

## **ASAP's response to 'Reforming support for failed asylum seekers and other illegal immigrants'**

### About ASAP

The Asylum Support Appeal's Project (ASAP) is a registered charity that provides specialist advice on asylum support law. We run a full-time duty "representative scheme" at the First-Tier (Asylum Support) Tribunal (the Tribunal), where our staff and pro-bono solicitors and barristers give advice and representation to over 650 appellants a year. We run a second tier advice line and regular training sessions on asylum support law for organisations. Our third area of activity is advocacy and policy work based on the evidence gathered at the Tribunal and through our links with a large constituency of organisations working directly with asylum seekers.

### Introduction

The consultation period of five weeks has been too short. Organisations and individuals who wish to respond have also been hindered by it taking place during the holiday period. These are complex and far reaching proposals that warranted a much longer period to respond.

The consultation paper and the impact assessment are unclear, vague and contradictory. This has made responding particularly difficult as it has been necessary to second guess on a number of occasions what is being proposed.

The documents contain internal inconsistencies. For example it is clear that support can be continued for reasons other than lodging further submissions (referred to as practical barriers or genuine obstacles) and yet the flow chart on p9 of the impact assessment only refers to further submissions.

The issue of appeal rights, and what changes might be proposed, is particularly unclear and will be dealt with below.

Whilst the documents contain references to international and human rights obligations, there is no explanation or analysis of what they are, and how they apply in this context. The current law is misleadingly presented, the implication being that it goes generously beyond international and human rights obligations, when in fact it reflects them. A proper detailed analysis of all existing relevant law should have been carried out before these proposals were made.

### **1. The proposed repeal of section 4(1) of the 1999 Act (para 16)**

Support under s4(1) of the 1999 Act is provided to people who are on immigration bail or on Temporary Admission (TA). These are two quite different kinds of support, with different criteria and Home Office (HO) policies, so they will be dealt with separately.

#### Section 4(1)(a) and (b)

Section 4(1)(a) and (b) support can be granted to people on TA. The HO policy, which was published in April 2013, is contained at para 1.1.3 of the Asylum support, section 4 policy and process instruction. In addition to various other restrictions, support is to be provided to destitute people

only in 'truly exceptional circumstances'. This is interpreted as meaning that a failure to provide support would lead to a breach of human rights.

ASAP only has experience of cases which are appealed to the Tribunal, and so is not aware of examples where the HO makes a decision to grant support. It is believed the power is exercised very restrictively. ASAP is aware from its referring agencies that most s4(1) applicants will need to go to appeal. In 2014-15 ASAP represented only 14 appellants who had applied for s4(1)(a) or (b) and secured support in 10 cases. Given that ASAP acted in approximately half of the appeals which took place in 2014-15 it is unlikely that the HO granted support to more than 30 people last year using these powers. This does not represent a significant strain on public finances.

However, in all of these cases, support will have been granted because a failure to do so would lead to a breach of human rights. Therefore ASAP believes it is vital that the HO continues to retain a general power to support destitute people in exceptional circumstances. Removing the power will burden local authorities who will have a duty to assess and potentially support under the Care Act 2014 and the Localism Act 2011.

Examples of ASAP appeals, which show a variety of scenarios and compelling stories behind these figures:-

- A long term street homeless man who was mentally fragile. He was in the process of organising the paperwork necessary to leave the UK.
- An appellant who had been in the UK for 15 years and had two British children. His ex-partner had mental health problems and the local authority was working with him as the father of her children to keep the family together. He had an outstanding application for leave to remain.
- Following the separation from her husband, another appellant found herself being refused leave to enter having previously had leave as a spouse. She was in the process of appealing this decision so she could stay because she had a very young child in the UK. Her outstanding appeal would have lapsed should she have left.
- Another appellant had obtained leave to remain on the basis of his UK ancestry. He was working but was admitted to psychiatric hospital after becoming unwell. During this period, unbeknownst to him, his leave lapsed. He had a British daughter with whom he remained very closely involved and had always financially supported. He had an outstanding application for leave to remain.

#### Cases warranting special consideration

The HO's rationale for abolishing s4(1) is that the power is 'unrelated to the support needs of destitute asylum seekers' (para 16). However, this statement is misleading. Whilst ASAP is aware that the majority of those who have received s4(1)(a) and (b) support have never claimed asylum, the s4(1) HO policy specifically recognises that there are two groups of asylum seekers who are excluded from the current asylum support system and so provides s4(1)(a) or (b) support for them instead. ASAP does not have statistics relating to these types of cases but numbers supported are likely to be small. These groups are:-

- Former looked after children who have claimed asylum. Normally UASCs are looked after by the local authority until they are 21 or 25, and at that point they may be eligible for s95

support (if they still have an outstanding asylum claim). The majority do not have an outstanding asylum claim, but may have further submissions. However, as they were under 18 when they claimed asylum they are not defined as asylum seekers or refused asylum seekers for support purposes. Thus the only power to support them is under s4(1).

- Those who abscond after claiming asylum and before a decision has been made. If they later re-emerge, and re-instate their asylum application they are not initially be eligible for support. This is because they are neither asylum seekers (as their claim will have been treated as withdrawn by the HO) or refused asylum seekers (because an initial decision on their asylum claim was never made).

In 2013 the HO sought to abolish s4(1)(a) and (b), via Clause 40 of the Deregulation Bill 2013. After lobbying, clause 40 was removed from the Bill. However, it was recognised at that time that special arrangements had to be made for these two groups of people and they were protected from the proposed repeal (see Clause 40(3) and (4)). These groups must again be provided for.

If s4(1) is abolished there is likely to be some ambiguity about the powers to provide support to those who the HO is seeking to return to other EU countries under the Dublin III arrangements. Given the current migrant crisis, consideration should be given to this issue as numbers may increase. Currently, the HO's policy is to provide support under s95 (see Q44 Asylum Support: Policy Bulletins Instructions). However, in some circumstances removal to a third country is delayed and then the situation with regards to support becomes unclear. These people are still asylum seekers as the substance of their claim has not been considered, and so provision must be made for them in the new scheme.

#### Section 4(1)(c)

Under s4(1)(c) the HO retain the power to provide accommodation to people granted immigration bail. The numbers of people concerned are not insignificant. According to figures obtained by BID under the Freedom of Information Act, there were 2860 grants of s4(1)(c) support in 2014.

The HO is clearly aware of the importance of this power because it was left untouched when the attempt was made to abolish s4(1)(a) and (b) in the Deregulation Bill 2013. Without the ability to provide a s4 bail address, many detainees will be unable to apply for Bail and so will remain in detention, potentially unlawfully. ASAP refers to the ILPA's response to this consultation which explains this in more detail.

The abolition of s4(1)(c) may also have the following unintended consequences:

- Increased number of unlawful detention JRs, breach of ECHR Article 5. With the option of Bail being unavailable to many detainees, their only route for securing release will be through Judicial Review. This would increase the burden on the courts and spending on the legal aid budget. It will also have an impact on the HO's budget as it will face increased pay outs in unlawful detention damages.
- Promoting absconding. In order to avoid unlawfully detaining people, the HO might start to release people on TA. ASAP is aware from contact with former detainees that this is already common practice. If a person is unable to use a s4 address, release will have to be to 'no fixed abode'. Logically, destitute people are more likely to find it difficult to stay in touch

with the HO and vice versa. This does not appear to be compatible with the HO's enforcement objectives.

- Increased detention costs
- Increased destitution thus encouraging people to live in precarious or exploitative situations or turning to unlawful means in order to survive.

**2. The proposal to close off support for failed asylum seekers who make no effort to leave the UK at the point their asylum claim is finally rejected, subject to continuing 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 (paras 20-21).**

Keys points:-

- Refused (childless) asylum seekers *currently* only receive support if there is a genuine obstacle to departure or they have outstanding further submissions
- The provision to re-enter the support system for reasons other than further submissions must be retained
- Appeal rights must be retained

Current law

It is *already* the case that there is no support for failed asylum seekers who make no effort to leave the UK.<sup>1</sup> The current law should not be presented in a misleading way. Paragraph 19 is incorrect 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 a necessary but not sufficient condition to be a destitute failed asylum seeker to qualify for s4(2) support. The five eligibility grounds are set out in reg 3(2) of the Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005:-

- (a) *he is taking all reasonable steps to leave the United Kingdom or place himself in a position in which he is able to leave the United Kingdom, which may include complying with attempts to obtain a travel document to facilitate his departure;*
  - (b) *he is unable to leave the United Kingdom by reason of a physical impediment to travel or for some other medical reason;*
  - (c) *he is unable to leave the United Kingdom because in the opinion of the Secretary of State there is currently no viable route of return available;*
  - (d) *he has made an application for judicial review of a decision in relation to his asylum claim;*
- (i) *in England and Wales, and has been granted permission to proceed pursuant to Part 54 of the Civil Procedure Rules 1998;*
  - (ii) *in Scotland, pursuant to Chapter 58 of the Rules of the Court of Session 1994;*  
*or*
  - (iii) *in Northern Ireland, and has been granted leave pursuant to Order 53 of the Rules of Supreme Court (Northern Ireland) 1980; or*

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<sup>1</sup> Unless further submissions are being made, see below

- (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.*

In practice only three of these five grounds are used. Reg 3(2)(c) can only be accessed if the Secretary of State has made a declaration. This has only occurred once, between January and July 2005, with regard to Iraq. Reg 3(2)(d) is redundant, as it is accepted that if failed asylum seekers pursue a judicial review against Home Office's refusals of their further submissions, then they qualify under 3(2)(e). Therefore they would already be on support by the time permission in the judicial review was granted, and thus would have no need to apply at that stage under reg 3(2)(d).

The consultation paper is not explicit, but the proposal to abolish this 'avenue for support' may be related to it only being available for refused asylum seekers, and not to others without leave. Therefore the HO may be concerned that refused asylum seekers could be seen to have an advantage. However, as we have argued above, it is crucial that the HO does retain a power to support other destitute migrants without leave, in exceptional circumstances.

#### Comments on what is proposed

Section 4(2) will be abolished (subject to transitional arrangements for those already on it) and if any support is available to refused asylum seekers, it will be under the same section as that provided to current asylum seekers, and so will be referred to here as the 'new s95'.

Support will be available where there is a 'genuine obstacle to departure' or there are further submissions outstanding. This reflects the current law, assuming 'genuine obstacles' would include the reasons contained in regs 3(2)(a) and 3(2)(b) above. This needs to be clarified. We note that, with regard to families, it appears that identical wording to the current reg 3(2) is proposed (para 33).

It is in the HO's interest that those who are taking 'all reasonable steps' to leave, reg 3(2)(a), are on support, as they will be better placed to document themselves, keep in touch with the HO and the AVR team (if relevant) than if they are destitute. There is also currently the facility to apply for extra support (eg to travel to Embassies) if already on support.<sup>2</sup> The HO wishes to encourage voluntary departures, and these are more likely to take place if the assistance provided includes accommodation and support. At the end of 2015 the HO is bringing the AVR programmes in-house, which have been dealt with by Refugee Action – Choices since 2011. It is surprising and counter-productive that the HO would wish to deprive itself of a power to support individuals who are taking steps to return home, at this particular juncture. This form of asylum support is particularly temporary and specific. It can be longer term for a few nationalities (Palestinians, Eritreans, Somalis and Iranians between 2011-14), due to the problems of being able to obtain travel documents, even if they are taking 'all reasonable steps'.<sup>3</sup>

Likewise, it is also in the Home Office's interest that those who are temporarily unable to leave for medical reasons, reg 3(2)(b) are on support. To leave destitute those who are unfit to travel,

<sup>2</sup> Immigration and Asylum (Provision of Services or Facilities) Regulations 2007 reg 9

<sup>3</sup> see ASAP report 'The Next Reasonable Step: recommended changes to Home Office policy and practice for section 4 support granted under reg 3(2)(a)' September 2014

whether for physical or mental health reasons, is very likely to cause public expenditure elsewhere, such as A&E services and psychiatric wards. Particularly in the case of those suffering from severe mental illness, the HO's own medical advisor, when asked for an opinion on reg 3(2)(b) appeals, on occasions recommends that the person should remain on support whilst in the UK. This is because, if left destitute, the person would be a risk to themselves and/or others.

It is proposed that it will not be possible (for the childless) to re-enter the support system, except in the case of further submissions. As stated above, this requirement contradicts the HO's overall aim of encouraging voluntary departures. The HO may additionally wish to consider how to facilitate departure at the point of becoming ARE, but it is essential that it retains the power to assist those who became ARE in the past. For reasons explained above, it is in the HO and the wider public interest, to have the ability to support certain categories of destitute people, and it makes no sense to limit this power only to those who have not yet been removed from their initial support.

Reg 3(2)(e) is most commonly used when destitute failed asylum seekers put in further submissions, and thus it would be a breach of ECHR Article 3 (inhuman and degrading treatment) to leave them without support, *R (Limbuella) v SSHD* 2005 UKHL 66. It is welcomed that support will continue to be available to those who lodge further submissions.

Finally, removing the power to support destitute refused asylum seekers will lead to a further burden on local authorities, who, in order to be compliant with ECHR, will owe duties under the Care Act 2014 (to those with care needs) and the Localism Act 2011 (to the able-bodied).

### Appeal Rights

There is no specific consultation question on appeal rights (although para 34 states our views are welcomed) and so the issue will be considered here. The relevant sections of the consultation paper are as follows:-

*Para 28 'Section 103 of the 1999 Act also allows a right of appeal against any decision to cease support'*

This is inaccurate, as under s103(2) there is only a right of appeal against the cessation of s95 if that support is terminated before it 'would otherwise have come to an end'<sup>4</sup>. Thus there is no right of appeal when s95 support terminates because an asylum seeker has become ARE. Due to the definition of an asylum seeker for support purposes contained in s94(5), termination decisions have not routinely been made with regard to ARE families, and when they have been (for example for breach of conditions) then there has been a right of appeal.

*Para 34 'We do not propose to create a right of appeal against the refusal to extend the grace period. We propose to consider whether, consistent with our international and human rights obligations, any changes to existing rights of appeal against asylum support decisions could help achieve the objectives set out in para 13'.*

It is unclear whether the current wording of s103(2) will apply to the 'new s95' such that there will no longer be a right of appeal against HO decisions terminating support. Whilst it is specified that

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<sup>4</sup> Although para 28 is in the context of the s9 certification process regarding which there is an appeal right

there will not be a right of appeal against decisions to refuse to extend the grace period, it is not clear how this will relate to other discontinuation decisions.

Without judicial oversight, and thus a right of appeal, it will not be possible to comply with international and human rights obligations. It has been established that ECHR Article 6, the right to a fair trial, applies to asylum support decisions, including decisions to discontinue support, *R (Husain) v ASA and SSHD* 2001 EWHC Admin 852. With regard to EU law, the Reception Directive (which applies to asylum seekers and those who have made further submissions or are in the process of a judicial review) Article 21.1 states that ‘the possibility of an appeal or a review before a judicial body shall be granted’. The EU law principle of effectiveness and the Charter of Fundamental Rights further reinforce the necessity of fairness. Relevant factors in this context are the importance of the issue to the individual, the inequality of arms and difficulty of challenging decisions without an independent body to appeal to.

HO decision makers inevitably cannot always make correct and lawful decisions. Judicial review of unlawful decisions is not an effective remedy. Even if individual asylum seekers are aware that decisions taken against them might be flawed, very real practical difficulties would be stacked against them; finding a specialist solicitor willing to act, obtaining legal aid, issuing proceedings in the High Court and obtaining interim relief to remain housed, all within a tight time frame. Furthermore the role of judicial review is very different from that of a first-tier tribunal, with the latter involved in fact-finding, taking evidence, deciding on credibility and applying the relevant law.

In para 34 we are invited to consider whether, whilst also complying with international and human rights obligations, the objectives in para 13 could be met by changing existing rights of appeal. None of these objectives could be met by reducing appeal rights:-

*‘ensure that asylum seekers who would otherwise be destitute continue to receive adequate support while their claim is under consideration’*

It is not possible to ‘ensure’ that support will be correctly granted without an appeal right.

*‘rebalance the support system so that failed asylum seekers and other illegal migrants have no financial incentive to remain in the UK and avoid return to their own countries’*

Refused asylum seekers who are medically able to travel and are not taking all reasonable steps to return are already without support. Removing appeal rights such that the process of leaving or making people destitute when they are unable to leave will not be subject to scrutiny will not be compliant with ‘international and human rights obligations’.

*‘Retain important safeguards to children’*

This will be considered more under q3. Reducing appeal rights to families and thus making children destitute would very clearly be contrary to retaining ‘important safeguards’

*‘Reduce cost to the public purse’*

Savings could only be made by breaching international and human rights obligations.

In conclusion, an effective appeals process enhances the para 13 objectives.

### Asylum support appeals' statistics

The statistics on appeals demonstrate the absolute necessity of having an independent body overlooking the Home Office asylum support decisions. The Asylum Support Tribunal latest statistics, September 2014–February 2015, show that 65% of the 837 appeals lodged at the Tribunal resulted in a positive outcome for the appellant. This figure includes cases which were allowed, remitted or withdrawn by the HO (a remittal in a discontinuation appeal results in the support continuing). 25% of the appeals lodged led to the HO withdrawing its decision, which in the majority of cases would result in the appellant being supported. Of the 575 cases which proceeded to either an oral hearing or a paper appeal 56% were either allowed or remitted.

ASAP works with advice agencies across the UK receiving referrals for our representation service at oral hearings at the Asylum Support Tribunal. Therefore ASAP's statistics (unlike the Tribunal's) do not cover paper hearings and withdrawals. In 2014–15 ASAP assisted 674 appellants, of which 64.5% were able to access support as a result of their appeal. In the first quarter of 2015-16 (April – June) ASAP assisted 221 appellants, 73% of which either won their appeal or had it remitted resulting in them accessing support they had previously been denied.

It is necessary to examine the types of appeals to gain a fuller picture of the importance of the right of appeal.

In 2014-15 ASAP represented in 288 appeals which related to HO decisions to discontinue support, which was approximately half of ASAP's appeals for this period. Of those appeals 69% were allowed or remitted resulting in the appellant continuing on support. Thus a right of appeal in discontinuation cases is essential to ensure lawful decision-making.

In the first quarter of 2015-16 (April – June) ASAP represented in 90 appeals where further submissions had been lodged, which was approximately half of ASAP's appeals for this period. 54% were allowed and 17% remitted at appeal.

In 2014–15 ASAP represented in 149 cases, where the appellant had been refused support on grounds of not being destitute. This was a quarter of all ASAP's appeals for 2014-15. 68% of these cases were allowed and 4% remitted.

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

#### **4. The length of the proposed grace period in family cases (para 31)**

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

#### **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 (para 42)**

Questions 3,4, 6 and 7 all relate to discontinuing support to refused asylum seeking families and so will be answered together, with the following sub-headings:-

#### The effect on local authorities (LA)



Rendering families destitute is very clearly going to add to LAs' burdens, and it is in this regard that the consultation paper is at its most unrealistic. At the very least LAs will have a duty to assess, and to provide interim support pending the outcome. The consultation paper states the HO is seeking 'to avoid new burdens on local authorities' (para 38) but provides no explanation at all as to how it will achieve this. Q7 presumes that LAs are currently supporting migrant families when they do not need to so. This is not the case; there is nothing voluntary about it. On the contrary, it is frequently necessary for families to issue proceedings (or threaten to do so) before LAs will assist.

There is the suggestion that Schedule 3 could be amended so as to make it clearer to LAs that they do not have a duty (para 42). This also is based on the false premise that they are currently not under a duty. Para 45 tentatively states that *if* the changes proposed could lead to families switching from HO to LA support, then the HO would wish to discuss this with LAs. Since it is very clear that this will happen, these discussions need to take place prior to any changes in the law.

### Section 9 pilot

It is very glaring that the HO does not refer to its own findings 'Family Asylum Policy, The Section 9 implementation project'. The conclusion reached there was that section 9 was not effective in encouraging families to leave, and therefore should not be used on a blanket basis. Instead case-specific close working with families, involving LA officials, would be needed. Para 28 implies that the reason section 9 did not work was because it made the 'process of stopping support more complicated and lengthy than it needs be', and that it placed the onus on the HO to prove that failed asylum seekers were not taking reasonable steps to leave before support could be stopped. As the HO's own evaluation (plus all other reports done by various organisations) acknowledged, section 9 was not effective in getting families to leave, but that was not because of the complicated legal process. The families in the pilot had their support terminated, and they duly lost their appeals at the Asylum Support Tribunal<sup>5</sup>. Thus the HO had successfully proved its case on legal grounds. However, as noted on p3 of the HO's evaluation 'the pilot placed significant demands upon local authority resources'. Nothing is offered in the consultation paper to suggest that the outcome will be any different this time. Granting or not granting a right of appeal when the family becomes ARE (or against a refusal to extend the grace period) is not going to alter the eventual burdening of LAs.

With regard to influencing behaviour more effectively, and encouraging voluntary departures, there are other kinds of action, beyond coercion and destitution, which the HO could pursue, which are more likely to be successful.<sup>6</sup>

### The Grace Period (and local authorities)

We do not agree with shifting the burden of families to LAs, especially as they are not given any resources to deal with NRPF families, but we acknowledge that that is where support will come from (as where the legal duties bite). It is very startling that there is no reference at all in the consultation paper to the SSHD's duties to children contained in s55 of the Borders, Citizenship and Immigration Act 2009. Given that, to date, the HO has rarely terminated support to families, it is not currently in

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<sup>5</sup> Willman and Knafler, *Support for Asylum Seekers and other Migrants: A Guide to Legal and Welfare Rights* (2009), p219-220, 308

<sup>6</sup> for an example of another model, Refugee Children's Consortium briefing on the UK Borders Bill House of Lords Stage 2007 *Withdrawal of Support to Families - Section 9*

the habit of considering s55 in the context of asylum support. Henceforward decisions to cease support will not be lawful unless there has been a s55 assessment. 3 months would be the very minimum needed, given that the HO will also need to liaise with the LA, who may decide to start their assessment during that period. Furthermore applicants will need time to seek advice on accessing support. This is especially pertinent given the restricted funding for asylum advice agencies.

Para 35 states that consideration is being given to whether families will be able to re-apply for support, and on what grounds. This could involve families switching back to HO support from LA support and is likely to involve further disputes between central and local government as to who is responsible. It is far preferable that families remain on HO support in the first place. The proposal in para 43 simply states existing policy (if not practise) of prioritising outstanding submissions and applications from those on LA or HO support.

It is also not clear if childless refused asylum seekers can apply to extend the grace period.

#### **5. The proposed transitional arrangements (paras 36-37)**

We welcome the fact that existing cases will not be in the new system. We would like the opportunity to comment on the detail of the transitional arrangements.

#### **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 (para 47)**

There are a number of ways to ensure the departure of those persons who no longer have a lawful basis to remain in the UK. Looking at the asylum system as an end to end process it is crucial that the front end of the process is working efficiently; asylum decisions must be made swiftly but thoroughly and fairly based on all the evidence to hand. The HO could increase the number of asylum caseworkers. Investment in training, working collaboratively with the NGO sector, and the appropriate use of up to date country guidance will all increase the quality of decisions and reduce the number of (costly) appeals. It is also important to recognise asylum caseworkers as effectively life savers. They should take pride in their work and be properly awarded for this difficult job. A cultural shift within the HO such that asylum casework is seen as protecting lives, would have the knock on effect of building confidence in the system.

Dealing with applications promptly, fairly and thoroughly will have 2 consequences:-

- Asylum applicants will have confidence in the system. Unsuccessful applicants will be more likely to leave the UK if they feel their case was properly heard and justice done.
- The shorter the time period asylum applicants stay in the UK, the easier it is for them to leave. The longer a person stays in the UK and settles the more challenging departure can become.

#### **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 (para 48)**

The impact on destitute asylum seekers who cannot return to their country of origin and who cannot access support has not been examined. Apart from the human cost this would have negative effects on the NHS in terms of increased costs, particularly from those suffering serious mental health problems.

The proposals would increase the numbers of refused asylum seekers living on the streets. It is widely known that asylum seekers due to their experiences both in the country of origin and here in the UK have high levels of mental illness. Research indicates that refugees and asylum seekers are five times more likely to have mental health needs than the general population and more than 61% will experience serious mental distress<sup>7</sup>. Research has shown that being destitute can cause asylum seekers to develop mental health problems. In 'The Destitution Trap' researchers found that 45% of destitute persons interviewed had developed mental health problems<sup>8</sup> and the Red Cross Report 'A decade of destitution' found 40% of destitute asylum seekers interviewed had developed mental health problems<sup>9</sup>. ASAP reviewed in detail, a snapshot of cases for a 7 day period and found that out of 14 cases examined 8 had mental health issues (57% rate), 5 of which were very serious with risk of suicide or PTSD, and one person had been sectioned under the Mental Health Act. Increasing destitution will increase the financial burden on NHS mental health services. With the average inpatient stay for someone with mental health problems being 32 days<sup>10</sup> and the average cost per hospital bed and stay per night in a mental health unit being £350<sup>11</sup>, this means there is a per person potential additional cost of £11,200.

The impact report has failed to examine the increased likelihood of individuals entering exploitative situations in order to secure a roof over their head, and the impact of this. For persons seeking asylum who were able to stay with friends or families but find this support coming to an end and becoming ARE it is likely they may need to access HO support especially if they have a recognised barrier to returning home. However the proposals would suggest they would not be able to access support as this is outside of the grace period. At which point they may be forced into exploitative situations. Exploitative situations could include forced labour, slavery or trafficking. These are the very offences which have recently been enacted in the Modern Slavery Act 2015. It seems bizarre that the Government is now seeking to create an environment which will make these kinds of offences more likely.

ASAP, 7<sup>th</sup> September 2015

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<sup>7</sup> Eaton et al, 2011, Mental Health and Wellbeing in Leeds, an assessment of need in the adult population, NHS Leeds

<sup>8</sup> "The Destitution Trap" Refugee Action, 2007, p84

<sup>9</sup> "A Decade of Destitution", British Red Cross, 2013, p4

<sup>10</sup> 13/11/2014 "LARGEST EVER NATIONAL REVIEW OF MENTAL HEALTH SERVICES REPORTS ON FINDINGS – INCREASES IN EFFICIENCY EVIDENT" NHS National Benchmarking network

<sup>11</sup> 10/04/2014 "NHS will pay a high price for short term mental health cuts, warns charity" RETHINK Mental Health" Hobbs, R, [www.rethink.org.uk](http://www.rethink.org.uk),