report.pdf

⁶ Paragraph 97, Joint Committee on Human Rights, The Treatment of Asylum Seekers, Tenth Report of Session 2006-7

⁷ Refugee Council, 2012, Between a Rock and a Hard Place

http://www.refugeecouncil.org.uk/latest/news/177_between_a_rock_and_a_hard_place

support there is little incentive for such individuals to remain in constructive dialogue with the Home Office with the aim of resolving their situation and may lack any practical means to do so.

13. Furthermore, it is not clear from the bill how this provision will fit with the approach taken since 2011 for families at the end of the process, which has received considerable investment in resources. The family returns process was rolled out on 1 March 2011 as a key component of the Coalition Government's aim of ending the detention of children for immigration purposes. The aims of the process were to increase take up of voluntary return opportunities; ensure that enforcement action takes into account the welfare interests of children; to better prepare families for return and give them the opportunity to take responsibility for their return; and to give families the opportunity to make further representations and seek judicial reviews before enforcement action takes place.⁸ The process is based around a more co-operative approach between the family and the Home Office, including the use of family return conferences, where barriers to return, family welfare and options such as assisted voluntary return are discussed. Removing support from families would be counter-active to this approach and would undermine the impact of the family returns process.

Grace Period

14. The consultation on the reforms to asylum support indicated that families who become appeals rights exhausted would be given a 28 day "grace period" before their support under section 95 is cut off, including losing any accommodation they are provided with. The grace period will be set out in regulations, but 28 days will not provide enough time for families to review their options, make decisions about what to do next, and to possibly make arrangements to return to their country of origin. For example, under the family returns process discussed above, the vast majority of families took longer than two months to return, with six in 10 families taking longer than three months.⁹ Any support should be available for as long as it is needed. The current grace periods, for those granted asylum as well as those refused, do not allow for any planning or transition to other forms of support. The Refugee Council has long asked for these to be reviewed, most recently in our research report *28 Days Later* and therefore support the notion that a longer grace period may be appropriate but this should apply to those without dependant children as well as families with minor children.¹⁰

Lack of Support for Pregnant Women

15. In our response to the Home Office's consultation on asylum support, we raised concerns about the apparent loss of a route back onto support for pregnant women who are appeal rights exhausted.¹¹ Currently, such women can access section 4 support six weeks before their due date (on the basis of being unfit to travel), and even earlier than this if there is

⁸ See Home Office, Evaluation of the new family returns process
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/264658/horr78.pdf

⁹ Home Office, Evaluation of the new family returns process, p.21
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/264658/horr78.pdf

¹⁰ Refugee Council, *28 Days Later: Experiences of New Refugees in the UK*
http://www.refugeecouncil.org.uk/assets/0003/1769/28_days_later.pdf

¹¹ See
http://www.refugeecouncil.org.uk/assets/0003/5884/Refugee_Council_response_to_asylum_support_consultation.pdf

evidence they are unable to travel earlier in their pregnancy. The publication of the bill has not allayed these concerns. It is unclear from the face of the bill that there will be a time frame when applications for the new s95A support should be made. However, the Memorandum on the European Convention on Human Rights states that "it is envisaged that applications for the new form of section 95A support will need to be made within the grace period", adding "there will be provision for an application to be made out of time where certain criteria are met".¹² We are concerned there is no indication what these criteria will be. It is essential there is proper support for women at all stages of their pregnancy and, at the very least, the new section 95A provisions must replicate the existing section 4 provisions in respect of pregnant women and ability to travel.

No right of appeal against a decision to refuse or discontinued.

16. Families and individuals who are refused section 95A support, or who have that support stopped, will have no right of appeal against that decision. Given the Home Office's poor record of decision making on asylum support applications, this is a worrying loss of judicial oversight. According to the Asylum Support Appeals Project, the latest Asylum Support Tribunal statistics indicate that in 65 per cent of appeals against decisions to refuse or withdraw support, the decision was either withdrawn by the Home Office or the appeal was allowed or remitted.¹³ Given the high success rates of appeal in the Asylum Support Tribunal, removing this safeguard will leave many families and individuals who are eligible for support destitute.

Conclusions

17. The Refugee Council believes that the UK should have an asylum system that is fair, humane, and effective so that refugees can get the protection they need and rebuild their lives. Whereas the bill could have, for example, provided an opportunity to ensure asylum seekers are not left destitute, to allow asylum seekers to work while awaiting a decision on their application, and to stop the all too frequent occurrence of newly recognised refugees being cut off from Home Office support before they have been transferred to other systems, the provisions the Government has brought forward will, if they become law, take the UK further away from that aim.

About the Refugee Council

The Refugee Council is one of the leading organisations in the UK working with asylum seekers and refugees. We give help and support to asylum seekers and refugees, and also work with them to ensure their needs and concerns are addressed by decision-makers.

For further information, please contact Jon Featonby, Parliamentary Manager, on 0207 346 1038 / 07780 664 598 or jonathan.featonby@refugeecouncil.org.uk

¹² Paragraph 115

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/462206/Immigration_Bill_ECHR_Memo.pdf

¹³Asylum Support Appeals Project, ASAP's response to 'Reforming support for failed asylum seekers and other illegal immigrations' <http://www.asaproject.org/asaps-response-home-office-consultation-asylum-support/>