

Reforming support for failed asylum seekers and other illegal migrants

Consultation response from the Local Government Association (LGA), Welsh Local Government Association (WLGA), the Convention of Scottish Local Authorities (COSLA), the Association of Directors of Children's Services (ADCS), and the No Recourse to Public Funds (NRPF) Network

A. Introduction

Local authorities are responsible for preventing the most vulnerable migrants, who are unable to access mainstream benefits due to their immigration status, from falling into destitution and homelessness. In England these duties are set out in the following legislation:

- **Section 17 Children Act 1989** - Families, where there is a child in need (if the family are destitute then a child will be in need).
- **Sections 23C, 24A, 24B Children Act 1989** - A young person who was formerly looked after by a local authority, whether they were an unaccompanied asylum seeking child or other separated migrant child.
- **Part 1 of the Care Act 2014** - Adults requiring care and support due to a disability, illness or mental health condition.

For the equivalent legislation in Wales and Scotland, please see Appendices A and B respectively.

The proposed reforms to the asylum support system particularly affect refused asylum seeking families. Directors of Children's Services have a statutory duty set out in the Children Act 2004 to secure the very best outcomes for all children and young people in a local area regardless of background or immigration status. Their role is to ensure that all children have a stable, safe and improving life. Local authorities therefore have overarching responsibility for safeguarding and promoting the welfare of all children in their area.¹ Social services are required to intervene to prevent and alleviate child homelessness.

Local authorities do not, therefore, support a policy which will lead to a significant increase in the numbers of destitute families within communities and greater numbers of homeless children who are at risk of harm. Destitute children and families are vulnerable to poor physical and mental health, modern day slavery, exploitation and abuse. Given public response to the Syrian refugee crisis, it is anticipated that local communities would expect that action is taken to prevent destitution for the most vulnerable.

¹ [Working together to safeguard children](#). Department for Education, 26 March 2015. Page 5.

There are two key concerns that underlie the response to the consultation questions:

- Low rates of enforced removal action undertaken by the Home Office.
- Assumptions regarding behavioural changes

A.1 Low rates of enforced removal action undertaken by the Home Office

In the year ending March 2015, 12,498 enforced removals were undertaken; less than in the preceding year.² This needs to be considered in light of the following statistics: the number of irregular migrants estimated to be in the UK at the end of 2007 is between 417,000 and 863,000;³ the Home Office is providing support to 15,000 refused asylum seekers, who have no further procedural rights to pursue their asylum claim;⁴ and, in 2014-15, one per cent of Home Office outcomes recorded on NRPF Connect were removals. The Home Office's processes regarding progressing cases to removal were criticised by the Chief Inspector of Borders and Immigration in his report, *An Inspection of Overstayers: How the Home Office handles the cases of individuals with no right to stay in the UK*.⁵

If the aim of the proposal is to prevent public money being spent on people who should and could leave the UK, then local authorities believe that more should be done to address the failures already identified with regards to the removals process itself.

There is no reference in the proposals to the family returns panel, and what role that will play in enforcing removals where families have no further procedural right to pursue their asylum claim.

There is no evidence from the local authority caseload, which is predominantly non-asylum, that the only impediment to achieving the outcome of return to country of origin is not being able to obtain travel documents from embassies with whom the UK does not have any/ a good relationship. From the experience of local authorities, the failure to achieve returns is often attributed to procedural and case-working delays, as opposed to a simple reluctance to co-operate with the return process of those hoping to stay in the UK.

On account of this, the Home Office should focus on making existing systems work for all groups of migrants that have no further procedural right to pursue their immigration or asylum case. Such action would also result in reducing existing local authority expenditure on migrants currently supported under social services legislation.

² [Immigration Statistics, January to March 2015](#). Home Office, 21 May 2015.

³ Gordon I., K. Scanlon, T. Travers, and C. Whitehead. [Economic Impact on London and the UK of an Earned Regularisation of Irregular Migrants in the UK](#). GLA Economics, Greater London Authority, London, 2009.

⁴ [Reforming support for failed asylum seekers and other illegal migrants](#). Home Office, August 2015. Paragraph 5.

⁵ Vine, J. [An Inspection of Overstayers: How the Home Office handles the cases of individuals with no right to stay in the UK \(May – June 2014\)](#). Independent Chief Inspector of Borders and Immigration, December 2014.

A.2 Assumptions regarding behavioural changes

A key objective of the proposals is that the changes will remove financial incentives for refused asylum seekers and other unlawfully present migrants to remain in the UK and, as a result, will return to their countries of origin.⁶

The Home Office accepts that it is unable to estimate savings that will be made as a result of any behavioural response to the measures proposed ‘...as the financial value of support available is small in comparison to the benefits of living and working in the UK, and the behavioural response to the withdrawal or restriction of support is difficult to evidence.’⁷

Between December 2004 and December 2005, a pilot was undertaken in a number of local authority areas, where asylum support was terminated for refused families by the Home Office enacting paragraph 7A of Schedule 3 of the Nationality Immigration and Asylum Act 2002.

The Minister for Immigration and Asylum, Liam Byrne, confirmed in 2007 that the Section 9 pilot failed and was discontinued because:

*‘In the form piloted section 9 did not significantly influence behaviour in favour of cooperating with removal—although there was some increase in the number of applications made for travel documents. This suggests that the section 9 provision should not be seen as a universal tool to encourage departure in every case’.*⁸

In their report assessing the impact of the pilot, Barnardos found that 35 out of 116 families had disappeared, losing all contact with services.⁹

Low removal rates also indicate to refused asylum seekers and migrants who have no immigration permission that an enforced return is an unlikely outcome.

Local authorities are therefore very concerned that such a behavioural change will not take place as expected, and that refused asylum seekers and asylum seeking families will remain in the UK despite being destitute as a result of their asylum support being stopped.

B. Consultation questions

1. The proposed repeal of section 4(1) of the 1999 Act (paragraph 16).

Local authorities are concerned that a valuable safety net for migrants who have not made asylum applications will be removed. Those who are vulnerable, i.e. families with children,

⁶ [Reforming support for failed asylum seekers and other illegal migrants](#). Home Office, August 2015. Paragraph 13.

⁷ [Impact Assessment](#). Home Office, August 2015. Page 6.

⁸ Hansard. 25 Jun 2007: [Column 9WS](#)

⁹ [The End of the Road, the impact on families of section 9 of the Asylum and Immigration \(Treatment of Claimants\) Act 2004](#). Barnardos & the Refugee Children’s Consortium, Autumn 2005. Page 6.

adults requiring care and support and former looked after children, will no longer have access to support to prevent destitution and it will fall to the responsibility of the local authority to assess eligibility for such assistance.

The justification for removing this provision, i.e. those who are asylum seekers will be able to access support under section 95 of the Immigration and Asylum Act 1999¹⁰, does not stand up when those concerned will not be within the asylum process.

The removal of these provisions would be of particular concern to local authorities with immigration removal centres and prisons holding foreign national prisoners located in their areas.

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).

The Immigration and Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005 only allow support to be provided under section 4(2) when a failed asylum seeker who appears to be destitute when one or more of the following conditions are satisfied:

- a) *The person is taking all reasonable steps to leave the UK or place themselves in a position in which they are able to leave the UK. This could include complying with attempts to obtain a travel document to facilitate departure.*
- b) *The person is unable to leave the UK by reason of a physical impediment to travel or for some other medical reason.*
- c) *The person is unable to leave the UK because in the opinion of the Secretary of State there is currently no viable route of return available.*
- d) *The person has made an application in Scotland for judicial review of a decision in relation to their asylum claim or, in England and Wales or Northern Ireland, has applied for such a judicial review and been granted permission or leave to proceed.*
- e) *The provision of accommodation is necessary for the purpose of avoiding a breach of a person's Convention rights, within the meaning of the Human Rights Act 1998.¹¹*

The statement at paragraph 19 of the consultation is therefore misleading, as being a refused asylum seeker in itself does not lead to the eligibility criteria being satisfied.

The proposal to close off section 4(2) support therefore means that refused asylum seekers, who have a temporary barrier to them leaving the UK, for example, a fresh application, will

¹⁰ [Reforming support for failed asylum seekers and other illegal migrants](#). Home Office, August 2015. Paragraph 16.

¹¹ Regulation (3)(2) of the Immigration and Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005.

no longer receive assistance from the Home Office. Those that have children or require care and support will therefore become the responsibility of the local authority. The Schedule 3 exclusion cannot be enacted when a migrant has such a barrier in place. This will therefore be a clear cost shunt as responsibility for supporting such cases transfers from the Home Office to the local authority.

No transitional measures are set out for how refused asylum seekers in receipt of section 4(2) support, who do not have children, will be dealt with. Due to the circumstances under which such support is provided, local authorities would expect all of those qualifying for assistance at that time to be able to continue to receive this from the Home Office.

Local authorities are also concerned about the likelihood that stopping such support will not result in refused asylum seekers leaving the UK when there are low rates of enforced removals and no reference is made in the consultation as to how the removals process will be applied to refused asylum seekers who no longer qualify for section 4(2) support (see A.1 and A.2).

There is concern that those who do not engage local authority statutory duties, such as single adults with no children or care needs, but have a barrier in place preventing them from leaving the UK, will have no access to support and remain destitute within local authority communities.

3. The proposed changes for failed asylum seekers with children (paragraphs 29-33).

Local authorities have duties and safeguarding responsibilities under section 17 Children Act 1989 which provide a necessary function to prevent child destitution in their areas. The Courts have recognised that section 17 Children Act 1989 acts as essential 'safety net' support for the most vulnerable migrants, and its existence has rendered lawful other policies to restrict access to welfare.¹²

The Home Office state that the proposals '*retain important safeguards for children*'.¹³ However, the proposals are unclear about how the Home Office will be complying with its safeguarding duties towards children, as set out under section 55 Borders, Citizenship and Immigration Act 2009, when a parent does not think that return is in the best interest of their child.

It is clear that the Section 9 pilot did not result in the desired outcome of families leaving the UK (see A.2). Additionally, local authorities that participated in the pilot experienced situations where parents abandoned their children, leaving the local authority responsible for the care of these children. There is concern that such situations will be repeated if the new proposals are enacted.

¹² *Sanneh & Ors v Secretary of State for Work and Pensions* [2015] EWCA Civ 49 (10 February 2015)

¹³ [Reforming support for failed asylum seekers and other illegal migrants](#). Home Office, August 2015. Paragraph 13.

The numbers of refused asylum seeking families receiving support, currently 2,900, are significant. The provision of support is not, as recognised by the Home Office, the incentive for people to remain in the UK (see A.2). It is therefore not expected that withdrawal of asylum support will lead to families leaving the UK. Without improvements to Home Office processes, the likelihood of swift update of voluntary return following notice of termination of support is going to be low (see A.1), and therefore the likelihood of increased presentations to local authorities will be high.

NRPF Connect shows that at the end of June 2015, 30 local authorities were providing support to 1976 households at a weekly cost of £591,275 (accommodation and financial support). The average number of days spent on support was 781. Local authorities are therefore already shouldering a considerable financial burden in supporting vulnerable migrants who have no recourse to public funds at a time when a number of policy measures, as part of creating a hostile environment for irregular migrants, continue to drive referrals into social services.

It appears that the local authority will be responsible for providing assistance if 'a genuine obstacle to departure,' such as a fresh application, is in place after support has been terminated. This creates a new client group and therefore a new burden on local authorities.

As well as giving rise to an increase in presentations from families requesting accommodation and financial support, the proposals transfer the legal responsibility and process for alleviating destitution from the Home Office to local authorities (see question 6(i)) and will result in wider pressures on local authorities as a consequence of having destitute families in communities who do not leave the UK (see question 6(ii)).

4. The length of the proposed grace period in family cases (paragraph 31).

Local authorities would prefer that asylum support is not removed in the first place, so Home Office resources should be focussed on making good quality case-working decisions and then progressing cases through to removal (see Question 6(i)).

If the proposals go ahead as currently outlined, clarity and assurance is required from the Home Office about what action will be undertaken during the grace period once notice of termination of support has been issued to a family, in terms of engaging the family with the returns process. For example, there would be a risk that a person, who does not approach their own embassy for travel documents because they are not made aware of how to do this, will instantly have asylum support terminated. More clarity regarding what would constitute 'reasonable steps to obtain the required travel documentation' is required, if this could lead to the cessation of support.

As of 1 January 2016, AVR case-working will be undertaken by the Home Office. The Home Office has indicated that there will be engagement with local authorities in this process.¹⁴

¹⁴ As advised at the Home Office AVR consultation feedback event, 25 June 2015.

Local authorities require further clarity with regards to this and also whether such case working will be undertaken by Home Office staff or contracted out to a third party.

It will be absolutely essential that the Home Office set up a process by which local authorities will be informed of families that are potentially going to become homeless as soon as the termination of support letter is issued. It is anticipated that families are unlikely to present to the local authority until they are about to lose their accommodation. This will enable the local authority to prepare for a possible presentation, plan resources and undertake any welfare procedures they would normally undertake for families that are about to become homeless.

There is some concern that a family would not be in a position to make further representations for a fresh asylum application within the 28 day time limit. Therefore it is expected that it will be quite rare that the grace period will be extended on this basis, and it is more likely that such applications will be made at a later stage, at which point the responsibility for providing the family with accommodation and financial assistance to prevent destitution will fall to the local authority.

5. The proposed transitional arrangements (paragraphs 36-37).

As with any policy that is driven by the need to find savings, and in the absence of any detail about how the Home Office is to engage with families prior to withdrawal of support, local authorities cannot see how this process will not simply become a mechanism for finding the easiest route for terminating support. Such a process simply ignores the complexities of working with children and their parents or, indeed, the rights that children may have acquired in the UK on account of many years spent in receipt of Home Office support. Loose ends will lead to repeat further claims being made to the Home Office, with the burden of providing support falling to the local authority if these are made after asylum support has been withdrawn.

This process will apply to at least 2,900 families, who are expected to remain in the UK and present to local authorities for assistance. Local authorities will be required to undertake a child in need assessment and human rights assessment, which involve different considerations to those which the Home Office might make. The Home Office's decision to withdraw asylum support under paragraph 7A of Schedule 3, will not necessarily mean that the local authority will not be required to provide assistance under section 17 Children Act 1989 (see Question 6(i)).

It is unclear at what rate the Home Office will process these decisions to withdraw support. Consideration will need to be given to numbers regionally. Local authorities will require the breakdown of numbers of families provided with asylum support accommodation within each local authority area in advance of the changes being implemented in July 2016.

Additionally, with regards to the removal of the right of appeal against such a termination of support, Home Office resources should be focussed on getting decisions right on asylum applications and then progressing cases to removal should the claim be unsuccessful.

It is a concern that there appear to be no transitional measures relating to the withdrawal of section 4(1) and section 4(2) support for the 4,900 migrants or refused asylum seekers currently receiving this where there are no dependant children.

6. The assessment of the impact of the proposals on local authorities (paragraphs 38- 45).

Local authorities do not accept that the Home Office's objective that the termination of asylum support will lead to families leaving the UK will be achieved (see A.2).

This therefore results in two key areas of concern for local authorities:

- An increase in presentations to local authorities by refused asylum seeking families requesting accommodation and financial assistance – local authorities have legal duties and processes to follow to determine whether they must provide this.
- Increasing numbers of destitute migrants resident in local authority communities.

Additionally, the expectation that a proportion of cases will be resolved by granting 'discretionary leave' will have cost implications for local authorities.¹⁵

(i) Local authority legal duties and process for determining whether assistance under section 17 & leaving care provisions of the Children Act 1989/ the Care Act 2014

The Home Office states that there would be no human rights issues engaged and no general obligation on local authorities to accommodate destitute illegal migrants.¹⁶ However, it is not a straightforward as that due to responsibilities local authorities have towards children and due to the process a local authority must undertake to determine whether such support needs to be provided.

Local authorities are required to assess any child that is or may be 'in need' in their area, under section 17 Children Act 1989, and adults who present with an appearance of need, under the Care Act 2014. There are also duties towards former looked after children up until the age of 21, or 25 if they are in education.

Schedule 3 of the Nationality Immigration and Asylum Act 2002 excludes certain groups of migrants from support and assistance under section 17 and the leaving care provisions of the Children Act 1989, and Part 1 of the Care Act 2014.

Schedule 3 would only apply to the following groups of refused asylum seekers:

- Refused asylum seekers who have failed to comply with removal directions
- Refused asylum seeker with family who has failed to leave the UK voluntarily, or placed themselves in a position to do so and this has been certified by the Secretary of State

¹⁵ [Impact Assessment](#). Home Office, August 2015. Page 8.

¹⁶ [Reforming support for failed asylum seekers and other illegal migrants](#). Home Office, August 2015. Paragraphs 41-42.

- Those who are unlawfully present; this includes refused asylum seekers who claimed asylum in-country, but not those who claimed at port of entry

To the year ending March 2015, 11% of the 25,020 asylum claims lodged were made at port of entry.¹⁷ There will, therefore, be some refused asylum seekers who are port claimants who will not be excluded by Schedule 3. It will therefore fall to the local authority to provide assistance if the family is destitute (there is a child in need) or to an adult who has eligible care and support needs.

When an applicant belongs to an excluded group, the local authority is required to undertake a human rights assessment to determine whether the exception set out at paragraph 3 of Schedule 3 applies:

Paragraph 1 does not prevent the exercise of a power or the performance of a duty if, and to the extent that, its exercise or performance is necessary for the purpose of avoiding a breach of—

(a) a person's Convention rights, or

(b) a person's rights under the Community Treaties.

The core function of the human rights assessment is to, therefore, identify whether, or to what extent the circumstances are such that, the bar on services under section 17 of the Children Act 1989 (or other legislation) should be lifted in order to avoid a breach of human rights or of European community treaties.

When considering this for families, the local authority must determine that:

- There are no barriers preventing the family from leaving the UK (e.g. pending human rights application, medical condition preventing travel, lack of documentation etc.)
- The child(ren) would not be in need in the country of origin, therefore a child in need assessment is necessary
- It is in the best interests of the child(ren) to return to the country of origin
- The provision of assistance under section 17 Children Act is not necessary to prevent a breach of human rights (e.g. right to be free from inhuman/degrading treatment; right to respect for family and private life)

When a person applying for local authority support belongs to a group excluded by Schedule 3, and a legal or practical barrier is in place which prevents the person from leaving the UK, then the local authority will be required to provide assistance to families with a child in need, adults with eligible care and support needs and to a former looked after child.¹⁸ Local authorities and the Home Office need to therefore be in agreement with regards to what constitutes a 'genuine obstacle to departure', with assurances that will hold the agreement of the Courts, should local authority decisions to refuse assistance be legally challenged. Local

¹⁷ [Immigration Statistics, January to March 2015](#). Home Office, 21 May 2015.

¹⁸ [Clue v Birmingham City Council](#) [2010] EWCA Civ 460 & [KA v Essex County Council](#) [2013] EWHC 43 (Admin)

authorities would not want to see a rise in legal challenges, which can result in significant costs and use of resources.

Although local authorities must defer to the decision making of the Home Office,¹⁹ they are required to make their own decision as to whether the provision of assistance under section 17 Children Act 1989 is necessary to prevent a breach of human rights, which must also incorporate consideration of the points listed above.

When a refused asylum seeker or family presents to a local authority, this assessment process must be undertaken, which will take up resources even when services are not provided.

Additionally, if the person or family would otherwise be homeless, the local authority would need to provide interim accommodation and financial support whilst assessments are carried out.

The local authority may conclude that the person or family can safely return to their country of origin without there being any breach of their human rights. In such instances the local authority may need to provide interim accommodation in order to avoid a short term breach.

Local authorities have established that the only way to persuade a family to return and to discharge responsibilities in line with Schedule 3 is to ensure that all procedural processes for pursuing applications/appeals have been concluded, that the consequences of remaining in the UK without immigration permission and the risks to children are clearly explained and that this is served in writing in a way that is understood by the family and other agencies involved, whether local authorities, schools or the NHS.

If the Home Office does not undertake this work whilst the family are in receipt of asylum support, and by ceasing asylum support without referring families to the family returns panel, where the best interests of the children would be considered, then it is not right for a local authority to have to complete exactly the same process for those families that have effectively transferred from Home Office to local authority support. This creates a resource burden as well as resulting in costs incurred from direct service provision.

(ii) Local authority responsibilities when families do not take up voluntary return and remain in the UK

The Home Office does not consider in its Impact Assessment the wider implications for local authorities of destitute families living within their communities.

The report by the Centre on Migration Policy and Society (COMPAS) at Oxford University, *Safeguarding Children from Destitution: Local Authority responses to families with 'no recourse to public funds'* found that the process of implementing the Schedule 3 exclusion for families only has the intended outcome if families leave the UK, either voluntarily or by forcible removal:

¹⁹ [Clue v Birmingham City Council](#) [2010] EWCA Civ 460

‘Some local authority interviewees reported that they had successfully discharged their duties by withholding or withdrawing s17 support following a Human Rights Assessment, but said that such occurrences were rare in practice, particularly where these assessments were subject to legal challenge. This is because a Human Rights Assessment can prove in law that a family can return to the parent’s country of origin, but if in practice they do not return and the child remains destitute in the borough, s17 duties will continue to be engaged. As will be noted in Section 7 (fig. 12 in particular), removal or voluntary return of these families at the end of the immigration process is rare and local authority interviewees expected that children were likely to remain in need in their borough regardless of a decision that they should leave.’²⁰

It is therefore likely that local authorities will be required to continue to provide assistance under section 17 Children Act 1989 if the family remain in the UK.

The alternative is likely to result in children and vulnerable adults being subject to serious safeguarding issues, for example:

- Child sexual exploitation
- Modern day slavery
- Non-attendance at school
- Not accessing healthcare and other services if they are ill, have a disability or special educational needs
- Living in unsuitable and unsafe conditions
- When parents will be driven to means to obtain financial support which have safeguarding implications for children, for example, using unsuitable child care arrangements

The impact of destitute migrants within communities also has wider implications for local authority communities and services, for example, around:

- Community cohesion
- Public health
- Demands on education providers

Refugees and asylum seekers are already at risk of poor health and wellbeing. Studies have shown: 5%-30% have experienced torture; 70% of women have experienced physical or sexual violence; maternal mortality is high; over half of children have witnessed violence; all have experienced loss or bereavement.²¹ On top of this, many live with anxiety, poor concentration and lack of confidence, poor nutrition, lack of healthcare and immunisations. Refused asylum seekers no longer in receipt of asylum support would not have access to free secondary healthcare.²²

²⁰ Price, J. & Spencer, S., [Safeguarding Children from Destitution: Local Authority responses to families with ‘no recourse to public funds’](#). Centre on Migration Policy and Society at Oxford University, June 2015. Page 38.

²¹ Burnett, A. & Fassil, Y. *Health needs of asylum seekers and refugees*. BMA The Royal College of Obstetricians and Gynaecologists.

²² National Health Service (Charges to Overseas Visitors) [Regulations](#) 2015

The Royal College of Psychiatrists highlights that: ‘..the psychological health of refugees and asylum seekers worsens on contact with the UK asylum system.’²³ A refused asylum claim alongside the threat of having support removed will be extremely stressful and likely to have a further detrimental impact on the health and wellbeing of parents and their children.

Research undertaken by the Universities of Salford and Leeds found that asylum seekers are vulnerable to forced and exploitative labour.²⁴

If there are safeguarding concerns because a child is at risk of serious harm, the local authority will need to consider whether care proceedings are appropriate. This is the least desired outcome for the family and local authority due to child welfare, cost and resource implications.

(iii) Resolution of cases by granting discretionary leave

The Home Office states that 15% of cases where further submissions have been submitted will be granted discretionary leave to remain with recourse to public funds.²⁵ Clarity needs to be provided by the Home Office as to: (i) why such people would not be granted this leave as a result of consideration of their initial asylum application, and (ii) whether these grants will actually be discretionary leave in line with the Home Office policy on this,²⁶ or would be leave granted under the Immigration Rules (family or private life rules), or outside of the Immigration Rules on Article 8 grounds.

Although those granted discretionary leave would be granted recourse to public funds, those who are granted under the Immigration Rules or outside of the Immigration Rules on Article 8 grounds would not automatically be granted recourse. Leave on this basis is granted with the ‘no recourse to public funds’ (NRPf) condition, unless the Home Office determines that the applicant is destitute, there are concerns regarding the welfare of a child or there are exceptional circumstances that require recourse to be granted. The policy governing this allows for recourse to be granted to those in receipt of asylum support when it is clear there has been no change in the person’s financial circumstances. However, for people in receipt of local authority support, the Home Office does not accept that receipt of such support in itself evidences destitution will make its own assessment of the information and evidence that the applicant has provided.²⁷

As it is most likely that further submissions will be made after asylum support has been terminated (see Question 5), and as section 4 support will be abolished, it will fall to local authorities to support families who have made further submissions.

²³ *Improving services for refugees and asylum seekers: position statement*. The Royal College of Psychiatrists, 2007.

²⁴ Lewis, H., Dwyer, P., Hodkinson, S., Waite, L. [Precarious lives: experiences of forced labour among refugees and asylum seekers in England](#). ESRC, University of Salford & University of Leeds, 2013.

²⁵ [Impact Assessment](#). Home Office, August 2015. Page 8.

²⁶ [Asylum Policy Instruction: discretionary leave](#). Home Office, 18 August 2015. Version 7.0.

²⁷ Immigration Directorate Instruction Family Migration: [Appendix FM Section 1.0b Family Life \(as a Partner or Parent\) and Private Life: 10-Year Routes](#). Home Office, August 2015.

Additionally, section 17 Children Act 1989 duties are engaged when a parent has leave to remain with NRPF, but cannot afford to accommodate or provide for the essential living needs of the family.

It should therefore not be presumed that all those granted leave on family or private life grounds are going to have recourse to public funds. It is therefore incorrect to assume that cases resolved this way would not result in additional costs to local authorities.

7. Whether and, if so, how we might make it clearer for local authorities that they do not need to support migrants, including families, who can and should return to their own country (paragraph 42).

Local authorities do not believe that stopping asylum support will result in families leaving the UK (see A.2). It is unclear from this proposal whether the Home Office intends by making this suggestion that it will be acceptable for refused asylum seeking families to be left destitute and visibly homeless on the streets.

Local authorities would not support measures which lead to such a consequence. It is highly unlikely that the judiciary would either, should refusal of assistance result in a legal challenge to the local authority, due to the clear safeguarding responsibilities towards children that are set out in the Children Act 1989. Legal challenges have cost and resource implications for local authorities, and would be expected to rise should assistance be refused to more people.

It is therefore highly likely that local authorities will be required to support refused asylum seeking families who do not return to their countries of origin, regardless of whether amendments are made to Schedule 3, unless there are clear processes in place to resolve the family's destitution (see Question 6(i)).

Local authorities would prefer to work with the Home Office to ensure that vulnerable migrants do not become homeless and destitute when they have exhausted all procedural avenues to pursue their claim, and that safeguarding responsibilities are maintained. It is therefore essential that at this stage, there must be an appropriate route to ensure this, which might include:

- Enforced removal or voluntary return
- Partnership working to ensure documentation can be promptly obtained
- Investing increased resources into AVR, such as more pre-departure training and support, as well as greater packages to support reintegration
- Funding local authorities to provide accommodation and financial assistance whilst return is being resolved

Local authorities are concerned that the reforms of AVR which will be implemented in January 2016 will not be extending pre-departure support or reintegration assistance.

However, local authorities are keen to engage with the Home Office in discussions around amendments that can be made to legislation to make it more workable, but these would presumably affect the enactment of Schedule 3 across all groups of excluded migrants, not just refused asylum seekers.

8. Any suggestions on how the Home Office, local authorities and other partners can work together to ensure the departure from the UK of those migrants with no lawful basis to remain here and minimise burdens on the public purse (paragraph 47).

The Home Office states that consideration of further applications/submissions by refused asylum seekers receiving assistance from local authorities would be expedited via NRPF Connect. However, NRPF Connect demonstrates that Home Office case-working is time consuming and complex, and the cost to local authorities whilst this is undertaken is significant. The existence of NRPF Connect to facilitate partnership working does not mitigate the fact that costs will increase due to local authorities being required to assist a new client group (i.e. refused asylum seekers making further applications).

The positive work being undertaken by the Home Office via NRPF Connect to resolve local authority supported cases needs to be sustained, not over-burdened by an increase of cases presenting and being provided with assistance by local authorities. However, good practice from this model of operation could be replicated for cases that are within the asylum support system.

Rather than terminating asylum support, refused asylum seeking families should be referred to the family returns panel. Local authorities would be keen to work with the Home Office to support the family returns process, but as it appears not to be working in its current state, the Home Office will need to address their processes and ensure that a system is developed that is workable and leads to real results.

A successful family returns process for appeals rights exhausted families would require the Home Office to work closely with local authorities. Where return to country of origin is being considered, it would make sense for the local authority to have a role in ensuring that the best interests of the child have been considered, that schools and health authorities are informed, that parents are aware of the risks of remaining in the UK and what impact this may have on their children.

If there is a case for such collective working, then reimbursement to local authorities for providing such assistance would be required due to the burdens local authorities already experience as a result of immigration policy measures.

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).

Local authorities are concerned that the focus on the impact on the resident population ignores the serious implications for refused asylum seeking children, which in turn would have consequences for resident populations if they remain with communities.

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).

N/A

C. Conclusion

Local authorities do not believe that the Home Office's intent will be realised through the proposals made. A direct consequence of the changes will be that increasing numbers of refused asylum seekers will go 'underground', leaving vulnerable adults and children at risk of exploitation.

Following the failure of the Section 9 pilot, and no clear indication that the Home Office will be taking steps to prepare families for return prior to terminating support, local authorities believe that the Home Office is unrealistic in its assumption that stopping support will lead to refused asylum seekers leaving the UK.

The proposals do not avoid responsibility for preventing and alleviating destitution of the most vulnerable refused asylum seekers passing from the Home Office to local authorities; the policy is in effect a 'cost shunt'.

Greater regulation regarding the Schedule 3 exclusions to absolve local authorities of responsibilities would result in tensions (which are currently already in play) between the application of immigration policy and local authority safeguarding responsibilities, including the practical application of these. If there is to be no or a reduced legal duty towards this group then the Home Office needs to provide a credible response to explain what the next steps for refused asylum seekers and their children would be. It would be unacceptable for central and local government to be absolved from their duty of care to vulnerable children living within communities. The policy therefore currently fails to retain important safeguards for children and does not comply with section 55 of the Borders Citizenship and Immigration Act 2009.

Local authorities would hope to see, within this policy, confirmation that the Home Office acknowledges its responsibility for strengthening the returns process to ensure real outcomes, and would be willing to work with them in doing this, as an alternative to ending asylum support by the Home Office when there is no clear pathway forward for the refused asylum seeker. If no action is taken pre or post-termination of support, a local authority will be in a position where it is forced to respond when a family remains destitute in their area.

The expedition of cases that are in receipt of local authority support would not alone mitigate the costs that will be borne by local authorities due to the burden of dealing with this new client group, whether this is by responding to increased referrals or providing services.

Local authorities therefore do not support a policy which will result in any more referrals into social services and increased financial pressures. The policy in its current form appears to do this, and does not, therefore, result in cost savings for the taxpayer.

Sound and effective processes will obtain savings to the public purse; switching off asylum support to those who have a right to essential safety net support from local authorities, regardless of Schedule 3 exclusions, will not. Local authorities would be keen to work with the Home Office to establish such processes.

LGA, WLGA, COSLA, ADCS & NRPF Network, 8 September 2015



Appendix A: Wales Specific Issues

While asylum and immigration are non-devolved issues, and remain the responsibility of the UK Government, many local government services will be impacted upon by the proposed changes. The Home Office will therefore need to identify and address how the different legislative context for local authorities in Wales will apply in relation to its proposals. Please see below for some examples of where relevant legislation differs in Wales that may affect the delivery of proposals as put forward by the Home Office:

Social Services and Well Being (Wales) Act

There are significant differences between the above Wales Act and the Care Act that has been introduced in England and therefore on the responsibilities and duties of local authorities in relation to its provision of social services. The Act in Wales impacts on all people of any age in need of care and support and local authorities have a duty to promote the well-being of people in need, including children. The eligibility criteria for services is also different with a 'can and can only' test to be applied.

The above Act also amends parts of the Children's Act and it will be important that the Home Office recognise and address any specific differences. We are also concerned at the potential impact of the proposals on the safeguarding of children and young people, and vulnerable adults and this does not appear to be addressed in the consultation paper. Safeguarding must be a key concern that underpins any legislation that follows in the Immigration Bill with the safeguarding needs of children and young people being paramount.

Housing (Wales) Act

The Housing Act in Wales has amended the homelessness legislation in Wales with an increased focus on preventing homelessness. A Landlord Registration Scheme is also being introduced for private sector landlords. We are concerned as to how the proposed changes to remove support for failed asylum seekers will impact on homelessness duties placed on local authorities (and the potential rise in homelessness if there is an increase in destitute people). We also await further details on other anticipated changes around housing, for example, new duties and responsibilities on landlords to check immigration status, as these will also need to sit neatly with existing duties on local authorities.

Rights of Children and Young Persons (Wales) Measure 2011

This Measure has placed a duty on Welsh Ministers to have due regard to the UNCRC and its Optional Protocols when making decisions about proposed legislation and policies and when they review existing legislation and policies. The first stage application of due regard came into force on 1 May 2012.

Children and Families Measure 2010

The Measure requires Welsh Authorities, including Welsh Ministers and local authorities, to prepare and publish a strategy for contributing to the eradication of child poverty in Wales. The broad aims for contributing to the eradication of child poverty include the need to increase income for households including one or more children with a view to ensuring that,

so far as reasonably practicable, there are no households in the relevant income group; ensuring that children living in households in the relevant income group are not materially deprived; to reduce inequalities in educational attainment between children; to reduce inequalities in health between children and between parents of children (so far as necessary to ensure the well-being of their children); to ensure that all children grow up in decent housing; to ensure that all children grow up in safe and cohesive communities; to reduce inequalities in participation in cultural, sporting and leisure activities between children and between parents of children (so far as necessary to ensure the well-being of their children). There is a high risk that for the children affected by the Home Office proposals, local authorities would find it increasingly difficult to meet their statutory needs in tackling child poverty.

The Welsh Government can provide further detail about the above legislation, and any other relevant legislation, that should be considered when developing immigration legislation and its practical application by local authorities in a Welsh context must also be considered and addressed.

Welsh Local Government Association, 8 September 2015



Appendix B: Scotland Specific Issues

The Convention of Scottish Local Authorities (COSLA) supports the points made within this consultation response, and is also submitting a separate letter highlighting issues of particular concern to Scottish local government.

As in Wales the Home Office will also need to consider the devolved legislative context in Scotland. Relevant devolved legislation will include:

- Mental Health (Care and Treatment) (Scotland) Act 2003
- Social Work (Scotland) Act 1968
- The Children (Scotland) Act 1995
- The Children and Young People (Scotland) Act 2014

COSLA, 8 September 2015

