



Home Office

# Reforming support for failed asylum seekers and other illegal migrants

August 2015

## Purpose and scope of the consultation

**Topic of this consultation:** Proposals for reform of support for failed asylum seekers and other illegal migrants.

**Scope of this consultation:** Public money should not be used to support illegal migrants, including failed asylum seekers, who can leave the UK and should do so. Subject to this consultation, we propose to legislate to curtail the scope for such support, consistently with our international and human rights obligations, and to remove incentives for migrants to remain in the UK where they have no lawful basis for doing so.

The consultation seeks views on our detailed proposals. It also seeks views on how we can best work together with our partners in local government and elsewhere to conclude immigration cases as quickly as possible, ensure the departure from the UK of those migrants with no lawful basis to remain here and minimise burdens on the public purse.

**Geographical scope:** The geographical scope of this consultation is United Kingdom-wide. Immigration is a reserved matter, but engages issues which are devolved, such as social services, housing and health. The Devolved Administrations and Non-Governmental Organisations across the UK are included in this consultation process.

### Basic information

**To:** This consultation document is publicly available on GOV.UK at:  
<https://www.gov.uk/government/consultations/reform-of-support-for-failed-asylum-seekers-and-other-illegal-migrants>

**Duration:** The consultation period will end on 9 September 2015.

**How to respond:** Please email your response to:  
[FASSupportConsultation2015@homeoffice.gsi.gov.uk](mailto:FASSupportConsultation2015@homeoffice.gsi.gov.uk)

Your attention is drawn to the statement on responses: confidentiality and disclaimer at page 12.

**After the consultation:** Following the consultation, a response to consultation document will be published, summarising the views expressed and the government's response to them.

# Reforming support for failed asylum seekers and other illegal migrants

## Introduction

1. The United Kingdom is committed to fulfilling its international obligations to meet minimum standards for asylum seekers who would otherwise be destitute until their asylum claim has been finally determined.<sup>1</sup>
2. These minimum standards are met through the support provided under section 95 of the Immigration and Asylum Act 1999 (the 1999 Act). Support is usually provided in the form of accommodation and a weekly cash allowance to cover the asylum seeker's essential living needs.
3. As of 31 March 2015, we were providing section 95 support to an estimated 20,400<sup>2</sup> asylum seekers whose asylum claim had yet to be finally determined, including pending the outcome of an appeal, and who would otherwise be destitute.<sup>3</sup> In 2014-15, such support cost an estimated £100 million.
4. However, the way in which the 1999 Act is framed has resulted in support also being provided to large numbers of failed asylum seekers. In particular, section 94(5) allows section 95 support to continue after the asylum claim has been finally determined if the asylum seeker has with them a dependent child, and section 4(2) provides the basis for supporting other categories of failed asylum seeker.
5. The number of failed asylum seekers being supported under these provisions is considerable. In total, as of 31 March 2015, we were providing support to an estimated 15,000<sup>4</sup> failed asylum seekers and their dependants. In 2014-15, such support cost an estimated £73 million.
6. This means that the system of support for which Parliament legislated in the Immigration and Asylum Act 1999 to discharge our international obligations towards those seeking asylum in the UK is now being used in large measure to support those whose asylum claim has failed and who have established no lawful basis to remain in the UK.
7. This is wrong in principle and sends entirely the wrong message to those migrants who do not require our protection but who may seek to come to or remain in the UK in an attempt to benefit from the support arrangements we have put in place for those who need our protection. It also undermines public confidence in our asylum system.
8. The United Kingdom has a proud record of providing a safe haven for refugees and giving them the opportunity to make a new life here with their family and to contribute to and integrate into British society.
9. But the arrangements for supporting those who have claimed asylum in the UK and would otherwise be destitute, which Parliament put in place 16 years ago, need to be

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<sup>1</sup> The EU Reception Directive 2003/9/EC lays down minimum standards for the reception of asylum seekers. The Directive allows support to be denied or withdrawn in certain circumstances, including where the asylum seeker has failed to demonstrate that their claim was made as soon as reasonably practicable after arrival in the Member State.

<sup>2</sup> This figure has been extrapolated from published Official Statistics as at 31 March 2015.

<sup>3</sup> Under section 95(3) of the 1999 Act, a person is destitute if (a) they do not have adequate accommodation or any means of obtaining it (whether or not their other essential living needs are met); or (b) they have adequate accommodation or the means of obtaining it, but cannot meet their other essential living needs.

<sup>4</sup> This figure has been extrapolated from published Official Statistics as at 31 March 2015.

rebalanced. Failed asylum seekers are illegal migrants and are no more deserving of welfare support than any other migrant in the UK unlawfully. Our focus should once again be on supporting those whose asylum claim has yet to be finally determined and who may need our protection, rather than those whose asylum claim has failed, who the courts have agreed do not need our protection and who should leave the UK.

10. Subject to this consultation, we therefore propose to legislate to curtail the scope for support for failed asylum seekers and other illegal migrants and to remove incentives for migrants to remain in the UK where they have no lawful basis for doing so. This consultation document seeks views on the detail of our proposals, for which the forthcoming Immigration Bill may provide a vehicle. It also seeks views on how we can best work together with our partners in local government and elsewhere to conclude cases as quickly as possible, ensure the departure from the UK of those migrants with no lawful basis to remain here and minimise burdens on the public purse.

### Principles of reform

11. We will continue to:

- provide protection to those who have a genuine need for it;
- consider asylum claims and support applications quickly and fairly, based on their individual merits;
- support people who would otherwise be destitute while their asylum claim is being decided; and
- grant leave to those who establish a claim to remain here and support their integration into our communities.

12. In return, we expect applicants to:

- be honest in their dealings with us, present us with the complete and true facts of their situation and not make unfounded claims or applications; and
- leave the UK if their asylum claim and any appeal is rejected.

13. The proposals set out in this consultation document will:

- ensure that asylum seekers who would otherwise be destitute continue to receive adequate support while their claim is under consideration;
- rebalance the support system so that failed asylum seekers and other illegal migrants have no financial incentive to remain in the UK and avoid return to their own countries;
- retain important safeguards for children; and
- reduce costs to the public purse.

## Detail of proposed changes

### Section 4(1) of the 1999 Act

14. Section 4(1)(a) of the Immigration and Asylum Act 1999 allows support to be provided to persons placed on temporary admission and section 4(1)(b) allows support to be provided to those released from immigration detention. These provisions have rarely been used.

15. Section 4(1)(c) has been used more frequently, principally to provide a bail address for persons released from immigration detention.

16. These provisions are unrelated to the support needs of destitute asylum seekers. We therefore propose to repeal section 4(1) of the 1999 Act. Asylum seekers granted bail, temporary admission or temporary release or otherwise released from detention will remain able to access support under section 95 of the 1999 Act if they are destitute.

### Section 4(2) of the 1999 Act

17. Section 4(2) of the Immigration and Asylum Act 1999 allows support to be provided to failed asylum seekers who would otherwise be destitute and who meet conditions set out in regulations.<sup>5</sup> The regulations allow the provision of support if the person is destitute and temporarily unable to leave the UK. For example, support can be provided if there is a medical reason why they cannot travel or they have outstanding further submissions (i.e. a new or repeat claim) lodged with the Home Office as to why they should remain here on protection grounds.

18. As of 31 March 2015, around 4,900 failed asylum seekers were supported under section 4(2) of the 1999 Act. In 2014-15, such support cost an estimated £28 million.

19. The problem with section 4(2) is that it provides an avenue for support simply on the basis that the person is in the UK and has previously made a failed asylum claim. It means that support is provided to failed asylum seekers who should have left the UK when their claim failed, but who did not do so and remained here unlawfully. It is essential that our support arrangements reinforce our immigration controls rather than providing incentives to circumvent them.

20. We therefore propose to change these arrangements to close off section 4(2) support for failed asylum seekers who make no effort to leave the UK at the point that their asylum claim is finally rejected. Where there was a genuine obstacle preventing return to the country of origin at that point, support could be provided until that obstacle was removed.

21. Support would also continue to be provided to those whose asylum claim had been finally rejected but who for the time being could not reasonably be expected to avoid destitution by leaving the UK because they had lodged with the Home Office further submissions (i.e. a new or repeat claim based on asylum or Article 3 of the ECHR) which were outstanding.

### Section 95 of the 1999 Act

22. Section 95 of the 1999 Act allows support to be provided to asylum seekers or dependants of asylum seekers who appear to the Secretary of State to be destitute or be likely to become destitute within 14 days. An asylum seeker is defined as a person who is aged 18 or over and has made a claim for asylum which has been recorded by the Secretary of State and has not been determined.

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<sup>5</sup> Immigration and Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005 (S.I. 2005/930).

23. However, section 94(5) allows section 95 support to continue after the asylum claim has been finally determined if the asylum seeker has with them a dependent child (who was a child at some point prior to the asylum claim being finally determined).<sup>6</sup> As of 31 March 2015, an estimated 2,900<sup>7</sup> families (around 10,100 people; approximately 33 per cent of the total on section 95 support) were supported on this basis. In 2014-15, such support cost an estimated £45 million.

24. This is unsatisfactory. Continuing to provide the same level of assistance once the asylum claim has been refused and this refusal has been upheld by the courts, regardless of whether the failed asylum seeker and their dependants can leave the UK, is wrong in principle. It creates an incentive to remain in the UK unlawfully. It provides no incentive to comply with the law.

25. Failed asylum seekers should be expected to leave the UK where it is possible for them to do so. We are otherwise providing a form of public subsidy for illegal migrants who could and should leave the UK. This should end.

26. Appropriate assistance in terms of travel costs and reintegration and other support in the country of return is available to failed asylum seekers who comply with the law and co-operate with arrangements for their departure from the UK. That is where the focus of publicly funded support should be rather than in enabling all failed asylum seekers with dependants to remain here indefinitely.

27. The only powers currently available to stop the provision of support under section 95 of the 1999 Act to failed asylum seekers with dependent children are set out in Schedule 3 to the Nationality, Immigration and Asylum Act 2002. These powers were briefly used in 2005 in a pilot of 116 cases. The powers can be used if the Home Office certifies that the person has failed, without reasonable explanation, to leave the UK voluntarily or to place themselves in a position where they are able to leave voluntarily (e.g. by applying for the required travel document).

28. The powers in Schedule 3 to the 2002 Act are unsatisfactory because they place the onus on the Home Office to establish that the failed asylum seeker is not taking the necessary steps to leave before support can be ceased. Section 103 of the 1999 Act also allows a right of appeal against any decision to cease support. This sends entirely the wrong message and makes the process of stopping support more complicated and lengthy than it needs to be.

29. Although we are preparing to use the Schedule 3 powers again on a case-by-case basis, we propose a more fundamental change to section 95 support arrangements so that those who have a dependent child or children with them when their asylum claim is refused and any appeal is finally rejected are no longer classed as “asylum seekers” for the purposes of eligibility for support.

30. We propose instead to adopt a similar approach to the one currently in place for failed asylum seekers who do not have dependent children. This will result in entitlement to support ending following a “grace period”<sup>8</sup> starting immediately after the asylum claim is finally rejected (including once any appeal rights have been exhausted).

31. The grace period for failed asylum seekers who do not have dependent children is currently 21 days as set out in regulations. For asylum seekers with dependent children we

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<sup>6</sup> This dependant can be any person aged under 18 prior to the asylum claim being finally determined, e.g. their child, their spouse, a sibling, a cousin, etc.

<sup>7</sup> These figures have been extrapolated from published Official Statistics as at 31 March 2015.

<sup>8</sup> The period prescribed by Regulation 2.2 of the Asylum Support Regulations 2000 for the purposes of section 4(3) of the Immigration and Asylum Act 1999 (from the day on which a claim for asylum is determined).

would expect the grace period to be at least 28 days. We welcome views through this consultation on how long it should be.

32. We propose that the grace period could be extended on application if there was a practical obstacle beyond their control which prevented the family's departure from the UK. The onus would be on those in receipt of support to make this application before the grace period expired and to demonstrate why they could not leave the UK and that they would otherwise be destitute.

33. We propose that the Secretary of State would specify in regulations the factors to which she would have regard in deciding whether to extend the grace period. These could include whether the persons were:

- taking all reasonable steps to leave the UK or place themselves in a position in which they would be able to do so, including applying for any travel document required to facilitate their departure; and
- unable to leave the UK owing to a practical obstacle beyond their control, e.g. the provision by their government of a travel document following their application for it or a medical or physical impediment to travel; or because in the opinion of the Secretary of State there was currently no viable route of return available.

34. We do not propose to create a right of appeal against a refusal to extend the grace period. We propose to consider whether, consistent with our international and human rights obligations, any changes to existing rights of appeal against asylum support decisions could help to achieve the objectives set out in paragraph 13 of this consultation document. We would welcome views on this through this consultation.

35. We propose to consider whether and in what circumstances a failed asylum seeker family co-operating with arrangements for their departure from the UK could later make an application for support where they could then evidence a practical obstacle beyond their control which prevented their departure from the UK.

### Transitional arrangements

36. Subject to this consultation, the proposals set out in this consultation document would be implemented by changes to primary legislation and by regulations. We have in mind that an asylum seeker receiving support on or after the date on which new legislation came into force would be likely to be subject to the new procedures if their asylum claim was finally rejected.

37. However, we recognise that it would be impracticable to abruptly cease the provision of support by the Home Office to failed asylum seekers already in receipt of it when new legislation came into force. We would therefore propose to put in place transitional arrangements for the management of these cases. For those supported because the failed asylum seeker had a dependent child or children, this would include the case-by-case use of the powers in Schedule 3 to the 2002 Act described in paragraphs 27-28, though with some changes, including the removal of the right of appeal against a decision to stop providing support.

### Impact on local authorities

38. We look forward to receiving the views of local authorities and the Devolved Administrations on the proposals contained in this consultation document. We have sought to frame the proposals to avoid new burdens on local authorities as a consequence of the Home Office no longer continuing to support failed asylum seekers solely because they have a dependent child or children.

39. As well as placing restrictions on the support which may be provided by the Home Office, Schedule 3 to the Nationality, Immigration and Asylum Act 2002 already provides that, across the UK, a range of local authority-administered welfare provisions are generally unavailable to failed asylum seekers and their families who remain in the UK unlawfully. It does enable such support to be provided where this is necessary to avoid a breach of the person's human rights, but such a breach will not generally arise if the person or family can leave the UK.<sup>9</sup> The duties on local authorities which arise specifically under the Children Act 1989 and equivalent legislation across the UK can also be limited by Schedule 3.<sup>10</sup>

40. Under the proposals contained in this consultation document, Home Office support would continue to be available to a failed asylum seeker with a dependent child or children while there remained a practical obstacle beyond their control to their departure from the UK.

41. We therefore do not believe that human rights issues would be engaged by the cessation of Home Office support under the proposals contained in this consultation document, since any risk of destitution could be avoided by the family's departure from the UK, with assistance with the required travel costs, or by their compliance with the conditions of Home Office support, e.g. in applying for any travel document required to facilitate their departure.

42. There is no general obligation on local authorities to accommodate illegal migrants who intentionally make themselves destitute by refusing to leave the UK in circumstances in which they could do so. We are nonetheless considering whether it might be necessary or helpful to put this beyond doubt and, if so, whether to do so through amendments to Schedule 3 to the 2002 Act or through guidance to local authorities on how they should apply those provisions. We would welcome views on this from local authorities and others.

43. We do accept that, should a family which could leave the UK fail to do so, it may be that they will later be able to point to obstacles to their departure, including where they have lodged further submissions or applications with the Home Office. The consideration by the Home Office of such further submissions or applications would need to be prioritised to avoid unnecessary costs to the Home Office or to local authorities.

44. Where local authorities are concerned, this would build on the existing partnership work between them and the Home Office to ensure that immigration decisions in cases receiving local authority support are made and implemented as quickly as possible. This includes the work of the No Recourse to Public Funds Network, which brings together senior managers in local and central government to discuss and resolve policy and process issues, and the continued development and operation of NRPF Connect. The Connect database provides a route into the Home Office for local authorities on individual cases, so that these can be dealt with expeditiously. This includes ensuring that any outstanding application that creates possible grounds for providing support can be prioritised and resolved.

45. If the changes proposed in this consultation document were to lead, or risk leading, to migrants being supported by local authorities who would previously have been supported by the Home Office, we would wish to discuss and address those impacts and their financial implications with local authorities in accordance with the new burdens doctrine and with the Devolved Administrations.

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<sup>9</sup> Birmingham City Council v Clue [2010] EWCA Civ 460; paras 54-56. Also, R (AW) v London Borough of Croydon [2005] EWHC 2950 (Admin); para 35: "It is well established and was common ground between the parties that if there are no legal or practical obstacles to prevent a failed asylum-seeker returning to his country of origin, the denial of support by the Secretary of State or a local authority would not constitute a breach of that person's Convention rights. He has the choice to return to his country of origin. Neither Article 3 nor Article 8 imposes a duty on the United Kingdom to provide support for a failed asylum-seeker when there is no impediment to his returning to his own country (R (Kimani) v Lambeth LBC [2004] 1 WLR 272)."

<sup>10</sup> MN v London Borough of Hackney [2013] EWHC 1205 (Admin).



46. Under the Smith Commission Heads of Agreement we have been exploring with the Scottish Government the possibility of different powers being in place in Scotland for asylum seekers to access support and advice. Those discussions will proceed in parallel with work following from this consultation on arrangements for supporting failed asylum seekers.

47. We will continue to look at further ways in which we can work collaboratively with local authorities and other partners to conclude cases as quickly as possible and encourage the voluntary departure from the UK of failed asylum seekers and other migrants with no lawful basis to remain here. We would welcome any practical suggestions for improving our approach.

### **Impact assessment**

48. A consultation stage Impact Assessment has been published alongside this consultation document. We would welcome comments from local authorities and others to help us improve the assessment of the potential impacts of the changes proposed in this consultation document. The consultation stage Impact Assessment can be found on GOV.UK at:

<https://www.gov.uk/government/publications/reforming-support-for-failed-asylum-seekers-and-other-illegal-migrants-impact-assessment>

49. We would also welcome views and evidence to inform our continuing assessment, in accordance with the public sector equality duty, of the potential impacts of the changes proposed in this consultation document on persons who have any of the protected characteristics as defined in the Equality Act 2010. This assessment will be reflected in the Policy Equality Statement published with any legislation following from this consultation.

## Consultation Questions

We welcome your views on all of our proposals, but particularly the following:

1. **The proposed repeal of section 4(1) of the 1999 Act (paragraph 16).**
2. **The proposal to close off support for failed asylum seekers who make no effort to leave the UK at the point that their asylum claim is finally rejected, subject to continued support in cases with a genuine obstacle to departure at that point or in which further submissions are lodged with the Home Office and are outstanding (paragraphs 20-21).**
3. **The proposed changes for failed asylum seekers with children (paragraphs 29-33).**
4. **The length of the proposed grace period in family cases (paragraph 31).**



**9. Any information or evidence that will help us to assess the potential impacts of the changes proposed in this consultation document and to revise the consultation stage Impact Assessment (paragraph 48).**

**10. Any information or evidence that will help us to assess the potential impacts of the changes proposed in this consultation document on persons who have any of the protected characteristics as defined in the Equality Act 2010 (paragraph 49).**

**Please email your response by 9 September 2015 to:**

**[FASSupportConsultation2015@homeoffice.gsi.gov.uk](mailto:FASSupportConsultation2015@homeoffice.gsi.gov.uk)**

**Responses: confidentiality and disclaimer:**

Unless you indicate here [ ], your name or that of the organisation on whose behalf you are responding may be listed as a respondent to the consultation in the response to consultation document. But individual consultation responses will not be published by the Home Office and, while the response to consultation document may, where relevant, attribute views to the type of organisation responding, your views will not be attributed to you or your organisation without obtaining your agreement to this.