IMMIGRATION BILL:
PART 5 SUPPORT FOR CERTAIN CATEGORIES OF MIGRANT
ILPA PROPOSED AMENDMENTS FOR HOUSE OF COMMONS COMMITTEE STAGE

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PART 5 / SCHEDULE 6 SUPPORT FOR CERTAIN CATEGORIES OF MIGRANT

Schedule 6 Paragraph 2

Amendment to provide a right of appeal against a decision by the Home Office to refuse or discontinue support under s95A

PROPOSED AMENDMENT

Schedule 6, Page 90, line 30, at end insert-

> "( ) If the Secretary of State decides not to provide support to a person under section 95A, or not to continue to provide support for a person under section 95A, the person may appeal to the First tier Tribunal."

Schedule 6, Page 90, line 29, leave out 'and (7)'.

Schedule 6, Page 90, line 30, at end insert –

> "in subsection (7) for 'section 4 or 95' substitute 'section 95 or 95A'"

Purpose:

To provide a right of appeal against decisions of the Home Office to refuse or discontinue support under new section 95A for asylum seekers at the end of the process who are unable to leave the UK.

This is similar to Liberty's amendment to provide for a right of appeal in relation to decisions on section 95A.

Briefing from the Asylum Support Appeals Project[1]:

The purpose of this amendment is to ensure that those who are entitled to support under new section 95A of the Immigration and Asylum Act 1999 can access this support in practice and are not left destitute if the Home Office wrongly refuses asylum support.

Refused asylum seekers who face a genuine obstacle to leaving the UK and would otherwise be destitute will be able to apply for support under the new section 95A of the Immigration and Asylum Act 1999 inserted by this Bill.

'Genuine obstacle' will be defined in regulations, but it is likely that support will be provided for some categories of persons who currently receive support under section 4(2) of the Immigration and Asylum Act 1999, which will be repealed by schedule 6 paragraph 1 to this Bill. Such groups would include those who are taking all reasonable steps to leave the UK and those who are medically unfit to travel.

A right of appeal currently exists against incorrect decisions made by the Home Office under section 4 of the Immigration and Asylum Act 1999. This right of appeal is essential to ensuring that destitute asylum seekers are able to access the support to which they are entitled.

The latest statistics from the Asylum Support Tribunal show that 62% of appeals received by the Tribunal had a successful outcome. From September 2014 to August 2015, the Asylum Support Tribunal received 2067 applications for appeals against a Home Office refusal of asylum support. 44% were allowed by the Tribunal and 18% remitted by the Tribunal (sent back to the Home Office for it to take the decision afresh) or withdrawn by the Home Office as it acknowledged its decision-making was flawed.

Asylum support cases represented by the Asylum Support Appeals Project reflect a similar statistic. The Asylum Support Appeals Project provides advice and representation to those appealing Home Office decisions to refuse or withdraw their housing or financial subsistence among other services. In 2014-2015, the Asylum Support Appeals Project represented in 509 appeals related to section 4 support with 332 of these cases receiving a successful outcome, representing 65% of appeals.

The assessment of destitution by the Home Office, relevant to the question of entitlement to support under new section 95A, is the object of particularly poor quality decision-making. In 2014-2015, the Asylum Appeals Support Project represented 168 asylum seekers whom the Home Office did not believe were destitute and to whom it refused asylum support. Seventy

[1] The Asylum Support Appeals Project provides free, high-quality legal representation and advice to asylum seekers and refused asylum seekers appealing against the Home Office decisions to refuse or withdraw their housing, financial subsistence, or both. The Project also provides asylum support advice and training to frontline organisations, advice agencies and legal practitioners working with asylum seekers.

per cent of these decisions were overturned on appeal. The Asylum Support Appeals Project has monitored decision-making on destitution since 2008, producing various research reports during this time. During this eight-year period, we have found the rate of cases overturned at appeal has varied between 60% (in 2014) and 82% (2011) because the Tribunal has found the appellant to be destitute when the Home Office had refused support.

The high level of appeals overturned by the Asylum Support Tribunal indicates a serious problem with the quality of Home Office decision-making on asylum support applications. The consequences of a wrong decision are that a person may be left homeless and destitute and at risk of harm. Such cases may give rise to breaches of human rights under Articles 2 and 3 of the European Convention on Human Rights as well as under Article 8.

Children and families would be also be affected by the loss of judicial oversight of asylum support applications under section 95A. Under paragraph 7(5) of schedule 6 of the Bill, section 95(4) of the Immigration and Asylum Act 1999 is repealed with the effect that section 95 support will not continue for families at the end of the asylum process. They will instead be required to apply for support under the restricted criteria in new section 95A. There is a real risk of children and families being left homeless and destitute without independent scrutiny of Home Office decisions given the high levels of incorrect decisions made on support applications. Local authorities will be required to step in and support families who would be legally entitled to Home Office accommodation and support but have been incorrectly refused this support with no right of appeal.

Without a right of appeal to the Tribunal, the only remedy against destitution and breach of human rights will be judicial review of the section 95A decision. This would be an inadequate remedy, falling short of the requirements of article 6 of the European Convention on Human Rights as it covers the right to a fair trial in the determination of civil rights and obligations, because asylum support appeals involve the determination of questions of fact and matters that go to credibility. The right of appeal to the Tribunal ensures judicial oversight of Home Office decisions in a cost effective, straightforward and accessible way. Appeals are quick. If they are dismissed, then appellants lose their support immediately.

Without the Tribunal's overseeing the process, there will be no check on the Home Office's decision-making. Thus it will matter much less what is contained in the statute, regulations and Home Office policies, as there will be no effective mechanism for ensuring that they are followed.

Case Studies

A is a Somali woman in her late 60s. She has two children in the UK with refugee status. Her own claim for asylum was refused in 2005. She suffers from chronic mental health problems including psychotic depression and post-traumatic stress disorder. She is at risk of suicide and self-harm. She also has physical health problems which restrict her mobility and leave her in pain. She receives frequent care from her GP and her condition is reviewed every few months by a psychiatrist.

She has been on section 4 support due to her health problems since 2011. Her GP has consistently said she is unable to travel because of the impact this would have on her health. At various points the Home Office's own doctors have also agreed. Since 2011 her support has been subject to at least eight internal Home Office reviews all of which have resulted in her

support continuing or being reinstated. Twice the Home Office was required to re-instate her support following a successful Tribunal appeal. On at least two other occasions the Home Office changed its mind and decided to continue to support her shortly before an appeal was going to be heard.

In the latest and third appeal, the Home Office's doctor expressed concern that continually reviewing her case was not in her best interests and that the question of her presence in the UK should be resolved once and for all. The Tribunal judge decided she was unable to travel and moreover that her mental health was too poor for her to make a decision about returning voluntarily. She continues to be eligible for support on health and human rights grounds.

B was due to give birth two days after her asylum support hearing. Her asylum appeal was listed for four months' later. She suffers from post-traumatic stress disorder as a result of the torture and rape she experienced in her home country. She is a long-term patient of the Helen Bamber Foundation, a charity which provides therapeutic and practical support to survivors of human rights violations. She had spent over a year sleeping rough in London parks, a mosque and sofa-surfing with strangers. The man she had been staying with for the last week had made it clear that she would not be allowed back once her baby was born.
In support of her application she had provided evidence from three charities confirming that they were providing her with food, hygiene items and occasional hardship payments. The Home Office refused her application on the basis that she had not proved she was destitute. The Tribunal judge found her oral testimony to be consistent, credible and compelling and allowed the appeal.

C was from East Africa and arrived in the UK at the age of 16. He had lost his family and been forced into working as a child soldier. On arriving in the UK he had initially been supported by social services and lived in foster care. At the age of 18 he was refused asylum and found himself unsupported and living on the streets in London. Five years later he was supported by the Baobab Centre (a therapeutic and support service for young people in exile), who referred him to a solicitor, who submitted further representations for him. He suffered from post-traumatic stress disorder, and received therapy from the Boabab Centre.

His application for asylum support was refused as the Home Office did not believe that he was destitute. He had been staying with someone in the community but the relationship was tantamount to abusive as he was confined to certain areas of the house, and his access to food was restricted. He was reliant on charities for food. The Tribunal judge allowed his appeal on the basis that his accommodation was not adequate and his essential living needs were not being met.

D is Palestinian. Following the refusal of his asylum claim he decided to return. However, he faced significant obstacles in doing this. He was born in Gaza but left around the age of 10. He moved with his father to Lebanon following the death of his mother and brother. He was orphaned not long after arriving and was looked after by neighbours in a refugee camp. He couldn't remember whether he ever had a Palestinian ID number which may have allowed him to obtain a travel document. He did not know anyone in Gaza or whether he had any kind of formal status in Lebanon.

He obtained support following a successful hearing in November 2014 when the tribunal judge found that he was taking all reasonable steps to leave the UK. She accepted that he had no means of confirming his identity or nationality. As he had left Gaza as a young child, it was not

realistic to expect him to know his ID number or to recollect whether he had any family there. He had provided evidence that the Lebanese Embassy had refused to assist him and confirmed they would only respond to enquiries made by the Home Office.

In July 2015 the Home Office decided to terminate his support and he appealed. Despite the conclusions in the previous appeal there had been no progress. The Tribunal judge came to same conclusions as her colleague, namely that it was now up to the Home Office to help him contact the Lebanese embassy. She remitted the appeal back to the Home Office so that they could progress matters, and D remained on support.

PROPOSED AMENDMENT

Schedule 6, Page 91, line 7, at end insert -

(*) Schedule 3 to the Nationality, Immigration and Asylum Act 2002 (withholding and withdrawal of support) is amended as follows.

(a) In paragraph 6(1), after "person" insert "who entered the United Kingdom as an adult"

(b) In paragraph 7, after "person" insert "who entered the United Kingdom as an adult"."

Purpose

This amendment seeks to ensure that all care leavers – including young asylum-seekers and migrants who came to the UK as children – are given the support they need while they are in the UK by amending Schedule 3 of the Nationality, Immigration and Asylum Act 2002 so it does not apply to people who initially came to the UK as children. It will not create an automatic right to support but make sure that a young person is not discriminated against on the basis of his or her immigration status.

Briefing

ILPA is a member of the Refugee Children's Consortium and supports this amendment put forward by the Refugee Children's Consortium and more detailed briefing will follow.

Paragraph 3 *Power to support people making further submissions in relation to protection claims*

PROPOSED AMENDMENT

Schedule 6, Page 91, line 37, leave out "before the end of such period as may be prescribed."

Purpose

To remove provision for a period to be prescribed in regulations, made under section 94(3) of the Immigration and Asylum Act 1999, during which an individual may be left destitute before qualifying for section 95 support on the basis of having lodged 'further qualifying submissions'.

Briefing

By schedule 6 paragraph 3(2B) of this Bill, people who have lodged 'further qualifying submissions' with the Home Office are defined as asylum seekers and will therefore qualify for support under section 95 of the Immigration and Asylum Act 1999 in the same way as those making an initial claim for asylum. This enables support to be provided under section 95 of the Immigration and Asylum Act 1999 to this group of people currently accommodated under section 4 of the Immigration and Asylum Act 1999 which is being repealed by the Immigration Bill.

'Further qualifying submissions' are defined in paragraph (3)(2C) as submissions that a person's removal breaches the United Kingdom's obligations under the Refugee Convention or its obligations to grant protection to those eligible for humanitarian protection. Such submissions may be made by persons after their asylum claim has been finally determined where new information or evidence of risk on return arises. The Secretary of State will then determine whether the further submissions may be considered as a fresh asylum claim.

As further qualifying submissions are lodged at the end of the asylum process, many individuals in this position are destitute. Further submissions must be lodged in person at the Home Office in Liverpool, so applicants may face practical and financial barriers to doing so.

The drafting of paragraph 2B(2)(c)(ii) enables the Secretary of State to prescribe in regulations a period during which she may consider the further qualifying submissions without being under a duty to provide support. During this period, the individual claimant would remain destitute.

It seems that this subsection seeks to reverse the decision in the case of *MK and AH and Refugee Action* [2012] EWHC 1896 (Admin) in which the Home Office policy of delaying 15 working days before making decisions on section 4 applications in further submissions cases was found to be unlawful. The policy was held to give rise to a significant risk of breaches of Article 3 of the European Convention on Human Rights and the Reception Directive.

The High Court cited evidence from the Red Cross about individuals who found themselves in this position, indicating that it seemed to be an almost inevitable consequence of the Home Office policy and could not be ignored:

> "*… A significant proportion of such people (i.e. destitute with further submissions pending) are "street homeless" (i.e. people sleeping on the streets). The majority are single men, although they also include single women.*"
>
> "*Many of our street homeless clients report sleeping at bus stops, on night buses (in cities such as London which have night bus services), in train and bus stations. People can only get on night buses if they have been able to obtain a bus pass or ticket (which means that it is not an option for the overwhelming majority of street homeless asylum seekers). They also tell us they feel*

vulnerable and unsafe sleeping rough. Some report being attacked whilst sleeping rough and it is not uncommon for them to be subjected to racist abuse. [...]

The overwhelming majority of the people who are street homeless find the experience of being in that position frightening and hugely distressing. Most of them have never experienced being homeless and lack the necessary survival skills to cope with being homeless. Many of them will not be sufficiently proficient in the English language. A lot of them, even if they speak English, are educated and from professional backgrounds. The distress and humiliation they report feeling at being homeless is particularly acute given their unfamiliarity with such a way of life. They find it particularly difficult to deal with the encounters with established groups of rough sleepers (often drug and alcohol users) which are unavoidable when someone is homeless."

As a result of the judgment, the Home Office amended the policy so that decisions on section 4 applications had to be made within two working days for individuals in 'vulnerable' categories and within five working days for other people[2]. Amending this policy and reversing the judgment would reintroduce destitution and risk of breaches of human rights for this cohort of applicants.

Further, families with children who are currently supported at the end of the asylum process under section 95 of Immigration and Asylum Act 1999 will be affected by this policy should section 94(5) of the Immigration and Asylum Act 1999 be repealed as intended under the Bill. This means that families with children will be at risk of destitution under any policy to delay support whilst further qualifying submissions are considered.

The situation is also likely to be worse than when the policy was considered in the judgment of *MK and AH and Refugee Action.* The requirement that further submissions are lodged in the person at the Home Office in Liverpool is already prolonging destitution for many people. Previously, most applicants were able to lodge their submissions at their local reporting centres. There is no funding available to travel to Liverpool and so applicants are reliant on charities and their communities in order to lodge further submissions.

There is also a delay between being accepted for support and support being provided in practice. In straightforward cases the provision of support usually begins between one and three weeks after an application is accepted. It may take longer where the applicant has special needs. It is therefore imperative that applicants are accepted and provided with support as soon as they qualify.

Paragraph 3 *Power to support people making further submissions in relation to protection claims*

PROPOSED AMENDMENT

Schedule 6, Page 92, line 6, leave out from ', or' to the end of line 8

Purpose

[2] Asylum Support, Section 4 Policy and Process instruction, https://www.gov.uk/government/publications/asylum-support-section-4-policy-and-process, para 1.15

To prevent section 95 support from terminating immediately on notification of a decision on further qualifying submissions if no period for support terminating is prescribed in regulations made under section 94(3) of the Immigration and Asylum Act 1999.

Briefing

The purpose of this amendment is to prevent individuals and families from being made immediately homeless and destitute on receipt of a decision from the Home Office on their 'further qualifying submissions'.

Those who lodge 'further qualifying submissions' are eligible for support under section 95 of the Immigration and Asylum Act 1999 whilst the Home Office makes a decision on those submissions.

'Further qualifying submissions' are defined in paragraph 3(2C) as submissions that a person's removal breaches the United Kingdom's obligations under the Refugee Convention or its obligations to grant protection to those eligible for humanitarian protection. Such submissions may be made by persons after their asylum claim has been finally determined where new information or evidence of risk on return arises. The Secretary of State will then consider those submissions and either grant leave, reject the submissions without treating them as a fresh protection claim or treat the submissions as a fresh protection claim with a right of appeal.

The notification of the Secretary of State's decision on the further qualifying submissions is treated as the start of a period, to be prescribed in regulations made under section 94(3) of the Immigration and Asylum Act 1999, after which support is terminated. Under paragraph 3(5)(3A)(b), however, if no regulations are brought in prescribing a period after which support is to be terminated, or the individual is not covered by a scenario envisaged in those regulations, support can be terminated immediately. This means that applicants, including families with children, may be made immediately homeless and destitute in the following ways.

<u>Applicants whose further submissions are accepted and are granted leave</u>

Applicants who are granted leave would have no time to obtain the documentation that they need to apply for mainstream benefits and/or obtain work.

Individuals supported under section 95 of the Immigration and Asylum Act 1999 who are granted leave are granted a period of 28 days under which they may continue to receive section 95 support whilst applying for mainstream benefits and/or obtaining work. This period is prescribed in regulation 2(2A) Asylum Support Regulations 2000 (as amended). A period of 28 days has been found to be insufficient to protect refugees from destitution. Freedom from Torture clinicians have identified that this is the period when torture survivors under their care most frequently experience destitution, including street homelessness[3]. Two further research reports published in 2014 by the British Red Cross[4] and by the Refugee Council[5] highlight the

[3] Freedom from Torture (2013) *The Poverty Barrier: The Right to Rehabilitation for Torture Survivors in the UK* at: http://www.freedomfromtorture.org/sites/default/files/documents/Poverty%20report%20FINAL%20a4%20web.pdf
[4] British Red Cross (2014) *The Move-on Period: An Ordeal for New Refugees*, at: http://www.redcross.org.uk/~/media/BritishRedCross/Documents/About%20us/Research%20reports%20by%20advocacy%20dept/Move%20on%20period%20report.pdf
[5] Refugee Council (2014), *28 days later: experiences of new refugees in the UK*, at: http://www.refugeecouncil.org.uk/assets/0003/1769/28_days_later.pdf

difficulties that refugees face during this 'move on' period due to problems with Home Office and Department of Work and Pensions processes, including delays in receiving Biometric Residence Permits and difficulties obtaining a National Insurance number.

The problem of the gap between a grant of leave and access to support was vividly and tragically highlighted by the death of child EG, a little boy who starved to death in this period. The case is relevant not just to those granted leave, but to all situations in which there is a gap and an emergency response is needed. We cite from the Executive Summary of the Westminster Council Safeguarding Board Serious Case Review, as amended as directed by the High Court[6]:

> *11.1.8 An initial post mortem examination on 10.03.10 found there was no food in EG's stomach or digestive tract. EG was described by the paediatric pathologist as 'severely underweight and dehydrated' and he concluded that 'this was clearly the immediate cause of death'.*

EG's mother died two days later. The serious case review identifies the following "National issue":

> *5.1.4 Westminster Local Safeguarding Children Board should write to the National Asylum Support Service and Department for Work & Pensions to express its concern about the adverse consequences on vulnerable children and the resulting additional pressure on local professional agencies which are triggered in the transitional period between withdrawal of support by the National Asylum Support Agency and entitlement to Benefits.*

<u>Applicants whose further submissions are treated as a fresh protection claim with a right of appeal</u>

This group of applicants, whose submissions are accepted by the Home Office as a fresh protection claim, would have an entitlement to support under section 95 of the Immigration and Asylum Act 1999 because their protection claim would be treated in the same way as an initial asylum claim. The provision in paragraph 3(5)(3A), however, would create a gap in their support. They could be made immediately destitute and homeless under that provision and then be required to re-apply for section 95 support. In the interim period, which may be several weeks, they would be destitute and homeless.

<u>Applicants whose further submissions are rejected</u>

There is no right of appeal where the Home Office rejects an applicant's further submissions and so the only scrutiny of decision-making available is by judicial review. Paragraph 3(5)(3D) provides for support to be continued where permission for judicial review is granted. In order to bring a judicial review, an applicant must first apply for permission to do so as a preliminary stage and this application is decided by a judge. Permission is therefore not granted immediately and the process can take time. If support is terminated immediately on notification of the decision on further qualifying submissions, the individual is made immediately destitute and homeless, preventing them from taking advice on or exercising the legal rights available to them as well as placing them at risk of harm.

[6] April 2012. Available at http://www.westminster.gov.uk/workspace/assets/publications/EG-Executive-Summary-April-2012-1336483036.doc

It is also the experience of the Asylum Support Appeals Project that individuals often only find out that a negative decision has been made on their further submissions when they receive a letter advising of the discontinuation of their asylum support. This may occur because separate parts of the Home Office manage decision-making and asylum support. Should the applicant's support be terminated immediately, they will have no opportunity to obtain the decision in their case and take advice on the reasons for refusal.

The experience of immediate homelessness and destitution would also prevent an individual from being able to make appropriate arrangements to return to their country of origin on receipt of a negative decision on their application.

Where an asylum application and any appeals are finally determined, Regulation 2 of The Asylum Support Regulations 2000 (as amended) prescribes a period of 21 days after which support is terminated. So why would a period not be prescribed here? A period for those whose further qualifying submissions are rejected should similarly be prescribed on the face of the Bill or in regulations with no provision for the immediate termination of support.

All of the above groups affected will include families with children, increasing the importance of ensuring there is a grace period where support is continued after a decision is made on further qualifying submissions to prevent destitution and homelessness.

Paragraph 7

Amendment not to repeal s94(5) and cut off support to failed asylum seeking families with children

PROPOSED AMENDMENT:

Schedule 6, Page 93, line 37, delete '(5) omit sections (5) and (6)'

Purpose:

This amendment will allow destitute refused asylum seeking families to continue receiving basic support (just over £5 a day for their essential living needs with housing provided for those with nowhere to live) until their case is finally concluded, as is currently the case.

This will protect vulnerable children from being left destitute; ensure immigration controls are not undermined because the Home Office has lost contact with families who are appeal rights exhausted; and avoid a substantial transfer of costs to local authorities.

Briefing from Still Human Still Here[7]:

The proposed policy will undermine immigration control

The Government's stated policy intention in withdrawing support from families with children who have had their asylum claim and any appeal rejected is to ensure "the departure from the

[7] Still Human Still Here is a coalition of some 80 organisations which includes nine City Councils the Red Cross, Crisis, the Children's Society, Mind, Citizens Advice Bureau, Doctors of the World, National Aids Trust, and the main agencies working with asylum seekers in the UK. For details, see: www.stillhuman.org.uk.

UK of refused asylum seekers with no lawful basis to remain in the UK." The Government will not achieve this objective because where parents, rightly or wrongly, think that their children's lives will be at risk if they return to the country fled, they will generally consider that becoming destitute in the UK is the better option available to them.

Consequently, removing support from asylum seeking families who are appeal rights exhausted will not lead to their voluntarily returning home. It will, however, undermine immigration controls as these families will have little incentive to stay in touch with the authorities once support is withdrawn. For those refused asylum seekers who do try to maintain contact with the Home Office, the practical barriers created by destitution may make this impossible (e.g. having no money for travel and communication).

Conversely, continuing support to refused asylum seekers strengthens the integrity of the immigration system because the Home Office maintains contact with people who have been refused asylum and is better able to enforce removals against individuals who do not have protection needs in the UK and do not leave voluntarily. This is why Home Office staff themselves proposed, in response to a previous consultation, that refused asylum seekers should be left in their accommodation until they are removed from the UK.[8]

This is not speculation. An almost identical policy - in which families who were appeal rights exhausted had all their support removed if they failed to take "reasonable steps" to leave the UK (implementing Section 9 of the Asylum and Immigration Act 2004) - was piloted by the Government between December 2004 and December 2005. The evidence from this pilot showed that the policy did undermine immigration control. Indeed the Home Office's own evaluation of the Section 9 pilot (which involved a cohort of 116 families) concluded that:

- Nearly a third of the families disappeared to avoid being returned to their countries of origin. The rate of absconding was 39% for those in the Section 9 pilot, but only 21% in the comparable control group who remained supported. That is to say that the absconding rate was nearly double when support was cut off from asylum seeking families.

- Only one family in the pilot was successfully removed, as compared to nine successful removals in the control group and "there was no significant increase in the number of voluntary returns" of unsuccessful asylum seeking families in the pilot.[9]

As the Government's own impact assessment states that there will be "no additional enforcement activities or costs as a result of this policy", it is clear that the Government's central concern is not ensuring "the departure from the UK of refused asylum seekers with no lawful basis to remain in the UK." The proposed policy change represents an abdication of the Government's responsibilities for both immigration control and child protection.

The proposed policy will leave children destitute and vulnerable

Irrespective of whether families should or should not go home, the children of asylum seeking families are children first and foremost, and UK asylum policy should make the protection of their welfare a priority.

[8] UKBA, *Simplifying Immigration Law: Responses to the initial consultation paper*, December 2007.
[9] Home Office, *Family Asylum Policy – The Section 9 Implementation Project*, pages 3 and 7.

The Government's proposal is, however, designed to prevent statutory services assisting children who become destitute and/or street homeless when their parent or parents' application has been refused and the Home Office believes there is no obstacle to prevent the family returning home.

This policy will leave families vulnerable to abuse and exploitation and may cause long term harm to the children affected. It is incompatible with promoting the best interests of the child and the principles set out in the Children's Act 1989 and other national guidance, including *Every Child Matters*.

The consequences of withdrawing all statutory support from vulnerable families should not be underestimated. A 2011 Serious Case Review involving Child Z, found that the circumstances of the child's mother - a refused asylum seeker facing removal, with a life threatening illness, and caring for a young child with few support networks - "would challenge any individual's coping strategies." It emphasized the "need for high levels of support for someone with such vulnerabilities was clear" and the absence of this support was a major factor leading to the woman's death and her child's needing to be looked after.

A separate 2012 Serious Case Review looked at the case of 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.

Both these cases highlight the consequences of leaving vulnerable families without any support (although in the latter case the family was entitled to benefits, but could not access them) and the complex health needs of many asylum seekers. When refused asylum seekers have their support cut off this both causes illness and complicates existing health problems. The deterioration in their health will be more rapid and more pronounced than in the general population because of their vulnerability and due to the fact that they have already been living well below the poverty line (on just over £5 a day) for many months while waiting for their case to be decided. Indeed, the Home Office has cut support to an asylum seeking couple with two children by more than £30 a week this year – a reduction of nearly 20% in 2015 alone.

The health impacts of removing support from families at the end of the asylum process was evidenced in the Section 9 pilot. The Refugee Council and Refugee Action outreach teams found that most of the 35 families they worked with during the pilot had physical and/or mental health problems which were made worse by Section 9: 80% of parents had mental health problems ranging from depression to self-harming and some had been diagnosed with post-traumatic stress disorder; and 36% of parents had significant health conditions which included heart disease, sickle cell anaemia and asthma. [10]

The Immigration Bill provides no safety net or support for refused asylum seeking families, thereby greatly increasing the risk of the children and their parents coming to harm, both through destitution and through the undertaking other survival strategies, such as illegal and exploitative work, abusive transactional relationships and prostitution. It is ironic that following

[10] Refugee Council and Refugee Action, *Inhumane and Ineffective - Section 9 in Practice*, 2006, page 5.

the passage of the Modern Slavery Act 2015, the Government is proposing a policy which is likely to create the conditions in which asylum seeking families will be more vulnerable to forced labour and trafficking.

Ian Johnson, the Director of the British Association of Social Workers, said that the section 9 pilot *"places social workers and their employers in an insidious position … If this is a civilised country we live in, then there is no place for that kind of treatment of families.'*[11]

The proposed policy will increase costs for local authorities

Research carried out at the time of the Section 9 pilot found that all 33 local authorities interviewed considered that section 9 ran counter to their established welfare duties and practices under the Children Act 1989.[12] Local authority staff also expressed concerns over:

- The resource implications of section 9, and whether or how the Home Office would reimburse costs arising from assessments and support of families.
- Undertaking assessments of whether a failure to support might lead to a breach of fundamental rights under the Human Right Act 1998 or the Children Act 1989.
- The risk that they were leaving themselves open to judicial review.

Peter Gilroy, the Chair of the Asylum and Refugee Task Group of the Association of Directors of Social Services, also concluded that Section 9 "*is injurious to children and families, compromises the work of local authorities and fails to address successful removals of failed asylum seekers from the UK. I also believe this policy will bring judicial challenges both to local and central government but more importantly it places vulnerable children in harm's way.*" [13]

All of the concerns highlighted above are equally relevant to the proposals in the current Bill. While the Government has stated that it is not its intention to place new burdens on local authorities, excluding refused asylum seeking families and their children from support will have exactly this effect.

During the section 9 pilot, the Home Office itself acknowledged that the "pilot placed significant demands upon local authority resources"[14] and its own impact assessment for the current Bill estimates that supporting families with an outstanding Article 8 claim alone will cost local authorities some £32 million over 10 years. This is likely to dramatically under-estimate the total costs to local authorities as it does not take into account:

- Their duty under the Children Act to prevent any child from being left destitute.[15]
- The substantial resources needed to screen and undertake statutory assessments of refused asylum seeking families who request assistance from local authorities.
- The indirect financial costs arising from destitution (e.g. healthcare and legal costs).

[11] Barnardos, *The End of the Road*, 2005, page 6.
[12] Barnardos, *The End of the Road*, 2005, page 27.
[13] Peter Gilroy, Briefing on Section 9, 1 November 2005.
[14] Home Office, *Family Asylum Policy – The Section 9 Implementation Project*, page 3.
[15] The average annual cost to support a family on s17 was £8,245 according to spending data from 24 authorities in 2012/3. J. Price & S. Spencer *Safeguarding children from destitution: local authority responses to families with 'no recourse to public funds'*, University of Oxford, Compass, June 2015, p.41

Issues to probe during the debate of this amendment

In relation to child protection:
The Government has stated its intention to "retain important safeguards for children".

- **What are these safeguards given that it is the policy intention to leave children without any form of statutory support?**
- **How can leaving children destitute be compatible with the duties outlined in the Children Act?**
- **Does the Government accept that the consequence of this policy will be to punish children for the actions of their parents?**

In relation to costs to local authorities:
The Government accepts that there will be millions of pounds worth of additional costs to local authorities from its proposals, but it is likely that the real costs will be much higher than the estimates provided by the Government (see above).

- **Will the Government therefore commit to use its power under s110 of the Immigration and Asylum Act 1999, to reimburse local authorities for additional expenditure resulting from this policy?** [16]

Paragraph 8

Amendment to increase asylum support rates to £40.47 per person per week

PROPOSED AMENDMENT

Schedule 6, Page 93, line 38, after 'provided)' insert '(a)'

Schedule 6, Page 93, line 39, at end, insert:-

'(b) insert after subsection (8) -

(*)The weekly cash payment of £36.95 set out in Regulation 2(2) of the Asylum Support (Amendment No. 3) Regulations 2015 No. 1501 is increased to £40.47.'

Purpose:

This amendment would increase the level of support for asylum seekers who would otherwise be destitute from £36.95 a week to £40.47 a week and then subsequently ensure that the rate is adjusted in line with Consumer Price Index (CPI) each year. This would provide asylum seekers with £5.78 a day to pay for food, clothing, toiletries, travel and other necessities and thereby try to help ensure that they can properly meet their essential living needs and pursue their asylum applications. The amendment works by amending s 95 of the Immigration and Asylum Act 1999 which is the overarching section under which support for persons seeking asylum is provided.

[16] Currently the power under s110 is used to negotiate reimbursements for local authorities for their expenditure in relation to unaccompanied asylum seeking children, but this legislation also allows central government to reimburse local authorities for any expenditure in relation to asylum seekers or people who have been asylum seekers.

Briefing from Still Human Still Here[17]:

The rates for asylum seekers supported under section 95 of the Immigration and Asylum Act 1999, were originally set at 70% of Income Support on the basis that their accommodation and utility bills would be paid for separately.

However, in recent years asylum seekers have seen the value of this support severely reduced. Asylum support rates were frozen between 2011 and 2015 and rates for asylum seeking children were cut in August 2015 by the Asylum Support (Amendment No. 3) Regulations by £16 per week.

All asylum seekers on section 95 support who would otherwise be destitute now receive the same flat rate of support which is set at £36.95 a week, or just over £5 a day. Asylum seekers must pay for their food, clothing, toiletries, transport and other necessities with this money. This means that asylum seeking families with children are now living on rates that are some 60% below the poverty line and single adult asylum seekers receive around 50% of Income Support.

Research indicates that this level of support is not sufficient to allow asylum seekers to meet their essential living needs and pursue their asylum applications. In 2010, Still Human Still Here analysed the basket of basic goods compiled by the Joseph Rowntree Foundation for its minimum income standards report and then stripped this down so that only items needed to avoid absolute poverty were included. On this basis it concluded that 70% of Income Support is the absolute minimum required to meet basic needs.

More recent research has also provided evidence that the current level of asylum support is inadequate. For example, in 2013 Refugee Action interviewed 40 clients who were in receipt of section 95 support and found that 70% (28/40) of interviewees were unable to buy either enough food to feed themselves or fresh fruit and vegetables or food that met their dietary, religious or cultural requirements, since being on asylum support.[18]

Furthermore, 90% (36/40) of interviewees could not afford to buy sufficient/appropriate food and clothes. Of the four people who said they could meet both these essential needs, three stated that the level of support did not allow them to maintain good mental and physical health. The only individual who did not report difficulties in this respect received food and other essential items from friends.

Similar detailed research by Freedom form Torture[19] found that all 17 respondents on section 95 support who responded to detailed questions stated that overall their income was insufficient to meet their essential needs. As with the Refugee Action research, this survey indicated that asylum seekers usually had to sacrifice one essential item to meet another one.

[17] Still Human Still Here is a coalition of some 80 organisations which includes nine City Councils the Red Cross, Crisis, the Children's Society, Mind, Citizens Advice Bureau, Doctors of the World, National Aids Trust, and the main agencies working with asylum seekers in the UK. For details, see: www.stillhuman.org.uk.

[18] Refugee Action's research took place in May 2013 with asylum seekers who visited offices in Liverpool, Manchester, Leicester, Bristol, Sheffield or Rotherham for advice sessions.

[19] Freedom from Torture carried out research into the impact of poverty on torture survivors in July 2013. A total of 117 clients took part in the research across the UK, including 19 individuals who were in receipt of Section 95 support at the time and completed a detailed questionnaire about their experiences.

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."[20] It should be emphasized that this conclusion was reached ***before*** support levels for children were cut by £16 a week.

In October 2013, the Home Affairs Committee issued a report in which it highlighted "concerns about the level of support available to those who seek asylum in the UK" and concluded that the "relative poverty" of those on section 95 support "is compounded by the fact that the vast majority of asylum applicants have not legally been allowed to work since 2002."[21]

In April 2014, the High Court handed down a judgment in a case which the Judge described as considering

> "what was sufficient to keep about 20,000 people above subsistence level destitution, a significant proportion of whom are vulnerable and have suffered traumatic experiences."

The Judge found that the Government's assessment of the amount needed by asylum seekers to avoid destitution was flawed and ordered the decision be taken again.
The ruling states that the Government failed to take account of items that must be considered as essential living needs (e.g. non-prescription medication; nappies, formula milk and other requirements of new mothers; basic household cleaning goods; and the opportunity to maintain relationships and have a minimum level of participation in society). It also found that the Government had made errors in calculating the amount required to meet essential living needs.

While the Government complied with the judgment and reviewed its decision, it still concluded that rates were adequate for single adults to meet their essential living needs (and later that they were overly generous for children). The Home Office methodology for reaching this conclusion primarily rests on the Office for National Statistics (ONS) expenditure data for the lowest 10% income group in the UK. However, the Home Office adjusted the latest ONS data (2013) in relation to several items to calculate what the support level should be for asylum seekers in 2015, as illustrated in the table.

Essential living needs	ONS data 2013	Adjusted by the Home Office
Food & non-alcoholic drink	£23.46	£24.96
Clothing and footware	£4.62	£2.51
Toiletries	£1.23	£1.23
Healthcare	£0.69	£0.69
Household cleaning items	£1.00	£1.00
Travel	£3.62	£3.00

[20] *Report of the Parliamentary Inquiry into asylum support for children and young people*, Children's Society, January 2013, pages 24-25.
[21] Home Affairs Committee, Asylum, Seventh report of session 2013-14, paragraph 77 and Press Release 10 October 2013.

Communications and post	£5.23	£3.00
Subtotal	**£39.85**	**£36.39**
Adjusted for 2014 CPI (1.55%)	**£40.47**	**£36.95**

The Home Office's £1.50 upward adjustment for food is to take account of the fact that the Office for National Statisics (ONS) survey separately recorded £5 worth of additional expenditure on other food items (e.g. takeaways, canteens, etc.) and asylum seekers would still have to prepare this food at home.

The downward adjustments made to expenditure on clothing, travel and communications were based on the Home Office's assessment that this amount was more than is necessary to cover essential living needs based on its own research. Such assessments introduce a subjective element into the calculation which is likely to be influenced by budgetary and/or other political pressures.

It should be stressed that ONS data cited above do not take account of the additional needs of asylum seekers (e.g. that asylum seekers often arrive with nothing, are more vulnerable than the general population, do not have a support network, etc.). Furthermore, the ONS data do not assess whether essential living needs are met or what impact the level of spending on food or other items has on health and well-being.

For all of the above reasons the ONS data should be the ***minimum*** baseline for asylum support payments. If the unadjusted ONS data was used for the current financial year, each asylum seeker would receive £40.47 a week and the amendment would then ensure that this rate would subsequently be adjusted in line with the Consumer Price Index (CPI) each year. This would be a fairer, more efficient way of calculating what the asylum support rate should be and would depoliticise this process.

While this would still leave the rate well below 70% of Income Support, which many people consider should be the minimum level of asylum support, it would represent a modest improvement in the current situation and help to ensure that those surviving on section 95 support do not get ill, whether with mental or physical health problems. This is particularly important given that many asylum seekers do spend considerable periods of time on section 95 support. At the end of June 2015, more than 3,600 asylum seekers had been waiting more than six months for an initial decision on their applications. During this time, and any subsequent appeal, asylum seekers are prohibited from working to support themselves and therefore have no choice but to rely on section 95 support.

PROPOSED NEW CLAUSE AFTER PARAGRAPH 43: Permission to work

Page 100, line 16 at end insert the following new clause-

"Permission to work

(1) The Immigration Act 1971 is amended as follows.

(2) After section 3(9) (general provisions for regulation and control) insert—

"(10) In making rules under subsection (2), the Secretary of State must have regard to the following.

(11) Rules must provide for persons seeking asylum, within the meaning of the rules, to apply to the Secretary of State for permission to take up employment and that permission must be granted if—

(a) a decision has not been taken on the applicant's asylum application within six months of the date on which it was recorded, or
(b) an individual makes further submissions which raise asylum grounds and a decision on that fresh claim or to refuse to treat such further submissions as a fresh claim has not been taken within six months of the date on which they were recorded.

(12) Permission for a person seeking asylum to take up employment shall be on terms no less favourable than those upon which permission is granted to a person recognised as a refugee to take up employment.""

Purpose

This proposed amendment would provide for asylum seekers to be able to work if their claim is not determined within the Home Office target time of six months.

Briefing

ILPA supports this amendment put forward by Liberty.

Currently those seeking asylum are only allowed to work after 12 months without an initial decision and then only if they can qualify for a limited list of skilled jobs. The integration of those recognised as refugees is made more difficult by their inability to work during the, often all too-lengthy, asylum determination procedure, while those whose claims for asylum do not succeed return to their country without having maintained or improved skills that could benefit that country. The State bears the cost of supporting persons who would be willing to support themselves.