Refugee Council briefing on the Report Stage of the Immigration Bill in the
House of Commons

December 2015

New Clause 1

Extended criteria for refugees joining refugee sponsors

The Refugee Council supports this cross-party New Clause. Expanding who qualifies for refugee family reunion will give access to a safe and legal route for many refugees fleeing war and persecution.

1. The world is currently facing the greatest refugee crisis since 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. This is the backdrop against which debates on the Immigration Bill take place. In response to the crisis, the Government announced in September that 20,000 Syrian refugees would be resettled in the UK by the end of the parliament. This is a welcome commitment, however much more needs to be done to help refugees from around the world fleeing war and persecution find safety.

3. There is currently a lack of safe and legal routes for refugees to reach protection, particularly in Europe. Without these routes, men, women and children are being forced to put their lives at risk by taking dangerous journeys over land and sea, often putting their lives in the hands of smugglers. So far this year, 3,551 people have lost their lives trying to cross the Mediterranean.¹

4. Some of those refugees risking their lives are trying to reach family members who have already found safety in other countries. They are forced to do so because while some family members can be reunited safely through a process the Government already has in place, the rules on refugee family reunion are so restrictive that many people don't qualify. Under the Immigration Rules, people granted refugee status or humanitarian protection (like those Syrian refugees currently being resettled) in the UK can apply to be joined by their

¹ International Organisation for Migration (IOM), as of 29 November 2015. See http://missingmigrants.iom.int/
family members who are still living in other countries. However, there are a number of restrictions about which family members qualify for family reunion.²

5. For adult refugees in the UK, only partners and dependent children under the age of 18 will usually come under the definition of “family”. As a result, families can be left with the invidious choice of whether to leave some members behind. For example, the rules mean that a Syrian father granted asylum in the UK would be allowed to bring his wife and younger children, who may have previously been sleeping several families to a house in Lebanon, to join him. Yet his eldest child, a 19 year old daughter, would not ordinarily be able to also come. Her parents would be faced with the choice of either leaving her behind or seeking to pay smugglers to bring her to the UK. In either scenario, she is at grave risk.

6. The UK, unlike other EU countries, also does not allow children who have travelled alone and then been granted refugee status or humanitarian protection to bring even their very closest family members to join them. This is despite them having been through the asylum system in the same way as an adult. As a result of this rule, children living in the UK are unable to be reunited with their parents. There is no justification for this. We echo the call of those Members of Parliament who have tabled New Clause 1 that a much wider range of family members should be able to be reunited through the family reunion process.

7. Additionally, refugee family reunion rules do not allow people identified as refugees living abroad to be reunited with family members in the UK, if the family members in the UK do not have either refugee or humanitarian protection status. For example, a British citizen who is married to a Syrian man, who is living in Turkey and recognised as a refugee by UNHCR, would not be allowed to bring her husband to the UK through the family reunion rules, but would instead need to meet the income and other requirements of the spousal visa route.

Not such a simple process

8. Even for those who do, in theory, qualify for family reunion, the process is long and complicated. The report by the British Red Cross, ‘Not So Straightforward’, sets out the many bureaucratic and practical barriers families face.³ To make an application for family reunion, the family members wishing to join their relative in the UK need to go to their closest British embassy. However, in their report, the British Red Cross highlight examples where families are risking their lives to travel to an embassy, being required to travel across areas affected by armed conflict and violence. Additionally, a number of people were turned away upon reaching the embassy, even though they have made appointments. For example, children who attempted to submit their applications in Rwanda were turned away from the British High Commission because they didn’t have passports, even though such practice runs contrary to Home Office guidance.

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² There are further provisions within appendix FM to the Immigration Rules for family reunion of other family members or post flight family members, but the requirements are much more difficult to meet and there is a charge to make an application.
³ British Red Cross, ‘Not So Straightforward: the need for qualified legal support in refugee family reunion’
9. The complexity means that some families are forced to wait months, even years, before being reunited. A recent answer to a written parliamentary question showed that at least one family has had to wait nearly a year (357 days) to have their application processed within the last year. In 2013, one case took more than three times as long to conclude, taking 1184 days.4

10. Despite the complexity of the process, since the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) came into force in April 2013, legal aid has not been available to support families going through the refugee family reunion process. During the course of that bill through Parliament, Government Ministers made it clear that they considered family reunion an immigration rather than an asylum matter.5 This echoed a point made in the Government’s response to the consultation that proceeded LASPO, where they said "Applications to join family members are treated as immigration cases, and are generally straightforward because they follow a grant of asylum."6 In the experience of many families seeking to reunite, the process is anything but straightforward. The Refugee Council urges Members of Parliament to ensure legal support is available for families seeking to reunite through a very complex process.

The Dublin Regulations

11. The UK should also make full use of the Dublin Regulation to help keep families who have been forced to flee their homes stay together. Under the latest version of the Dublin Regulation,7 individuals seeking asylum in one member state of the European Union can request to be transferred to another member state where they have family members so that their asylum applications can be considered by the same country. However, despite the latest version of the regulations coming into force in January 2014, the Government’s publically available guidance is yet to be updated.8 The UK Government should make full use of the provisions within the Dublin Regulation to ensure that families are able to be together.9

Amendment 29 – Support provided to asylum seeking families

Amendment 29 would leave out Clause 37 from the bill. The Refugee Council urges Members of Parliament to support this amendment, which would ensure families who have applied for asylum but had their application refused are not left destitute.

12. While waiting for their application to be decided, asylum seekers are provided with accommodation and financial support of £36.95 per week for each adult or child, known as

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4 Written Question 11525, 13 October 2015.
5 See, for example, Lord Wallace of Tankerness’ response to an amendment tabled by Lord Thomas of Gresford, HoL 18 Jan 2012, c675
7 EU regulation 604/2014, commonly known as Dublin III
8 See, for example, Written Question 15300, 17 November 2015
9 For more information on the Dublin III regulations, see the Refugee Council briefing http://www.refugeecouncil.org.uk/assets/0003/6143/Nov15_Dublin_III.pdf
Currently, families with children under the age of 18 continue to receive section 95 support until the youngest child turns 18 or the family leaves the UK.

13. Clause 37 of the bill, which gives effect to Schedule 8, changes this. Instead of continuing to receive support, families who become appeal rights exhausted will no longer be eligible for section 95 support. Instead, the bill creates a new form of support families will be able to apply for, section 95A support. 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”.11 As a result of this change, many families and families may be left without support.

14. The Government state that the aim behind this policy is to encourage people, including families, to leave the UK if they become appeal 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”.12

15. Additionally, evaluations of the pilot by organisations such as Refugee Council, Refugee Action and Barnardos clearly showed the detrimental impact of the policy and the shift of responsibility to meet the basic needs of children to local authority children’s social services.13 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.”14

16. Responding to these points during the committee stage of the bill, James Brokenshire, the Immigration Minister, argued there were some key differences between the section 9 process and the approach taken in the current bill. He said that

10 Section 95 support is provided under section 95 of the Immigration and Asylum Act 1999
11 Paragraphs 103, Immigration Bill European Convention on Human Rights, Memorandum by the Home Office
12 Home Office, The Section 9 Implementation Project
13 Refugee Council and Refugee Action, 2006, Inhumane and Ineffective – Section 9 in Practice
14 Paragraph 97, Joint Committee on Human Rights, The Treatment of Asylum Seekers, Tenth Report of Session 2006-7
"the new approach will involve a managed process of engagement with the family, in tandem with the local authority, following the end of the appeal process, to discuss their situation and the consequences of not leaving the UK".  

17. However, removing support for families is likely to hinder this process. Without 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. 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.  

18. During the committee debate, the Immigration Minister also highlighted the family returns process, which has received considerable investment since its introduction in 2011. 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. 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.  

19. During the debate in committee, the Minister used the family returns process as an example of “effective family engagement”, saying it had “successfully achieved the return of 377 families” between 1 April and 2 October this year. The Home Office’s evaluation of the process found that the vast majority of families took longer than two months to return, with six in 10 families taking longer than three months. Removing support from families will undermine a process the Immigration Minister clearly views as a success.  

**Lack of Support for Pregnant Women**  

20. 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.20 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 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”.21 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.

Amendments 30 and 31 – Appeal rights against decisions not to award asylum support

The Refugee Council supports amendments 30 and 31, which would provide a right of appeal against a decision not to award section 95A support.

21. 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.22

22. During the committee stage of the bill, James Brokenshire said there was no need for a right of appeal as deciding whether an individual or a family face barriers to leaving the UK, and so qualify for section 95A, “because that should be a straightforward matter of fact”.23 Yet even if this was the case, this ignores the first part of the test for eligibility for section 95A support, that of whether or not the individual of the family is destitute or will become destitute within 14 days. According to the Asylum Support Appeals Project, the Home Office frequently gets decisions on destitution wrong, with three in five appeals against decisions not to award section 4 support on the grounds that the applicants aren’t destitute being successful.24

20 See http://www.refugeecouncil.org.uk/assets/0003/5884/Refugee_Council_response_to_asylum_support_consultatio
23 Immigration Bill 5 November 2015 c422
23. The Immigration Minister also argued during the committee stage that the rate of appeal success was not a good indication of the quality of decision making. He backed this up by citing a report from the then Chief Inspector of Borders and Immigration, John Vine, published in July 2014. That report looked at the whole system of asylum support, and on decisions not to award support, the Chief Inspector said “we found that in 92 of 103 cases (89%) the decisions made by Home Office staff were reasonable.” The decisions taken by Home Office staff may be reasonable in that they follow the guidance given to them, but this does not explain away the high number of successful appeals. It may be that the guidance provided is not suitable. Given the high success rates of appeal in the Asylum Support Tribunal, removing the safeguard of appeal will leave many families and individuals who should be receiving support but are not due to a Home Office error destitute.

Amendment 40 – Continuing asylum support for families

The Refugee Council supports amendment 40, which would ensure that families who have sought asylum in the UK continue to receive support while they remain in the UK.

24. This amendment would retain the definition of asylum seeker currently used for the purposes of section 95 support. It would allow families with children under the age of 18 to continue to receive section 95 once they have become appeal rights exhausted. As discussed above, there is no evidence to suggest that removing support from families will act as an incentive for them to leave the UK and, conversely, is more likely to result in families losing contact with the Home Office.

Government amendments 8 to 17 – local authority support for destitute families and care leavers

25. In response to concerns that removing support from appeal rights exhausted families would result in an increased number of those families being supported by local authorities, thereby increasing costs for local authorities, the Government amended the bill during the committee stage to make changes to Schedule 3 of the Nationality, Immigration and Asylum Act 2002. Schedule 3 of the 2002 Act limits access to local authority support for migrants without status in the UK, including those who have had unsuccessful asylum claims. The Government’s amendments during the committee stage create two new forms of support, one for destitute families and another for former looked after children who do not have status.

26. In a letter to the chairs of the public bill committee, the Immigration Minister explained that the amendments were designed to simplify and strengthen the provisions within Schedule 3 of the 2002 Act. Yet the amendments fail to do this. Instead, what is created is a patchwork of various forms of support, some administered by the Home Office, others by local authorities, each with complex eligibility tests for which the full details will only be made apparent when the Government publish the relevant regulations. The resulting

25 Immigration Bill 5 November 2015 c422
26 Letter from James Brokenshire MP to Peter Bone MP and Albert Owen MP, 11 November 2015, http://www.publications.parliament.uk/pa/cm201516/cmpublic/immigration/memo/ib44.pdf
system creates the very real risk that destitute families and care leavers will face gaps in their support as various authorities decide who is responsible for providing support.

27. Government amendments 8 to 17 do nothing to make the picture clearer. Instead, they are a mix of excluding groups from the new systems of support (amendments 10 and 15) and creating further caveats to when support will be provided under the new systems. For example, the new system of local authority support for destitute families created by the amendments introduced during committee cannot be provided by local authorities to any family in receipt of section 95A support. Amendments 8 and 9 would broaden this so that such support cannot be paid to any family who has either made an application for 95A support or who could be “reasonably expected” to receive that support if they applied for it, no matter how desperate the situation of such a family might be.

Amendment 2 – right to work for asylum seekers

This amendment would give all asylum seekers who have been waiting for more than six months for a decision on their asylum application the right to work. The Refugee Council supports this amendment and strongly encourages Members of Parliament to do likewise.

28. Currently, almost all asylum seekers who are awaiting a decision on their asylum application are denied the right to work. The only exception is for people who have been waiting for more than 12 months for a decision, who can then apply to the Home Office for permission to work. Even then, asylum seekers granted permission are only allowed to work in national shortage occupations.

29. As highlighted in the House of Commons Library briefing on the right to work for asylum seekers, most EU countries allow asylum seekers to work after shorter periods than the UK. Since 20 July 2015, all EU countries (with the exceptions of the UK, Ireland and Denmark) have been required under the Reception Conditions Directive to allow asylum seekers to work after they have been waiting for nine months for a decision on their application. A number of member states are more generous. Since November 2014, Germany has allowed asylum seekers to work after three months, with some conditions, while in Belgium and Denmark (the later not being bound by the Reception Conditions Directive) permit work after six months.

30. That the vast majority of asylum seekers are not allowed to work means that many experienced and professional asylum seekers are unable to develop and maintain their skills. It also means that for those who do go on to get status, the time spent unable to work is a missed opportunity to gain experience of working in the UK as well as securing references for future employment. Allowing asylum seekers to work would also reduce the cost to taxpayers as those able to find employment would no longer need to be supported through the asylum support system.

27 House of Commons Library, Briefing Paper 1908, 10 June 2015, ‘Should asylum seekers have unrestricted rights to work in the UK?’ http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN01908#fullreport
31. Amendment 2 would allow those asylum applicants who had been waiting for longer than six months for a decision to work, including being self-employed, unless that delay was due to actions by the applicant. According to the latest immigration statistics, over 3,600 applications had been without an initial decision for longer than six months. When the dependents of applicants are taken into account, that’s nearly 5,000 people living on little over £5 per day.

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.

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28 Table as_01_q, Immigration Statistics July to September 2015