

Evidence from Still Human Still Here to the Joint Committee on Human Rights on the Immigration Bill

1. Still Human Still Here is a coalition of 78 organisations that are concerned about the destitution of refused asylum seekers in the UK.¹ This briefing focuses on Clause 34 of the Immigration Bill, the key provisions of which will:

- Leave refused asylum seeking families and their children without access to Section 95 support and remove leaving care support from specific groups of Children
- Remove a right of appeal against a Home Office decision to refuse or discontinue support from refused asylum seekers who face a genuine obstacle to leaving the UK.

2. We are concerned that these measures are not consistent with the UK's international human rights obligations, particularly:

- Articles 11 and 12 of the Covenant on Economic, Social and Cultural Rights which recognises “the right of everyone to an adequate standard of living for himself and his family including adequate food, clothing and housing” and “the right to the highest attainable standard of physical and mental health”.
- Articles 2, 3 and 27 of the Convention on the Rights of the Child which state that the “best interests of the child shall be a primary consideration” in all actions concerning children, without discrimination of any kind, and that every child has a right to “a standard of living adequate for the child's physical, mental, spiritual, moral and social development.”

Proposals in the Bill to stop support to refused asylum seeking families with children

3. Under Clause 34, support for asylum seeking families with children (available through Section 95 of the Immigration and Asylum Act 1999) will be stopped once they have been refused and any appeal rejected.

4. The Bill sets up a new and complex system of support whereby asylum seekers may now be supported under Section 95 or Section 95A of the 1999 Immigration and Asylum Act or under paragraphs 10A or 10B of Schedule 3 of the Nationality, Immigration and Asylum Act 2002.

¹ Still Human includes nine City Councils, Doctors of the World, the British Red Cross, Crisis, Homeless Link, OXFAM, Mind, National Aids Trust, the Children's Society, Citizens Advice Bureau, a range of faith based organisations and all the leading agencies working with asylum seekers and refugees.

5. This runs contrary to the recommendation made by the Joint Committee on Human Rights in 2007 when it called for “the introduction of a coherent, unified, simplified and accessible system of support for asylum seekers, from arrival until voluntary departure or compulsory removal from the UK.”²

6. New Schedule 3, which the Government tabled at Committee, prevents local authorities from providing support or assistance to children and families under Section 17 of the Children Act 1989 if that support could be provided by the Home Office under the new paragraph 10A of the schedule. Under paragraph 10A the Home Office may make regulations to arrange for support for a person who is destitute and has a dependent child and does not meet the criteria for support under Section 95A and meets one of four conditions which include that “support is necessary to promote and safeguard the welfare of the child.”³

7. However, the detail of these provisions, including the level of support and who will administer it are left to regulations despite being pivotal to the protection and promotion of children’s welfare.⁴ Still Human is very concerned that the type and level of support provided in these circumstances may not be appropriate for vulnerable children and their families, particularly as we consider that the current level of Section 95 support is not sufficient to provide an adequate standard of living or to ensure the health and wellbeing of asylum seekers.

8. This view is shared by many other respected bodies. For example, in 2013, a cross-party parliamentary inquiry into asylum support for children and young people, which received information from more than 150 local authorities, local safeguarding children boards and child protection committees, found that “the levels of support for asylum seeking families are meeting neither children’s essential living needs, nor their wider need to learn and develop. The levels are too low and given that they were not increased in 2012 they should be raised as a matter of urgency and increased annually at the very least in line with income support.” The inquiry further recommended that the “rates of support should never fall below 70% of income support.”⁵ In October 2013, the Home Affairs Committee also stressed “concerns about the level of support available to those who seek asylum in the UK”.⁶

² The Joint Committee on Human Rights, *The Treatment of Asylum Seekers*, 2006-7, Recommendation 14.

³ The other conditions are that: they have a pending application for leave to enter/remain of a type to be specified in regulations; or they have a pending statutory appeal; or they have exhausted their appeal rights and are cooperating with removal.

⁴ The Bill leaves a considerable amount of key issues relating to the protection of fundamental rights to Secretary of State to decide through delegated powers. These include, but are not limited to, regulations which may proscribe other criteria to be used in determining whether to provide or continue to provide support and make the provision or continuation of support to be a matter for the Secretary of State’s discretion.

⁵ *Report of the Parliamentary Inquiry into asylum support for children and young people*, Children’s Society, January 2013, pages 24-25.

⁶ Home Affairs Committee, *Asylum*, Seventh report of session 2013-14, paragraph 77 and Press Release 10 October 2013.

9. Since this time the value of this support has been severely reduced. Asylum support rates were frozen between 2011 and 2015 and rates for asylum seeking children were cut in August 2015 by £16 per week. All asylum seekers who would otherwise be destitute now receive £36.95 a week (just over £5 a day), the equivalent of around 50% of Income Support.⁷

10. In addition, the complexity of the new arrangements mean that families with children are likely to fall through the gaps in the system and find themselves destitute at least temporarily. The consequences of refused asylum seekers being left without support even for short periods of time is extremely serious as it both causes illness and complicates existing health problems.

11. This is illustrated by a 2012 Serious Case Review which involved an asylum seeker who developed a brain infection and could not look after her child, EG. The boy starved to death and the mother died two days later. The family became destitute during the transition from asylum to mainstream support, leaving the family “dependent upon ad hoc payments by local agencies.” The review expressed “concern about the adverse consequences on vulnerable children and the resulting additional pressure on local professional agencies” when support was cut off.

Proposals in the Bill to remove leaving care support from specific groups of children

12. New Schedule 3 removes leaving care support provided by social services under the Children Act 1989 from children leaving care who are under immigration control who reach the age of 18 and do not have a pending asylum claim or leave to enter or remain in the UK.

13. Paragraph 2(2) of the proposed new Schedule would remove these young people from provisions relating to foster placements and personal advisors and Paragraph 4 of the new Schedule would exclude young people from certain leaving care provisions if they would qualify for Home Office support under new section 95A or under new paragraph 10B of Schedule 3. The effect of this is to exclude these young people from the principal leaving care provisions of the Children Act 1989, but there is no indication that the needs of children leaving care reflected in current statutory frameworks would be met under the new provisions.

14. The Joint Committee on Human Rights stated in 2013 that unaccompanied migrant children must be properly supported in the transition to adulthood and receive comprehensive plans that focus on educational goals, reintegration and rehabilitation. This includes planning for possible return to the country of origin and the provision of support to young people leaving care whose appeals rights are exhausted. The Committee has also stated that it would be difficult to reconcile the removal of support from young people leaving care on the basis of their immigration status, rather than on

⁷ Housing with utility bills included are provided separately for asylum seekers who would otherwise be homeless, but all other necessities, including food, clothing, toiletries and transport, would have to be met on just over £5 a day.

assessment of need, with the non-discrimination provision of the UN Convention on the Rights of the Child.⁸

No right of appeal against a decision to refuse or discontinue support

15. The Bill provides for support to refused asylum seekers to be continued in cases where there is a genuine obstacle to departure. While this is welcome, this provision is currently implemented in a very restrictive way so that individuals who are clearly unable to return home (e.g. because they cannot obtain travel documents or that they are too sick to travel) are still denied support and have to rely on a right of appeal in order to reverse incorrect decisions. The Government is removing this crucial appeal right. In addition, the Bill leaves the detail of what constitutes a “genuine obstacle” to be determined in future regulations.

16. The removal of this appeal right is of great concern as the Home Office’s decision making on support applications is of a very poor quality. This is reflected in the fact that between 1 September 2014 and 28 February 2015, the Asylum Support Tribunal allowed 44% of the appeal cases it decided and remitted a further 12% back to the Home Office to retake the decision. This means that in over 50% of cases in which the Tribunal made a decision the case was either allowed or remitted. If cases in which the Home Office withdrew prior to the hearing are included, then a total of 61% of appeal cases received in this period were either allowed, remitted or acknowledged by the Home Office to be flawed before the hearing.⁹

The information above demonstrate that the right of appeal is an essential mechanism for correcting mistakes made by Home Office and ensuring that those asylum seekers who are wrongly refused support are not left destitute in the UK.¹⁰

⁸ Joint Committee on Human Rights (2013) Human Rights of Unaccompanied Migrant Children and Young People in the UK, First Report of Session 2013/14, HC196 at: <http://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/9/9.pdf>, paras 198, 213 & 209.

⁹ Asylum Support Tribunal statistics, 1 September 2014 to 28 February 2015.

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