Family Rights Group Response to the government consultation on

Reforming support for failed asylum seekers and other illegal migrants

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1. About Family Rights Group:

Established in 1974, Family Rights Group is the charity that works with parents in England and Wales whose children are in need, at risk or are in the care system and with members of the wider family who are raising children who are unable to remain at home. Our expert advisers, who are child welfare lawyers, social workers, or advocates with equivalent experience, provide advice to over 6000 families a year via our free and confidential telephone and digital advice service. We advise parents and other family members about their rights and options when social workers or courts make decisions about their children's welfare. We also campaign for families to have a voice, be treated fairly and get help early to prevent problems escalating. We champion Family Group Conferences and other policies and practices that keep children safe in their family network.

We are particularly concerned about the impact of the proposals set out in this consultation on families and children who will cease to receive asylum support soon after their asylum claim is refused. These families will turn to the local authority to support them under Children Act 1989 provisions. FRG advises many families who are seeking support from children's services, and we know that local authority resources are already stretched. It is inevitable that if the proposals in the consultation are carried out, more families will fall into this category, and more demands will be made on children's services.

Furthermore, if the proposals to use the Sch 3 NIAA 2002 (as amended by s9 IAA 2004) provisions for families who are currently on s95(4) support and for new families, to be denied resource to public funds once their asylum support claim is refused are carried into effect, this will result in families being left completely destitute. This will result in there being a serious risk of children being removed into care as their family is unable to provide for their basic physical needs. We believe that children should be able to live with their families, provided that they are safe; in our view, to remove a child from their family who cannot look after them due to financial constraints is a serious breach of the right to respect for family life.

2. Introduction

Within this response we have sought to answer the specific questions posed in the consultation document that relate to families and children, those being questions 3,4 6 and 7.

At the outset, we would like to highlight our serious concern that there is no mention in the consultation of the Secretary of State's duty under s55 of the Borders, Citizenship and Immigration Act 2009. This duty requires that when any function of the Secretary of State in relation to immigration, asylum or nationality is discharged, regard must be had to the need to safeguard and promote the welfare of children who are in the United Kingdom. It appears to have been wholly ignored within the consultation. In our view, the measures proposed will, for the reasons we set out in this response, result in families and children suffering destitution and potentially children being separated from their

parents for no reason other than their families' inability to provide for their basic needs, as a result of lack of state support and no right to work in this country. This result will most certainly breach the s55 duty.

We recommend that the Home Office reconsider these proposals in light of the s55 duty and amend the proposals accordingly.

3. Our comments on consultation questions 3,4,6 and 7

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

The proposed changes to asylum support for families with children will mean that families who cannot or will not leave the UK, will be left without support, and therefore destitute. As a result, their children's welfare will suffer. Moreover, the burden of supporting these families and children will fall on local authorities who are already facing severe financial cuts.

Under the current s95 provision, support is available to asylum seeking families after their claim is determined, if they would otherwise be left destitute. Those families who are supported under s4(2), because their children were born after their asylum claim was determined, are subject to even more stringent conditions. The families who receive this support must satisfy one of the conditions set out in the Immigration and Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005. Accordingly it is already the case that there is no support for failed asylum seekers (even those with families) who make no effort to leave the UK: paragraph 19 of the consultation is therefore misleading in stating that section 4(2) provides 'an avenue for support simply on the basis that the person is in the UK and has previously made an asylum claim'.

It is an important principle that families, and in particular children, should continue to be supported and not be left destitute, whilst they remain in the UK. This is consistent with the UK's domestic and international obligations under s55 Borders, Citizenship and Immigration Act 2009, the Human Rights Act 1998 and the UN Convention on the Rights of the Child.

If the proposals set out in the consultation are put in place, new families making claims for support will only be supported until their asylum claim is determined. After that, support will only be provided if they satisfy as yet undefined conditions. Inevitably, there will be families who fail to qualify for continuing support, and are refused all recourse to public funds. The burden of supporting those children will fall on local authorities. The local authority will have to carry out a human rights assessment, which is a significant cost in itself, and support those who it deems it owes a duty under the Human Rights Act. We are very concerned that local authorities do not have sufficient resources to properly support these additional families, and that will have a significant impact on the health and welfare of those and other families already supported by local

authorities. The consultation document does not propose additional funding for local authorities, or identify how they will be supported to deal with these additional families.

The consultation document also proposes that for those families already supported under s95, the existing provisions under Sch 3 NIAA 2002 (as amended by s9 IAA 2004) to deny support may be used on a 'case by case' basis. Again, this will place a further pressure on local authorities.

It is noticeable that the consultation makes no mention of the s9 pilot in 2004, which sought to remove support from families who were not taking steps to leave the UK, and was not effective in encouraging families to leave the UK. The Government's own evaluation and other NGO reports clearly showed that the removal of support did not increase the numbers of families voluntarily returning home[1].

During the Section 9 pilot, Barnardos carried out research focusing on the impact Section 9 would have on local authorities. A total of 33 authorities took part in the research, of which 18 were directly involved in the pilot. All of the local authorities interviewed were clear that Section 9 ran counter to their established welfare duties and practices under the Children Act 1989. The Home Office's own review of Section 9 acknowledged that local authorities "had difficulty in reconciling what they considered to be conflicting principles of child welfare and section 9" and that the "pilot placed significant demands upon local authority resources." All of these concerns continue to be relevant to the Government's new proposal to withdraw support from refused asylum seeking families.

Our primary recommendation is that these proposals should not proceed, for the reasons we have given above. If however support is to be withdrawn, it is essential that local authorities should be properly consulted about the impact that this will have on children's services and appropriate funding needs to be provided to local authorities to meet the increased number of families in need of CA89 support and services.

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

The aims set out in the consultation are, first and foremost, to stop support for families within a short period of the asylum claim being refused. The onus is then on the individual to show, within the grace period provided, that they fall within one of the exceptions.

The consultation document does not include proposals for how the claims to have an exception will be processed within the time available. One of the

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[1]http://webarchive.nationalarchives.gov.uk/20140110181512/http:/www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithasylumseekers/section9implementationproj.pdf
Refugee Council Section 9 Report 2006

reasons so many families exist on s95 and s4 support for so long is the time it takes for their asylum appeals and other applications to be processed. By definition, their will be a large number of families who are entitled to continued support under the proposed exceptions, whose claims will have to be processed in an extremely short time period. We are very concerned that families will be left destitute while their claims for an exception to the new legislation are processed. Furthermore, there will be those who cannot claim an exception, but are not able to leave within 28 days.

This timescale is unrealistic, and we recommend that the grace period should be at least 90 days. A minimum of 90 days would be a reasonable time to enable people to seek advice and submit further applications for support, if they need to do so.

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

It is not clear from the consultation paper what, if any, additional resources are proposed for local authorities to enable them to:

- Fulfil their continuing responsibilities to those families and children who Ccarry out ECHR assessments of families who claim, or
- Meet the costs of judicial review actions where support is refused.

We recommend that local authorities and in particular the Directors of Children's Services be consulted on how they think these proposals will impact on them before any move is made to implement the proposals.

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).

We are very concerned to see in the consultation paper " that ministers will confirm in legislation, putting "beyond doubt", that local authorities will not be obliged to help rejected asylum seekers and their children who could leave Britain – and so avoid destitution." As stated above, there is no mention in the consultation of the Secretary of State's duty under s55 of the Borders, Citizenship and Immigration Act 2009. This duty requires that when any function of the Secretary of State in relation to immigration, asylum or nationality is discharged, by the HO or by any other body (such as a local authority) regard must be had to the need to safeguard and promote the welfare of children who are in the United Kingdom. Both the Home Secretary and local authorities have a duty to promote the welfare of children and to avoid actions resulting in a breach of their human rights, and forcing children and families to become destitute will be in breach of children's rights and will be contrary to their welfare. It is unrealistic and misleading to suggest that there is a way in which local authorities can legally simply turn families away – and such an approach is contrary to the very ethos and purpose of local authority children's services.

Despite this and the fact that the proposals directly impact on children, the consultation document provides no evidence of the consideration of the interests, needs and rights of children in their own right.

4. Conclusion

Irrespective of whether families should or should not go home, the children of asylum seeking families are children first and foremost, and UK asylum policy should make the protection of their welfare its priority, consistent with its duty under s55. However, it is impossible to implement the proposals in the consultation paper without running the risk of leaving families destitute and street homeless, vulnerable to abuse and exploitation, and causing long term harm to the children affected.

The increased burden that these proposals will inevitably place on local authorities will impair the proper provision of support and services to all families with children 'in need', not just those who are forced upon the local authority as a result of these proposals.

The Government has stated that its intention is to "retain important safeguards for children", but it also proposes a policy which is designed to prevent statutory services assisting children who become destitute and/or street homeless when their parent's application has been refused and the Home Office believes there is no obstacle to prevent them returning home. This approach is completely incompatible with promoting the best interests of the child and the principles of child protection as reflected in the UN Convention on the Rights of the Child and the Children Act 1989.

We strongly recommend that these proposals should not be put into legislation and that support for families with children should continue until such time as they leave the UK.

If the proposals are to proceed, then adequate funding, training and resources must be made available to local authorities who will have to assess and support a considerable number of these families and children.