

Home Office's consultation on "Reforming support for failed asylum seekers and other illegal migrants"

Response submitted by Scottish Refugee Council

September 2015

Recommendations

1. We reject the consultation proposals in their entirety, premised as they are on the legitimacy of rendering destitute women, men, and children refused asylum. We reject the terminology of the consultation implying that those who have exercised their human right to claim asylum are 'illegal migrants' simply because the UK Government has decided not to recognise them as refugees. The UK Government can and should end asylum destitution by either integrating the support of asylum seekers into mainstream social security and housing policy or at the very least ensuring those not recognised by the UK Government as refugees or qualifying for other protection, get support until voluntarily returned or removed with safe condition at home.

2. In terms of the proposals for this new single asylum support regime we regard it as:

- Ideologically driven, based on supposition, and lacking any credible evidence base;
- Self-defeating as it will not lead to more returns or removals but more disappearances;
- Drastically increasing the vulnerability of women, children, and men refused asylum;
- Completely contrary to UK policy against slavery, violence against women, and organised crime;
- Possibly unlawful in terms of child welfare and appeal rights for asylum support;
- Constituting irresponsible displacement of responsibility from national to local services; and
- Potentially requiring in some cases the legislative consent of the Scottish Parliament.

About Scottish Refugee Council

1. Scottish Refugee Council is Scotland's leading refugee charity with a vision to ensure that all refugees seeking protection in Scotland are welcomed, treated with dignity and respect and are able to achieve their full potential. We provide advice and information to people seeking asylum and refugees in Scotland. We also campaign for the fair treatment of refugees and asylum seekers and to raise awareness of refugee issues, including in areas such as housing, welfare, health, education, employment, justice, gender and equalities.

2. We also support organisations in the community working with or led by refugees; coordinate a variety of arts and cultural events; and work to raise the profile of refugees and refugee issues in the media.

About the consultation

3. The Home Office states the "policy objectives and the intended effects" of the proposals in the consultation are:

"(i) To ensure that asylum seekers who would otherwise be destitute continue to receive adequate support while their claim is under consideration;

(ii) To rebalance the support system so that failed asylum seekers and other unlawful migrants have no financial incentive to remain in the UK and avoid return to their own countries;

(iii) To retain important safeguards for children; and

(iv) To reduce costs to the public purse."

4. The Home Office's position is summarised at paragraph 9 of the consultation paper as:

"Failed asylum seekers are illegal migrants and are no more deserving of welfare support than any other migrant in the UK unlawfully."

We make some overarching comments before responding to each of the proposals in turn.

Language

5. We fundamentally reject the language employed in the consultation. Women, men, and children fleeing persecution, conflict, and war who claim asylum and protection in another state are simply utilising a right to claim asylum as enshrined in the UN Declaration on Human Rights, which states at Article 14(1) that everybody is entitled to seek and to enjoy asylum.

"Everyone has the right to seek and to enjoy in other countries asylum from persecution."

6. Furthermore, the UN Refugee Convention 1951, at Article 1A defines a refugee as a person who:

"owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it".

7. To claim asylum is to exercise a universal human right. It is not to commit a criminal offence or to act illegally. We remind the Home Office of the inappropriateness of its assertion that "failed asylum seekers are illegal migrants and are no more deserving of welfare support than any other migrant in the UK unlawfully". This is fundamentally incorrect and passes moral judgment where it has no place. -An individual refused asylum by the UK has not failed in any way whatsoever. They have had an application for recognition as a refugee by the UK refused, no more and no less. UK Ministers and the Home Office should exercise care and use accurate language rather than reckless and incorrect language that can, quite wrongly, distort what asylum actually is.

Risks of exploitation to women, children and men refused asylum

8. We are also particularly concerned of the risks for those made destitute to exploitation and even criminalisation as a consequence of the proposed shift in statutory language from refused asylum seeker to illegal migrant. The Home Office's own evaluation of its section 9 pilot, as highlighted by Still Human Still Here, noted that of the pilot's cohort of 116 families in Leeds, London and Manchester nearly one-third disappeared in order to avoid return to their country of origin. This is precisely due to the depth of fear of return, which is the reality for many destitute asylum seekers.

9. Those refused asylum and made destitute have to make survival decisions for themselves and their families (if applicable). The reality is these may involve exploitative work, servitude and abusive transactional relationships including prostitution. Rendering women, men, and children destitute in this way therefore creates opportunities for organised crime groups to exploit them and permit ill-gotten gains that can be used for other organised crime activities. As these proposals may lead to refused asylum seeker families being destitute, there are particular risks for women and children, which run completely contrary to the Home Secretary's commitments to ending violence against women and girls and to policies and procedures in place to prevent and combat such violence. These proposals, therefore, will not only have a human cost but undermine the UK Government's ability to meet its own international and domestic obligations notably in the Modern Slavery Act 2015, and the Home Secretary's Call to End Violence Against Women and Girls.

10. We are deeply that the predicament for refused asylum seekers as a result of these proposals will be worsened further through the proposed new criminal offence in the forthcoming Immigration Bill of illegal working, which will include refused asylum seekers made destitute, (including families and children) and categorises them as overstayers.

11. Section 9 Immigration and Asylum Act 2004 applied to families that have reached the end of the asylum process and had exhausted all their appeal rights. It permitted the Home Secretary to remove financial support and accommodation if they were deemed to be failing to take reasonable steps to leave the UK. It is materially the same form of provisions proposed in this consultation.

12. An unintended but entirely predictable consequence of that provision and therefore of these current proposals, pinpointed in the Home Office's own evaluation of its s.9 pilot from 2004-2005, is how such an approach and proposals are likely to force the disappearance of refused asylum seekers, including women and children, and thereby lessen the Home Office's contact with and knowledge of them.

13. This evidence completely undermines the Home Office's intention behind these proposals to ensure the "departure from the UK of those migrants to remain in the UK where they have no lawful basis for doing so". We recommend the Home Office note this unintended consequence, consult their own evidence, and maintain refused asylum seekers and especially families and children in accommodation and support.

Scottish Parliament and Scottish Ministers, the Sewel Convention and the Immigration Bill

14. We note that criminal law is devolved to the legislative competence of the Scottish Parliament. Therefore, we fully expect that the UK Government will give effect to the Sewel Convention, which we further note is to be strengthened in the forthcoming Scotland Act, in respect of any proposals in the Immigration Bill that alter in any way the legislative competence of the Scottish Parliament or the executive competence of the Scottish Ministers. We would expect UK Ministers to work with Scottish Ministers and to ultimately seek the legislative consent of the Scottish Parliament that the proposed new offence of illegal working can apply to Scotland. In addition, in putting refused asylum seeking women, children, and men at a needless acute risk of exploitation and coerced illegal work by organised crime, these proposals will undermine not only the UK Modern Slavery Act, but also Scotland's implementation of its forthcoming Human Trafficking and Exploitation (Scotland) Act.

15. We take the view that the proposals, particularly those impacting on the welfare of children and vulnerable adults impact on the legislative and executive competence of the Scottish Parliament and Scottish Ministers. Legislation relating not only to criminal law but, as these proposals will remove support from refused asylum seeking families, they also interfere directly with the ability and resources of local authorities' in Scotland to meet their obligations to safeguard and promote the wellbeing of the children. These are devolved to the Scottish Parliament. We fully expect therefore that UK Ministers will respect the constitutional framework and undertake a comprehensive, robust, and transparent process that engages Scottish Ministers so that the Scottish Government may form a view as to whether and how not only these proposals but any provisions in the Immigration Bill with a devolved dimension may apply and seek the consent of the Scottish Parliament to that effect.

Comments on consultation proposals

16. The UK Government proposes repealing section 4(1)(a)-(c) of the Immigration and Asylum Act 1999. Section 4(1)(a) allows support to be provided to those on temporary admission and section 4(1)(b) permits support for those to be released from immigration detention. Section 4(1)(c) is, as the UK Government acknowledges, a provision mainly for the purpose of providing a bail address to enable release from detention. If section 4(1)(c) were to be repealed it would prevent the allocation of bail addresses and may lead to individuals being detained unlawfully in potential breach of Article 5 of the European Convention of Human Rights. Furthermore, repeal may lead to

non-asylum applicants becoming asylum applicants in order to make an application for bail. Repeal could also lead to more legal challenges to detention, which, if successful, will result in compensation. Both are preventable drains on public monies.

17. The Home Office states that it plans to close off section 4(2) support to individual refused asylum seekers who, in its opinion, "make no effort to leave the UK at the point their asylum claim is finally rejected" subject to support being continued only if in its opinion, there is a genuine obstacle to departure at that point of rejection or if further submissions have been lodged and are outstanding.

18. As mentioned above, the Home Office's own evaluation of the Section 9 pilot found that removing support does not lead to more voluntary returns or administrative removals. And, as Still Human Still Here noted, Home Office staff concluded in a 2007 consultation that refused asylum seekers should remain in their accommodation until they choose to return home or can be removed with proper regard given to their safe return. Just because the Home Office has decided not to recognise an individual as a refugee does not mean that they are either in a practical position to return. For example, they may not have the requisite documents, nor be able to obtain them quickly or at all; or they may feel, often correctly as they have an intimate knowledge of their home country, that it is simply not safe for them and their children (if applicable) to return.

19. We would welcome the closure of section 4(2) support if it could be replaced with something better. We recommend end-to-end support for all asylum seekers from arrival and registering a claim through to voluntary return or removals discharged with safe return considerations paramount. Section 4(2) is not only pitifully low; it is also cashless support, which dehumanises individuals. Whilst inadequate it is essential for those who receive it. We oppose completely therefore the proposed removal of section 4(2) support for those refused asylum seekers who, in the opinion of the Home Office, are not making sufficient effort to leave the UK. As the 2005 Regulations specify there are a number of good reasons why people cannot leave, medical and/or physical impediments to travel including late stages of pregnancy, no viable route of return, an active legal process such as judicial review or further submissions lodged, or support and accommodation are required to be provided by the Home Office to avoid breaching ECHR rights.

20. Our opposition to this proposal is founded not least in our experiences for over 15 years of working with refused asylum seekers rendered destitute, as well as documented evidence of asylum destitution in Scotland, such as that clearly presented in the report, [Trapped: Destitution and Asylum in Scotland \(2012\)](#). We reject the proposed closure of section 4(2), in the absence of something better, in light too of its stark consequences for those affected, which are: (a) they will either die or suffer serious physical and mental ill-health; and/or (b) they will have to survive through exploitative work and transactional relationships including prostitution and sexual violence, disproportionately impacting on women and girls. A further reason for our opposition, is that we believe strongly that the UK Government is proposing to inhumanely absolve itself of its responsibilities to people in such vulnerable circumstances by displacing this responsibility onto charity from individuals, churches, or other humanitarian organisations, as well as local statutory bodies such as councils, health services and the police, to give emergency assistance in order to meet obligations to safeguard children, vulnerable adults, or to avoid a breach of ECHR rights.

21. One of our most grave concerns is the proposed removal of the right of appeal to the Asylum Support Tribunal against Home Office refusals of asylum support. This will apply to individuals and to families refused asylum and appeal rights exhausted. Not only is this wrong in principle and a potential breach of Convention Rights – notably Article 6 with the resultant destitution a possible breach of Article 3 – but it is also deleterious of the UK's duty under the EU Reception Directive to provide an effective remedy to persons seeking asylum. It is dubious whether the costly, complex, and limited remedy of judicial review can seriously be regarded as accessible or effective for a group that by definition is completely without means. The potential unlawfulness of this removal of an essential safeguard against the destitution of women, men, and children is strengthened by evidence of the poor quality of Home Office decisions on asylum support: Still Human Still Here noted that between 1 September 2014 and 28 February 2015, the Asylum Support Tribunal allowed 44% of appeals, remitted a further 12% back to the Home Office, and another 5% of refusals were withdrawn by the Home Office on receipt of the appeal.

22. We fundamentally reject the premise of the so-called "grace" period proposed by the Home Office, which could be more accurately described as a "notice of destitution". We strongly advocate for end-to-end support to be provided to people exercising their human right to claim asylum and be recognised as refugees. One of the primary reasons for our opposition to the proposed "grace period" is the potential disproportionate impact this would have on women, in contravention of the Home Office's obligations under the Public Sector Equality Duty. One of the main groups currently in receipt of s.4 support is pregnant women and new mothers, because of the clear and medically evidenced barrier to removal that pregnancy presents. Women with complex pregnancies and in the late stages of pregnancy cannot be removed or return home voluntarily as they are not fit to fly. The imposition of a "grace period" for the provision of support will clearly prejudice this group. Furthermore, there are many examples of men, women and children being recognised as refugees following the submission of fresh evidence or further legal challenges after being certified appeal rights exhausted. The imposition of a time limit on applications for support would render such people destitute, effectively hindering their ability to pursue access to the justice and protection they are entitled, and which in such cases, the Home Office has failed to provide. The reasons for delays in people's ability to present fresh evidence can include barriers to accessing quality legal advice, gendered barriers in the asylum process leading to more women consistently having refusals overturned, and barriers to gathering evidence from home, all of which would be greatly exacerbated by enforced destitution.

23. One of the most worrying and offensive consequences of this new asylum support regime for those refused asylum is that, quite contrary to the Home Office assertion that it intends to "retain important safeguards for children", there is no evidence whatsoever of any such safeguards nor of how the new regime reflects fulfilment of the Home Office's own section 55 duty to safeguard and promote the wellbeing of children and ensure their best interests are a primary consideration in policy. Indeed, in rendering refused asylum seeking families destitute, the effect of the policy will be to make children destitute as well as to prevent or severely curtail local statutory services' ability to prevent children being street homeless and acutely vulnerable to ruthless organised crime groups and severe exploitation and servitude. The proposed new support regime in actual fact displaces responsibility in particular onto councils bound by child safeguarding and welfare obligations, as well as the need and the costs to conduct emergency assistance and care needs

assessment. In Scotland, the relevant children's legislation is the Social Work (Scotland) Act 1968, Children (Scotland) Act 1995, and Children and Young People's Act 2014.

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