

ASAP

ASYLUM
SUPPORT
APPEALS
PROJECT

Proposals to change the Asylum Support System

January 2010

Contact Gerry Hickey phone or email if you would like to discuss these proposals further:

Gerry@asaproject.org.uk

Contact ASAP

office@asaproject.org.uk

advice@asaproject.org.uk

18 Barclay Road

Croydon

CR0 1JN

Tel: 020 8686 1888

Fax: 020 8686 1899

Advice Line: 0845 603 3884

www.asaproject.org

Briefing on the proposed changes to Asylum Support and Asylum Support Appeals

UKBA has issued proposals for changes to asylum support provision which are set out in Part 11 of the Draft Immigration Bill (the Bill) and a consultation paper entitled 'Reforming Asylum Support: Effective Support for those with Protection Needs (November 09)'. The Bill contains the actual changes proposed by UKBA but leaves most of the detail to be decided later by the Secretary of state and not parliament. The Bill also includes powers which seek to reduce the rights of individuals to appeal against a decision made by UKBA about their entitlement to support. Organisations are invited to give their views on the proposed changes by the **4th February 2010**.

This briefing focuses on the most serious changes being proposed to the support system, as set out in Part 11 of the Bill, and lists our concerns in relation to each.

*N.B It is important to note that at this stage it is unclear **when or whether** these changes will happen as the current government has made it clear that they do not expect this Bill to pass into law before the next general election. It is also unclear what would happen to the draft Bill if there is a change of government. A new government could choose to reject the Bill or could adopt some or all of the changes proposed.*

Lack of detail in the Draft Immigration Bill

One of ASAP's major concerns about the Bill is that many of the details concerning how the support system will operate are not set out in the Bill itself, but instead are left to regulations which would be made at a later date. This covers details such as the criteria under which support would be provided, when support can be suspended, and the factors to be taken into account when deciding whether someone is destitute.

ASAP considers the absence of detail in the Bill about such important matters to be unacceptable. It places too much power in the hands of the Secretary of State (UKBA). Parliament will be deprived of full consideration and debate of the most crucial matters which will be left to the Secretary of State to lay down in regulations.

Changes to the Support System

Failure to Comply with Conditions

The Bill contains a clause which would make it possible to refuse to support a person who had previously been in receipt of support, but who was considered by UKBA as having failed to comply with the conditions attached to that earlier support. Although the Bill does give UKBA

the power in certain circumstances to disregard a failure to comply with a condition, it does not provide details of when this will apply and how .It is left to regulations to be decided at a later date.

We are very concerned about this proposal, as a failure to comply with a condition of support can be caused by factors such as poor mental health or other similar support needs. We think the Bill should contain details of the circumstances under which a failure to comply can be ignored. Any consideration of withdrawing support on the basis of a breach should only be taken after careful and fair consideration of all the circumstances and in particular the very real difficulties faced by asylum seekers in the UK.

Changes to support for Families

Under the new proposals families would no longer continue to get cash support once their first claim for asylum is fully refused. They would instead be expected to transfer to another type of support which is likely to be a payment card scheme (no cash) or, in some circumstances, could be placed in full board accommodation. UKBA states that they are proposing these changes in order to make it clear to families that they have ‘reached the end of the asylum process and that they expect them to leave the UK or to co-operate with removal’.

The removal of cash support would cause particular hardships for families. For example the payment scheme currently being piloted by UKBA (the Azure card) can only be used at a limited number of outlets. It does not allow the person to purchase bus or train tickets which means that families, many with young children, may be forced to walk long distances to the shops, doctor’s surgeries, schools, nurseries etc. A lack of cash would also mean families could not use markets or discounted stores to purchase food or clothing, something which is vital for those living on limited incomes.

Support for a Limited Period

Under the proposals some individuals will only qualify for support for a limited period. UKBA intends to restrict support to a three month period for individuals who receive support, on the basis that they are taking all reasonable steps to return. At the moment individuals in this situation are subject to having their support reviewed after three months and UKBA can discontinue support if they are not satisfied that the person is taking enough steps to return. However, the person currently has an automatic right to appeal this decision. Under the new proposals this right of appeal would be removed. The individual could re-apply for support but this will involve a gap in their support while they again provide evidence that they have a barrier to return. (See also our concerns listed under the appeals section below.)

Re-introduction of Section 55

UKBA are proposing to reintroduce a law which is almost identical to Section 55 of the Nationality Immigration and Asylum Act 2002. Section 55 gave the government the power to refuse to provide support to a person if they did not claim asylum ‘as soon of reasonably practicable’. When introduced this law caused widespread destitution amongst asylum seekers and was eventually challenged in the High Court. This led to a court ruling known as the ‘*Limbuela*’ case, which severely limited the circumstances under which Section 55 could be used by UKBA. In practice this means that it is normally only used when a person applies for asylum after 72 hours of entering the UK and is requesting subsistence only support (ie no accommodation) from UKBA. In these cases UKBA argues that refusal of support will not breach the person’s human rights as they have a place to live.

Given that the indiscriminate use by UKBA of Section 55 was found to be in breach of the Human Rights Act, ASAP is concerned that the use by UKBA of any similar power in the future

would not respect the court's decision in *Limbuella*.

Changes to Asylum Support Appeals

The changes to the appeals system outlined in the Bill seek to severely limit the right of appeal against a decision to either refuse or discontinue support. The following is a list of ASAP's main concerns in relation to those proposed changes.

Ceases to meet the Criteria

The new proposals seek to remove the right of appeal to all refused asylum seekers (*known as ex protection applicants under the new proposals*) who are having their support discontinued on the grounds that they no longer meet the criteria under which support was provided. Currently a person automatically has the right to appeal in these situations.

Over the years ASAP has assisted a number of individuals to successfully appeal against a discontinuation of support on these grounds. In many cases the decision to stop support had been based on incorrect information. Sometimes this was because UKBA had failed to update the person's case file. It is therefore very important that the right to appeal is maintained as it protects the individuals against mistakes or poor administration on the part of UKBA.

No Asylum Claim Outstanding

The bill contains a clause that would remove the right of appeal against a decision not to award support if UKBA consider that the person does not have an outstanding asylum claim. This would apply where UKBA consider that the asylum claim has been fully refused or where they state that there is no record of a claim ever having been made.

Under the current system a significant number of appeals are lodged and won on this point every year. Again the information held by UKBA is often incorrect or has not been updated. Given the potential for UKBA to make mistakes on such an important issue, ASAP believes the right to appeal to the tribunal in these circumstances must be maintained.

Support Provided for a Limited Period

The Bill proposes that there be no right of appeal against the decision to withdraw support provided to someone for a limited period, once that period has expired. As outlined earlier in this briefing, this is likely to apply to individuals who are provided with support for a three month period on the grounds that they are taking all reasonable steps to return.

This proposal is likely to cause serious difficulties for those nationals who are unable to leave the UK through no fault of their own. This includes individuals who are stateless or who experience problems obtaining travel documents from their embassy and those where there is a dispute about their nationality. Currently there are many individuals who fall into these categories including Palestinians, Eritreans, Somalis, Congolese, Algerians, Iranians and Chinese.

UKBA has stated that the person can re-apply for support but that they will need to provide evidence of any barrier they have experienced in trying to leave the UK. However, UKBA does not acknowledge the fact that certain nationalities will experience problems obtaining a travel document and that very often they are unable to provide proof of their attempts to obtain one. Withdrawing the right to appeal in these circumstances will deny this group the opportunity to have cases heard by an independent tribunal and will result in individuals being left stranded in the UK with no formal means of support.

Despite the uncertainty surrounding when or whether the above changes will be introduced ,

ASAP will be responding to the consultation as we are very concerned about the changes being proposed. **If your organisation would like to us to include any particular concerns you have in relation to the bill we are happy to do so. Please contact Gerry Hickey on 020 8686 1888 for more information or to express your own concerns.**

A copy of the both the Draft Immigration Rules and the consultation paper on reforms to asylum support can be obtained by clicking on the link below:

<http://www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/legislation/project-draft-bil/>
