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10 FEB 2016

Dear Richard,

Immigration Bill – Committee stage Day 4

I promised to write to follow up a number of issues raised in our debates on Day 4 of the Committee stage of the Immigration Bill on 3 February. I thank all noble Lords who contributed to the debates and the organisations which produced briefings for them. I look forward to the further discussions on these issues which are planned ahead of the Report stage. As I emphasised last Wednesday, we are keen to understand and respond to all views and perspectives on these important measures.

Asylum support

The debate on Clause 37 and Schedule 8 to the Immigration Bill, which reform arrangements for Home Office support to failed asylum seekers we and the courts have agreed have established no lawful basis to remain here, raised many important issues both about those measures and about the support arrangements for asylum seekers who would otherwise be destitute, which the Bill does not alter.

My 21 January letter enclosed the paper to which I referred in the debate on the new system of support for failed asylum seekers and other migrants without immigration status. This sets out in some detail the new support arrangements, which will be contained in statutory regulations and guidance, and how they will provide a better system of central and local government support for, and engagement with, migrants without immigration status prior to their departure from the UK or while they establish a lawful basis to remain here. The paper can be found on GOV.UK at: https://www.gov.uk/government/publications/immigration-bill-part-5-support-for-certain-categories-of-migrant

90-day grace period and section 95A support

The paper confirmed that, in light of the representations received during our public consultation, the new grace period after which section 95 support will cease for failed asylum seeker families will be 90 days from the date they have exhausted any appeal rights against the refusal of their asylum claim. They will qualify for further support under the new section 95A if they face a genuine obstacle to departure from the UK at that point. Together with Baroness Lister of Burtersett, the Earl of Sandwich, Lord Roberts of Llandudno and Lord Alton of Liverpool, you asked some key questions about how this 90-day grace period and access to section 95A support would work in practice.

I would add the following to what I said in responding to the debate:

- Failed asylum seeker families who qualify for section 95A support will retain that support for as long as there remains a genuine obstacle to their departure from the UK and they are complying with the conditions of that support, which may include taking the steps necessary to remove that obstacle, e.g. in obtaining travel documentation.

- Support will not be withdrawn from families after the 90-day grace period where they are engaging fully with us over their departure: in those circumstances support would remain in place, under section 95A, until their departure.

- You referred to the time taken to conclude cases through the family returns process. I believe that the figures you quoted refer to the position in 2013; 220 of the 250 cases concluded through that process in July to September 2015 (the latest period for which statistics are available) were concluded within 90 days.

- There is an important distinction between our proposed approach and that taken in the 2005 pilot of the powers to cease support to families contained in section 9 of the 2004 Act, to which you and other noble Lords referred. In 2005, the approach largely involved simply sending letters to families who had exhausted their appeal rights in the previous 11 months. By contrast, we will engage directly with the families as they become appeal rights exhausted to ensure they understand their situation and the options open to them. We will help to facilitate an application for section 95A support where appropriate. Where there is no genuine obstacle to departure, we will encourage the family to leave voluntarily and provide every assistance they need to do so, including in arranging and paying for their travel costs, and we may give them up to £2,000 per family member to support their resettlement in their country of origin.

- A pregnant woman who will be within 6 weeks of her due date at the end of the 90-day grace period for families (or 21-day period for singles), meaning that there will be a genuine obstacle to departure as she will then be unable to travel by air, will qualify for section 95A support. She would also do so if she would be further from her due date at the end of the grace period, where medical evidence established that she would then be unable to travel by air. Where a family engagement manager is working with a family which includes a pregnant woman who is able to travel by air, that official will be able to help the woman make appropriate reception and support arrangements in her country of origin.

- A failed asylum seeker family who become destitute during the 90-day period, or a single failed asylum seeker who does so during the 21-day period (e.g. because the accommodation provided by a friend ceases to be available), will be able to apply for section 95 support for the remainder of that period and for section 95A support if they face a genuine obstacle to departure.

- It will not generally be possible for failed asylum seekers to apply for section 95A support after the end of the grace period. To provide otherwise would effectively reverse the repeal of section 4 of the 1999 Act, which currently provides failed asylum seekers who could and should leave the UK at the point their appeal rights are exhausted with open-ended scope to return to taxpayer-funded support later on. We believe this obvious incentive to remain in the UK unlawfully should be removed.

- The section 95A regulations will set out the circumstances where an application for section 95A support can be made outside the grace period. We envisage this will include:

  - where circumstances beyond their control, e.g. serious ill health or the lack of timely notification that their asylum appeal has been refused, have prevented the person making an application during the grace period; or

  - where the family or individual did not apply for section 95A support during the grace period because they were taking the steps necessary to leave the UK, but their departure is then prevented by circumstances beyond their control, e.g. a family member becomes too ill travel, their embassy does not provide the required travel document or their route of return ceases to be viable.

These important issues will be dealt with in the regulations for section 95A support, which the Delegated Powers and Regulatory Reform Committee has recommended be subject to the affirmative procedure so that they are debated and subject to the approval of both Houses of Parliament. As I indicated in the debate (column 1832), we think there is a strong case for that approach and will confirm the position at the Report stage. We will consult local authority colleagues and other partners in drafting the regulations.

Lord Alton of Liverpool (column 1827) asked five specific questions about support for families in particular and I reply to each as follows.

First, I can provide the assurance he sought that the level and type of support provided under section 95A will meet essential living needs. I confirmed to Baroness Lister of Burtersett during the debate (column 1831) that cash support under section 95A will be the same as under section 95. We generally expect that families accommodated under section 95 will remain in the same accommodation under section 95A.

I can also provide the assurance Lord Alton sought that the support provided by local authorities under the new paragraphs 10A and 10B of Schedule 3 to the 2002 Act will meet essential living needs, as the relevant regulations will make clear. The Delegated Powers and Regulatory Reform Committee has recommended that those regulations should also be subject to the affirmative procedure so that they are debated and subject to the approval of both Houses of Parliament. Again, as I indicated in response to Lord Kennedy of Southwark (column 1859), we think there is a strong case for that approach and will confirm the position at the Report stage. We will also consult local authority colleagues and other partners in drafting the regulations.

Second, Lord Alton asked about the scope for an application for section 95A support to be made outside the grace period. I have set out above examples of the circumstances in which we envisage the regulations will provide for this, subject to Parliamentary approval.

Third, he was concerned that a family could be left destitute while their eligibility for local authority support is determined. The government amendment 234Y to paragraph 10A of Schedule 3 to the 2002 Act, which I moved at the Committee stage, will ensure that local authorities are able to prevent destitution by providing support under paragraph 10A while they decide a family's eligibility for support.

Fourth, Lord Alton asked about the factors we intend to specify in the regulations to be made under paragraph 10A that local authorities may, must or must not take into account in deciding whether the provision of accommodation and/or subsistence support to a family is necessary to safeguard and promote the welfare of a child. As mentioned in paragraph 52 of the paper enclosed with my 21 January letter, the factors specified, on which we will work jointly with the Department for Education, will enable us to provide a clear framework for local authority decisions about support in such cases, e.g. to underline how, consistent with case-law, the best interests of the child must be a primary consideration and, where migrants without immigration status could avoid the risk of destitution in the UK by returning to their country of origin, any support needs they may have on return to that country are a matter for the relevant authorities there. The decision whether to provide support will remain a matter for the local authority to determine in light of all the circumstances of the case.

Fifth, I can provide the assurance sought by Lord Alton that the best interests of the child will remain a primary consideration in all decisions under these provisions, consistent with the UN Convention on the Rights of the Child, with the statutory obligations on the Secretary of State (under section 55 of the 2009 Act) and on local authorities (under the Children Act) and with case-law.

Baroness Hamwee asked (column 1835) about the possible circumstances in which section 95A support might not be in the form of accommodation and cash. An example would be where a person had in an emergency to be moved quickly from their current accommodation: they might be accommodated temporarily in the full-board accommodation generally used at the initial stage of the support process.

Lord Roberts of Llandudno referred (column 1825) to the low food prices which may be charged by shops in which the Azure card cannot be used and mentioned as an example the opening of an easyJet store in North London. We have asked Sodexo, the contractor administering the Azure card which can be used in most of the main supermarket chains and a number of smaller retail outlets, to investigate whether that store can be added to the scheme.

Right of appeal for section 95A support

There was much focus in the debate on your amendment 230 to provide a right of appeal against the refusal or cessation of section 95A support. The Lord Bishop of Norwich, Baroness Lister of Burtersett and Lord Roberts of Llandudno in particular spoke in support of such a provision.

I entirely understand the keen interest taken by noble Lords in the quality of Home Office decision-making in all areas of the asylum and immigration system. The quality and timeliness of decisions is clearly fundamental to a system in which applicants, Parliament and the public can have confidence. There is always more that can be done to improve decision-making, to get more decisions right first time and to learn from the reports of the Independent Chief Inspector of Borders and Immigration in this respect. Our responses to those reports have set out the steps we have taken to improve the quality and timeliness of decisions. I also recognise the importance of the role played by the Tribunal in correcting mistakes where they occur.

I would suggest, however, that the Committee stage debate on whether there should be a right of appeal for section 95A support did not perhaps quite come at the issue from the right angle. I make these further points:

- Around 87 per cent of asylum support appeals in the year to August 2015 were against the denial of section 4 support, most commonly where a failed asylum seeker had lodged further submissions or intended to do so. Schedule 8 will repeal section 4 and provide section 95 support for those with outstanding further submissions on protection grounds, or who are granted permission to apply for judicial review in relation to their asylum claim. There will remain a right of appeal against a decision that a person does not qualify for section 95 support. We are therefore retaining, not removing, a right of

appeal for the present circumstances in which support appeals by failed asylum seekers commonly arise.

- As I said in the debate, I pay tribute to the excellent work done by the Asylum Support Appeals Project and I thank them for the research they have done and the briefing they have provided to inform this discussion. It is essential that consideration of this matter is properly grounded in the evidence. Home Office officials met with them recently to discuss this work.

- The published statistics show that in the year to August 2015, 37 per cent of asylum support appeals were dismissed. 41 per cent were allowed, often because the person only provided in their appeal the evidence required for support to be granted. Many of the remainder were remitted for reconsideration or withdrawn in the light of new evidence provided in the appeal. Few appeals related to the issue of whether there was a genuine obstacle to departure from the UK.

- Baroness Lister of Burtersett referred (column 1824) to the further analysis which the Asylum Support Appeals Project helpfully provided ahead of the Committee stage debate. Of the 50 cases allowed or remitted by the Tribunal which they reviewed in detail:

  - 42 (84 per cent) were allowed or remitted wholly, mainly or partly because they presented the Tribunal with fresh evidence (orally or in writing) that was not before the Home Office at the time of the decision.

  - 17 of the cases (34 per cent) concerned the making of further submissions or an application for judicial review of the asylum decision (for which Schedule 8 provides section 95 support).

  - In only one case was the appeal allowed because the person was found to be unable to leave the UK for medical reasons; in three other cases the appeal was remitted to the Home Office to consider medical evidence that the person was unfit to travel (in two of these cases that evidence was only made available at the appeal). But none of these cases involved unfitness to travel at the point the person had exhausted their asylum appeal rights. None of the 50 cases involved other practical obstacles to departure, e.g. the lack of a travel document.

- This means that **none** of the 50 cases analysed by the Asylum Support Appeals Project concerned the relevant issue here: whether there was a genuine obstacle to departure at the point the person's asylum appeal rights were exhausted.

That is why, as I said in responding to the debate, the case for a right of appeal for section 95A support is not supported by the evidence. Indeed, the evidence supports the opposite conclusion that a right of appeal is not required to determine whether a failed asylum seeker who the courts have confirmed has no lawful basis to remain here faces any genuine obstacle to leaving the UK.

As I explained in the debate, what we mean by a 'genuine obstacle' will be set out in regulations subject to Parliamentary approval. It will include for example where the evidence of an appropriate medical professional shows that the person is unfit to travel, or where (notwithstanding the arrangements now in place for obtaining an emergency travel document for the main failed asylum seeker nationalities) they have applied for but not yet been issued with a travel document. It is why, in light of the evidence, we have concluded that, where they arise, these matters of fact can be determined without need of a right appeal.

28-day grace period for those granted status

Baroness Lister of Burtersett, Lord Alton of Liverpool, Lord Judd and Baroness Hamwee highlighted the importance of effective arrangements for the transition off Home Office support for those asylum seekers granted refugee status or other forms of leave to remain.

I agree with them as to the need to ensure that, together with the prompt issuing of the Biometric Residence Permit which evidences that they are allowed to take up employment and to apply for welfare benefits, these individuals receive the advice and assistance required to 'move on' from Home Office support.

I look forward to the opportunity to discuss these issues further at the Peers meeting arranged for 25 February from 3-4pm in Committee Room 2A. Ahead of that meeting I have asked officials to consider the recent findings of the Commons Work and Pensions Committee on these issues[1] and to discuss them with the Department for Work and Pensions. I have also asked officials to ensure that we have learnt all we can from the experience of the British Red Cross in this area. I mentioned in the debate their 2014 report on the 'move-on period' which highlighted, among other things, the importance of encouraging and facilitating newly recognised refugees to make a prompt claim for welfare benefits where appropriate.

Local authority support for migrants

Clause 38 and Schedule 9 to the Immigration Bill reform arrangements for local authority support to migrants without immigration status while they establish a lawful basis to remain here or prior to their departure from the UK.
The rationale for these changes and how they are expected to work in practice are discussed at pages 11 to 18 of the paper I circulated on 21 January, to which I referred in the debate and which can be found at:
https://www.gov.uk/government/publications/immigration-bill-part-5-support-for-certain-categories-of-migrant

[1] In the Committee's Fourth Report of Session 2015-16 on Benefit delivery (page 25) at: http://www.publications.parliament.uk/pa/cm201516/cmselect/cmworpen/372/372.pdf

I also referred to the significant government amendments to Schedule 9 which I moved in Committee, which respond to several important issues put to us by local authority colleagues and other partners. Those discussions are continuing and will now take into account the points made by noble Lords in the Committee stage debate. I look forward to the Peers meeting arranged for 25 February as an opportunity for further dialogue ahead of the Report stage.

In the meantime, I offer these reflections on the Committee stage debate.

Lord Alton of Liverpool made a powerful case for the importance of local authorities enabling and encouraging children in their care who need to do so to make a timely application to regularise their immigration or to register as a British citizen. Lord Hylton asked (column 2016) whether it is our intention to deport those who have not committed a serious criminal offence and who would be eligible for British citizenship if they applied for it: it is not.

I have asked officials to look further at the work of the project mentioned by Lord Alton on the registration of children as British citizens. I have also asked them to ensure that our ongoing work with the Department for Education on the guidance to local authorities on these matters clarifies their responsibilities, including as to payment of the relevant application fee.

As I said in the debate, it is essential that social workers support children in local authority care to engage with the immigration authorities to resolve their status. This should be an integral part of their pathway plan under the Children Act 1989. Schedule 9 makes no change to that framework in this respect or indeed in any other respect as far as children are concerned. I also confirmed that those turning 18 who have an outstanding asylum claim, first immigration application or related appeal will remain subject to the Children Act framework for care leavers, as will those granted refugee status, humanitarian protection or other leave to remain.

To address Lord Alton's question about numbers (column 1846), we estimate that around 750 adult care leavers who have exhausted their appeal rights and established no lawful basis to remain here are currently supported by local authorities. They will continue to be so, but in future the new paragraph 10B of Schedule 3 to the 2002 Act, as inserted by Schedule 9, together with paragraph 11 of Schedule 3, will provide a new basis for local authority accommodation, subsistence and other social care support for other such cases.

The Earl of Listowel spoke with his customary insight and expertise in support of his amendments, and I thank him for arranging a Parliamentary briefing event on care leavers and the Schedule 9 provisions for 22 February. I have asked officials to attend that event and its conclusions will help to inform the Peers meeting on 25 February. I recognise all that he said about the potential vulnerability of these young people and therefore about the importance of ensuring that appropriate immigration controls are accompanied by appropriate safeguards.

He referred to the research by the Children's Commissioner into young people leaving care; Baroness Lister of Burtersett rightly drew attention to the work of the Children's Commissioner in this area. Home Office officials are in touch with her office about various measures in the Bill and I have asked to receive a read-out of those discussions in respect of the Schedule 9 provisions ahead of our 25 February meeting.

The Earl of Listowel asked two particular questions (column 1848) to which I would respond as follows.

First, the changes made by Schedule 9 to the Bill affect only those adults leaving local authority care who have not established a lawful basis on which to remain here and who will generally have exhausted their appeal rights against the refusal of their asylum claim or leave to remain application. I agree entirely that they should receive support appropriate to their individual needs prior to their departure from the UK. I suggest only that the new mechanism which Schedule 9 creates for this under Schedule 3 to the 2002 Act is an appropriate reflection of the fact that, unlike other care leavers, their long-term future is not in the UK. I entirely agree with the noble Earl that the Children Act otherwise remains the right framework for supporting care leavers' transition into adulthood.

Second, I can give the noble Earl the assurance he sought: under paragraphs 10B and 11 of Schedule 3 to the 2002 Act the local authority will be able to provide a care leaver who has exhausted their appeal rights with any additional support they need before they leave the UK. This could include remaining in their foster placement during this period.

In response to the scenarios raised by Baroness Hamwee (column 1849) and Lord Kennedy of Southwark (column 1853):

- Where an adult care leaver falls to be supported by the Home Office under section 95A of the 1999 Act because they are a failed asylum seeker who faces a genuine obstacle to departure, it will be possible for them to remain in local authority accommodation, funded by the Home Office, where this is appropriate in their individual circumstances. We will work closely with local authorities to establish and manage the practical steps required, including in those cases where transfer to Home Office accommodation is appropriate.

- A failed asylum seeker without status turning 18 who makes further submissions under the Immigration Rules resulting in either the grant of leave or acceptance of the further submissions as a fresh claim for asylum will remain subject to the Children Act care leaver framework.

- Adult care leavers without immigration status or an outstanding asylum claim, first immigration application or related appeal will be eligible for such accommodation, subsistence and other support under paragraphs 10B and 11 of Schedule 3 to the 2002 Act as the local authority is satisfied needs to be provided in their case, in light of the statutory regulations and guidance which will apply. As mentioned above, this could include remaining in their foster placement in the period before their departure from the UK.

I agree with Baroness Lister of Burtersett (column 1851) that the transition to adulthood of young people leaving local authority care does not cease on their 18th birthday. The issue is what their needs are and how best they can be met. I pay tribute to the excellent work of the Joint Committee on Human Rights, of which the noble Baroness was then a member, in producing its June 2013 report on the human rights of unaccompanied migrant children and young people in the UK.[2] Schedule 9 maintains the Children Act framework for those care leavers with refugee status or leave to remain. It maintains that framework for those with an outstanding asylum claim, first immigration application or related appeal. For those appeal rights exhausted cases and others who have not established a lawful basis to remain here, Schedule 9 enables their pre-departure support to be based on individual need in the way the Joint Committee on Human Rights recommended in paragraphs 209 and 210 of that report.

The Lord Bishop of Norwich (column 1852) rightly drew attention to the importance of ensuring that those adult care leavers who have failed to establish a lawful basis to remain here do leave the UK where they can do so. We provide generous financial assistance to incentivise returns and assist with reintegration in the country of origin. The assisted voluntary return scheme is now administered directly by the Home Office, together with our work on voluntary departures (which in 2014-15 achieved more than 5,000 voluntary departures of those with no lawful basis on which to remain in the UK and which in 2015-16 had exceeded this number by November 2015), as part of a new integrated Voluntary Departure Service. Where our eligibility criteria are met, assisted voluntary returns are supported by up to £2,000 per person for families with children under the age of 18, as I mentioned in the debate. Eligible single adults may qualify for up to £1,500 in overseas support, which includes cash on departure for immediate resettlement needs. 469 single failed asylum seekers left under the assisted voluntary return scheme from 1 April to 31 December 2015.[3]

Tuition fee support for migrant care leavers

In response to Baroness Kennedy of the Shaws (column 1859), I agreed to set out the position in relation to home tuition fees for higher education and access to the Department for Business, Innovation and Skills' (BIS) Student Support Regulations.

We are clear that those in need of our protection should have access to a student loan under the Student Support Regulations to help them pay home tuition fees for a university or other higher education place, where they qualify for such a course, under the same terms as British citizens. The current regulations require British citizens to demonstrate three years' lawful ordinary residence immediately prior to the first day of their course to qualify for a student loan and home tuition fees. Those granted humanitarian protection are also required to demonstrate three years' lawful ordinary residence; those granted refugee status are given immediate access to the Student Support Regulations.

[2] http://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/9/9.pdf
[3] Internal management information, which may be subject to revision.

The provisions in Schedule 9 to the Immigration Bill will not change this. Instead, local authorities in England will be prevented from paying the higher education tuition fees of adult migrant care leavers who do not qualify as refugees or who do not meet the residence requirements and are therefore classed as overseas students.

BIS have recently consulted on the residence requirements for migrants with limited leave to remain, proposing that those under the age of 18 who came to the UK as children would need to have been resident in the UK for at least seven years and those aged 18 to 24 would need to have been resident here for at least half their life. We think that it is reasonable to expect migrants with limited leave to meet such a long residence requirement before benefiting from state support in this way, and that it is right that the costs should not fall on local authorities. We also think that it is important that we recognise that the public funds available for support for higher education are finite and should be targeted at those who can demonstrate a fundamental connection to the UK. We believe that having a more generous access policy for those granted refugee status or humanitarian protection strikes the right balance.

Genocide

I thank Lord Alton of Liverpool for the opportunity his New Clause 234A on the conditions for the grant of asylum in cases of genocide provided for a powerful and informed debate on these issues. I look forward to the opportunity to discuss them in more detail at the Peers meeting arranged for Monday 22 February from 3-4pm in Committee Room 4.

Unaccompanied asylum seeking children

As I said in responding to Baroness Hamwee and Lord Wigley on the provision made by Clauses 39 to 43 of the Bill for the transfer of responsibility for the care of unaccompanied asylum seeking children between local authorities, we are developing the new arrangements with the Local Government Association, the Association of Directors of Children's Services, the Department for Education and the Department for Communities and Local Government. This joint work will need to provide clarity as to roles, responsibilities, timescales and relevant factors to ensure we arrive at solutions which meet the best interests of the children affected, and the needs of the local authorities who will be responsible for them.

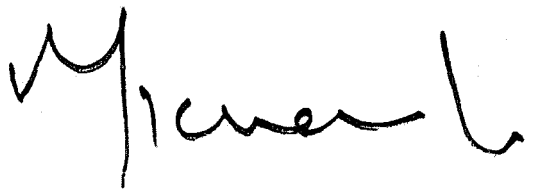
The funding to underpin new transfer arrangements is integral to our thinking and I agreed to provide Peers with a copy of the letter of 24 November sent jointly to all Council Leaders by the Home Secretary, the Secretary of State for Education and the Secretary of State for Communities and Local Government. This is enclosed and sets out the additional funding currently available to local authorities who take on responsibility from Kent County Council for caring for unaccompanied asylum seeking children. Kent currently has more than 900 such children in its care and while we are grateful to those local authorities that have stepped forward to take on responsibility for some of these cases, it cannot be right that only a handful of local authorities are caring for more than 50 per cent of all unaccompanied asylum seeking children in the UK.

I am therefore grateful to Lord Wigley for raising the offer of support from Gwynedd County Council. I can reassure him that we are engaging with the Welsh Government on the voluntary dispersal of unaccompanied asylum seeking children and I have asked Home Office officials to follow up on the specific point he raised. In addition, the Minister for Immigration is hosting a roundtable discussion with local authorities and NGOs on 11 February to look at what more can be done to provide support for unaccompanied asylum seeking children already in the UK.

Baroness Hamwee sought confirmation (at column 1910) that the relevant factors to be considered in the transfer of responsibility for the care of an unaccompanied migrant child between local authorities under Clause 39 will be covered in guidance. I can confirm that they will and that such guidance, like regulations made under Clause 39(6), will be developed in consultation with the Department for Education and the Department for Communities and Local Government.

I am copying this letter to Baroness Hamwee, Lord Hope of Craighead, and others who spoke on Day 4 of the Committee stage or at Second Reading. I will place a copy of this letter in the House Library.

With best wishes,



The Rt Hon Lord Bates