



association of **visitors** to  
immigration detainees

## Response to the Home Office consultation

### ‘Reforming support for failed asylum seekers and other illegal immigrants’

**September 2015**

AVID is the national network of volunteer visitors to immigration detainees in the UK. Established in 1994, AVID has over 20 years experience in supporting immigration detainees wherever they are held; our 19 member groups visit in immigration removal centres (IRCs), short term holding facilities (STHFs) and prisons. AVID provides support, resources, information and advocacy to all those who visit immigration detainees. Working with and through our membership, AVID collates evidence of the daily realities of immigration detention and uses this to present a collective voice for change.

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

Section 4(1) currently provides the Secretary of State with the power to provide support to persons who would otherwise be destitute. This includes those released on temporary admission and others released from immigration detention. If abolished there is a risk therefore that some people will be left destitute, at risk of inhuman and degrading treatment. It may also lead to an increase in cases of unlawful detention and leave people at risk of being refused release from detention.

Those who are likely to be affected include:

- Those released from detention and given temporary admission rather than bail
- Those released from detention on High Court Bail
- Those released on bail by the Immigration and Asylum Tribunal (without a Section 4 address, many will not be released)
- Those who have not claimed asylum and are attempting to return to their country of origin, but who are experiencing difficulties for example in obtaining the correct travel documentation or where that country won't admit them
- Those who have not claimed asylum but are waiting for the Home Office to regularise their status (e.g. people brought to the UK as children)

If Section 4 (1) is repealed it will prevent individuals in detention from obtaining a bail address and may therefore result in an increase in periods of long term detention, and even increase cases of unlawful detention. Those who are non asylum seekers, in detention, without a private address, will have no opportunity to apply for bail. We are concerned about the welfare of these individuals, who may therefore remain in detention

for lengthy periods. A further unintended consequence of these proposals may therefore be an increase in unlawful detention claims, at significant cost. There is also a risk that these proposals will lead to an increase in the number of asylum claims being made. People in detention who cannot apply for bail because they are not asylum seekers may make an asylum application in order to make a bail application.

**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)**

Our understanding of the proposals (which are less than clear) is that support will continue to be provided in cases where there is a genuine obstacle to departure or where a further submission will be lodged. In our experience it can be very difficult for a refused asylum seeker to get support from the Home Office even in cases where it is wholly obvious that they cannot return to their country of origin.

We are concerned that closing off support to refused asylum seekers will not lead to an increase in returns but will provide individuals with very little incentive to maintain contact with the authorities once they have had their support withdrawn. It is likely that many more will experience destitution and be at risk of rough sleeping. In our experience, many refused asylum seekers are unable to maintain contact with the Home Office by the very fact that they are destitute. Phone cards and travel costs make maintaining communication with the Home Office reporting mechanisms impossible for those who are sleeping rough. These proposals would force even more people into this position.

It is also apparent that there is an incentive in this system to encourage someone to make further submissions in order to access support. There is also likely to be an increase in demand for support from voluntary sector organisations, charities and faith groups who work with the most vulnerable and destitute.

There is absolutely no evidence to substantiate the suggestion that a ‘harsh environment’ or ‘hostile environment’ is a deterrent to those seeking asylum. Conversely, there is evidence internationally to suggest that if an asylum seeker feels that they have been treated fairly and has been informed throughout the process they are far more likely to comply. These proposals would force far greater numbers of people to go underground, and make it much harder to locate them, and as such there is a risk that these proposals will increase rather than reduce absconding.

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

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

AVID is a member of the Refugee Children’s Consortium and as such we would defer to their collective submission in matters relating to the impact of these proposals on families with children.

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

We have no comment to make on the proposed transitional arrangements as we are very much against the implementation of these arrangements on the basis that they will cause further harm to vulnerable individuals and put many more at risk.

6. **The assessment of the impact of the proposals on local authorities (paragraphs 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 (paragraph 42).**

It is not clear what is meant by 'new burdens' in the consultation document. It also seems impracticable to suggest that local authorities will not be impacted upon or that if they are, they are under no obligation to support migrants who are destitute within their boundaries. An increase in refused asylum seekers who have no other means of support will undoubtedly lead to increased pressure on local authority resources, and this is likely to be concentrated in certain areas around the country. To suggest that they can ignore these individuals or families, because the Home Office is doing so, is to disregard the various statutory duties which befall a local authority.

Local authorities have a duty to act in compatibility with the Human Rights Act 1998. They are also bound by safeguarding duties and a duty to protect the welfare of children. There is above all else a moral obligation on local authorities when faced with an increase in rough sleeping and destitution. An increase in destitution is likely also to impact on local support systems, charities, churches, faith groups and other community supports. There may also be an increase in street begging, crime and exploitation. This would be impossible to ignore at a local level despite the Home Office's intentions.

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)**

There is mounting evidence that the best way to ensure that those with no lawful basis to remain here do leave is to improve all stages of the asylum system so that it is fair and fit for purpose. Investment needs to be made in all aspects of the asylum system from initial decision making to removal, to ensure that it is fair and robust.

The speed and quality of decision making need to be looked at urgently. Initial decision making is flawed, with around 30% of initial decisions overturned on appeal. Procedures such as the detained fast track, which has been found on repeated occasions to be unlawful, should be abolished. There is a clear need to restore confidence in the UK's asylum and protection systems- asylum seekers must feel that they have been given a fair, informed and just opportunity to present their cases.

International evidence suggests that those who feel they have been treated fairly and been informed throughout the process are much more likely to comply with returns. Critical to this is the provision of timely, independent quality legal advice, which in the UK has been decimated. Evidence suggests that the provision of quality legal representation in the early stages of an asylum application and for appeals and further representations is critical in restoring confidence in the system from a range of quarters not least those going through the system itself. It is our experience that the series of cuts to legal aid budgets in recent years have made it harder for asylum seekers to access quality legal advice, and as such we see more and more people who feel that their case was not fairly considered. This would be even harder to achieve if the current proposals become a reality and the support options are withdrawn.

The over reliance on immigration detention as a means to facilitate removal has been proven time and again to be expensive, inefficient and unjust. Most recently a cross party

Panel of MPs and Peers concluded the first Parliamentary Inquiry into Immigration Detention by stating that the UK uses detention both disproportionately and inappropriately. The system has grown out of control and is beset with injustices and scandals. Only 49% of those detained are eventually removed from the UK, the remainder are released into the community, their detention having fulfilled no purpose. The panel recommended a time limit on the use of detention and advocates the use of community based alternatives, both of which would substantially reduce the numbers detained and therefore the strain on the public purse. Detention is not effective in ensuring the removal of people from the UK who are deemed to have no right to stay.

**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)**

There is no mention in the Impact Assessment of the impact on those in detention or seeking bail. As such we would suggest the impact assessment is revised as a matter of urgency to take into account this particular group and in light of the various possible consequences outlined in this submission.

**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)**

We would like to see a full equality impact assessment carried out that reflects the full gambit of these proposals, as we feel the current impact assessment is inadequate. It does not include any impact on those in detention. Without this it is impossible to comment with any authority on the impact on groups with protected characteristics.

**For more information about this submission please contact:**

**Ali McGinley  
Director, AVID (Association of Visitors to Immigration Detainees)  
Archway Resource Centre, 1b Waterlow Road, London N19 5NJ  
Ali.mcginley@aviddetention.org.uk/0207 281 0533**