

Refugee Children's Consortium

Repealing Section 9 of the Nationality, Immigration & Asylum Act 2004

Members of the Refugee Children's Consortium are: The Asphaelia Project, The Association of London Somali Organisations, AVID (Association of Visitors to Immigration Detainees), Bail for Immigration Detainees, Barnardo's, BASW (British Association of Social Workers), British Associations for Adoption and Fostering (BAAF), Children's Legal Centre, Child Poverty Action Group, Children's Rights Alliance for England, The Children's Society, FSU (Family Service Units), The Immigration Law Practitioners' Association (ILPA), The Medical Foundation for the Care of Victims of Torture, NCB, NCH, NSPCC, Redbridge Refugee Forum, Refugee Council, Refugee Arrivals Project, Scottish Refugee Council, Save The Children UK and Voice for Child in Care (VCC). The British Red Cross, UNICEF UK and UNHCR all have observer status.

Introduction

The Refugee Children's Consortium is urging the Government to repeal Section 9 of the Nationality, Immigration & Asylum Act 2004 on the grounds that it causes family destitution, puts children at risk and is wholly incompatible with existing childcare law. Evidence suggests that the law is unworkable and is causing significant chaos and confusion in local authorities. There is no evidence that it has directly led to the return of families as the Government has stated was its intention. The new Immigration, Asylum & Nationality Bill provides an opportunity for repeal.

What is Section 9?

Section 9 of the Nationality, Immigration & Asylum Act 2004 extends provisions under the Nationality, Immigration and Asylum Act 2002 to create a fifth class of person, "failed asylum seeker with family", who cease to be eligible for any form of support. Under the Act, families who are deemed to have "failed without reasonable excuse to take reasonable steps to leave the UK voluntarily" have no recourse to financial and other assistance. Children of the family remain eligible for support under the Children Act 1989, but only if separated from their families and being "looked after" by local authorities. Support to the whole family can only be provided if there is felt to be a potential human rights breach (Schedule 3, 3).

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The Government has stated that its intention in bringing forward this policy is to encourage the voluntary departure to their home countries of families whose asylum claim has failed. The effect of Section 9 has not been to encourage voluntary departure but to use the threat of destitution and removal of children from families to coerce families to leave. There has been no evaluation of the pilots as yet and the Government is considering roll-out of the policy across the country.

Who is affected?

Section 9 is currently being piloted in three areas of England: Central/East London, Greater Manchester and West Yorkshire. The pilot began on 1 December 2004; as at 31 August 2005 27 families were being threatened with removal of all support. Some families have disappeared as a result of the implementation of Section 9.

There has been significant media interest in the cases of a number of families living with the fear of destitution and in the dilemma that local authorities are facing in deciding what to do to support them or not.

Some people may feel that if an asylum application has been refused then it is clear that the family should not be here and need to go home. However this assumes that asylum claims are determined fairly and in a manner that takes fully into account all family members' vulnerability to persecution. Our experience demonstrates that this is not always the case. Where a family fears persecution, parents may seek to survive unaided, sleeping rough or on the floors of friends and family in over-crowded accommodation, as preferable to returning their children to a situation where they fear that they will face torture or death

What are local authorities doing?

Forthcoming research from Barnardo's will highlight the high levels of confusion and, in some cases chaos amongst local authorities in implementing this policy. On the one hand childcare legislation and guidance tells them to support families together where this is in the child's best interests and on the other Section 9 explicitly prevents them from doing this and to consider separating children from their families.

As a consequence of this confusion and lack of any guidance from the Department for Education & Skills, local authorities are left to seek legal advice and to develop their own response. The Association of Directors of Social Services, has said:

"The pilot of s9 by the Immigration and Nationality Directorate...has highlighted the conflict that exists between this policy and childcare legislation within which local authorities operate to safeguard the interests and welfare of children...the ADSS is also aware that the inherent conflict... is likely to result in judicial reviews of individual cases and both the Home Office and local councils may be challenged in this way."

10 local authorities in Manchester have written to the Home Secretary requesting a fundamental review of the policy before a decision is taken about national roll-out.

Now is the time to act

The Government has yet to publicly state what it intends to do following the pilots and in terms of national roll-out of the policy. As we witness first-hand the detrimental impact that the policy is having on individual children and families, it is time to put a stop to it and to demand that the legislation is repealed.

The Refugee Children's Consortium will be lobbying Parliament to effect repeal of Section 9 in the current Immigration, Asylum and Nationality Bill. We will be urging all MPs to vote for repeal and to stop the national roll-out of this policy.

You could write to your MP to highlight your objection to the policy and to urge him/her to vote for repeal.

FOR MORE INFORMATION CONTACT:

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