

## What is this guide for?

The Government is consulting on deeply concerning proposals which would do significant harm to children, families, adults and care leavers. They seek to **remove local authority's ability to support families and young people**, and risk **exposing children and adults to homelessness**, as well as leading to more children needing support under Child Protection duties. They restrict access to support for people who have been refused asylum and reduce the right to appeal refusals of support. They also **pave the way for children to be handcuffed and removed by immigration enforcement**.

As a short summary, the main changes being proposed by the Government are:

1. Families refused asylum will no longer stay on section 95 support (S95) - Local Authorities (LAs) will have to consider whether to support them under a new form of support under paragraph 10A of the Immigration Act 2016 (Para 10A). The Home Office will tell LAs whether they think they should support the family or not. This may lead to children being taken into care or families left destitute.
2. Adults refused asylum will no longer be eligible for section 4 support (S4) - S4 will be discontinued. Some people will be able to apply for a new form of support called section 95A support (s95A) but only within 21 days of being refused asylum, with restrictive criteria, and no right of appeal. People with further submissions (further subs) will be able to apply for s95 support.
3. Children leaving care will no longer be eligible for ongoing support from Local Authorities, except in very limited circumstances.

### Read more:

For further explanation of the proposals in the consultation and principles of how to respond, see these helpful resources:

- [GMIAU guide](#)
- [GMIAU briefing for local authorities](#)
- [NRPF Network guide aimed at local authorities](#)
- [Refugee Council Briefing Note for Sector Responses](#)
- [ASAP overview of proposed changes](#)

The law which enables these proposals to take place passed in 2016, but was not implemented - meaning we can't defeat the legislation, and will find it very difficult to make any changes if these regulations are laid before Parliament. This **consultation is therefore one of the only opportunities to highlight the risks of these proposals**, the harm they will do to children and adults, and the problems they are

likely to cause for local authorities and the voluntary sector left to pick up the pieces when people are left without support.

[You can read the full consultation document here](#)

## How to use this guide

The consultation is very technical and mainly aimed at operationalising the system. There are not many opportunities to make principled points of objection. There is the option to submit a written response by email to

**[HO-Consultation-ChildrenandFamilies@homeoffice.gov.uk](mailto:HO-Consultation-ChildrenandFamilies@homeoffice.gov.uk)**. You may wish to do this instead of, or as well as, answering the detailed questions.

This consultation is split into **two parts**. **Part one** covers the proposals on asylum support and local authority support. We have provided explanatory analysis and suggestions to shape responses to all of the substantive questions in this part.

### **This is the online form for Part 1**

**Part two** of the guide focuses on the use of force on children during enforced removals. The phrasing of the questions makes it almost impossible to respond without agreeing to the principle of using force against children. We have therefore not offered a detailed explanation of this part, and recommend people submit principled objections by email.

However, anyone who does wish to respond to part two of the consultation can find the form [here](#).

Please note that in order to submit the online form, you must respond to every question marked with \*, which is almost all of them. If you do not feel able to respond to all these questions, you can still respond by email, using the details above.

**However you choose to respond, we urge as many people as possible to submit some sort of response to these deeply worrying proposals.**

The question numbers in the online form are slightly different to those in the consultation document - we've used the online form numbers here, so answers map directly onto what's being asked in the form.

**The deadline is 28th May**

## Part 1

### General Questions

Both parts of the consultation start with questions about yourself/your organisation and your understanding of the issue - please answer as appropriate for you.

## Section A: Reforms to the support provided by the Home Office under Schedule 11 to the Immigration Act 2016 (the 2016 Act)

### *Changes to support for failed asylum-seekers*

**Question 9:** To help manage the transition for those currently receiving section 4 support and failed asylum-seeker families currently receiving section 95 support, how can the Home Office best communicate the changes to those affected?

- o Guidance on GOV.UK
- o Fact sheets and FAQs for organisations who support those affected
- o Email updates to organisations who support those affected
- o Other communication channels (please specify)

**Commentary:** This question asks how the Home Office should explain the changes to people in the asylum system. The emphasis here seems to be on developing information for advice organisations, rather than directly informing people themselves. It is also unclear why changes would only need to be communicated to people already on support and not people who might apply for asylum (or support) after the changes come into force.

### **Points you might want to make:**

- All of these options seem important.

### **Under “other”:**

You may want to say you oppose the whole principle of the changes and state that here (see GIMAU’s template). [I.e. ‘we believe there should be no transition to the system. If it is to go ahead, then our response to this question is...

- The Home Office should not develop materials only for the advice sector, but should aim materials at people in the system, be they on support or not. It should not be left to an under-funded advice sector, which lacks the capacity to explain these changes. **You may want to give examples of your own capacity and limited resources here.**
- Any materials should take language and accessibility needs into account and not only be provided in written text format.
- Migrant Help and accommodation providers should be provided with sufficient resources to deal with the inevitable increase in requests for assistance that any changes would create. Migrant Help should be contracted to offer in-person sessions to explain these changes to people in the system (**you could include any feedback or data you have about the benefits of face-to-face services compared to remote work**).
- Accommodation providers must be fully involved in disseminating information.
- Induction materials should be changed to provide an explanation of the new system alongside an explanation of how transitional cases will be dealt with

(you might have some evidence about how induction materials are currently understood by the people you work with).

**Question 10:** Are there any other measures the Home Office should consider to help manage the transition for these cases?

- o Yes (please specify)
- o No (please specify)

**Commentary:** This question is about what happens to people who are already on support when these changes come in. It is not clear from the consultation document what the plan is.

The changes will affect people who have been refused asylum - we explain more below. Under the Immigration Act 2016 (IA16), when the changes are introduced, people who are already on support after being refused asylum, and people who are already applying for support (or appealing against a refusal), continue to be eligible for support under the current system. But there will be no right of appeal if the Home Office decides to stop their support. The Home Office is also able to make support conditional on them taking reasonable steps to leave the UK.

The consultation document (*para 8 and footnote 8*) states that they are considering changing what happens for people already on (or applying for) support when these changes come in. This would mean that the new asylum support system (explained below) applies both to people already on support as well as new applicants.

If the government chooses to do this, they will need to put through a new act of parliament, so there will be further opportunity to oppose this change later on. But in the meantime, it is difficult to know how to answer this question.

### **Points you might want to make:**

You may want to answer **Yes**.

- Again, you may want to signal your disagreement with the policy in principle.
- You may also want to oppose the consultation's proposal to apply these changes retrospectively to people who are already supported.
- If the Home Office does want to make changes to the system for people already on support, they should consult meaningfully with people living on asylum support. They should also consult with relevant professionals, including local authorities, NGOs, the legal profession etc. They must fully develop and publish policies and operational plans ahead of the changes to ensure people understand what is coming. There will need to be a very long lead-in time before implementing changes, particularly if the changes are retrospective.
- The Home Office must ensure that Home Office contractors and local authorities are properly funded to absorb the extra work from these changes.

Funding for the legal aid sector must be provided to ensure that there is enough legal advice to fund legal challenges when the Home Office restricts the right of appeal.

### *Section 95A Regulations*

**Question 11:** Do you agree with the proposed length of the grace period being set at 90 days for families with children in their household?

- o Yes (please specify)
- o No (please specify)

**Commentary:** Once a family's asylum claim comes to an end, the new system means s95 support continues for 90 days, during which time the Home Office will encourage them to leave the UK. If, after that time, the family refuses to engage with the returns process, their support will stop.

If they encounter a “**genuine obstacle**” (according to the Home Office's definition) to departure during this 90-day 'grace period', they can apply for a new form of support called s95A. If they have made **further submissions**, they will continue to qualify for s95 support. If neither of these two options is available, they might qualify for support from the local authority (but that support is subject to similar “genuine obstacles” criteria as s95A).

### **Points to consider in your answer:**

#### **You may want to answer No**

- This new system deliberately aims to use the threat of destitution to make families leave. There is no evidence that this approach has ever worked. It is disastrous for the welfare of children. It will increase the burden on local authorities who are already stretched. In the worst case scenario, it may result in children being separated from their parents. For those that remain on support, the system will be hard and stressful. We are concerned that even those who might qualify will go underground rather than have to go through the process (there is evidence that this happened during the section 9 pilot back in 2004/5 but you might also have evidence from your own work, or other research which shows this is a real risk).
- Support should not be stopped for families with children. It is unclear why the timeframe of 90 days has been picked. If going ahead, we suggest a flexible approach based on work with individual families (i.e. at a minimum 90 days grace period with built in flexibility to extend).
- Use any case studies or research you have to show that destitution does not encourage people to leave the UK.

You may want to look at:

- Refugee Action’s best practice guide for AVR, which is based on years of experience of delivering the Choices program:  
[Best Practice Model - NGO delivery of AVR-1.pdf](#)
- Draw on the [Home Office’s own assessment](#) of their failed section 9 family returns pilot (this was a pilot that ran in 2009, which linked continuation of asylum support to taking steps to leave)
- The Refugee Council’s analysis of the section 9 pilot is also worth looking at  
[Inhumane and Ineffective - Section 9 in Practice](#)

**Question 12:** If late applications (outside of the grace period) for section 95A support were to be considered, what circumstances should be taken into account? (Select all that apply)

- None – late applications should not be considered
- Health reasons e.g. hospitalisation or documented illness, preventing an application
- Being detained by the police or other law enforcement agencies
- Evidence that the individual had not been notified about applying for section 95A support
- Other (please specify)

**Commentary:** The Government is proposing the new s95A support to replace parts of s4 support.

A large proportion of people on s4 support are thought to qualify because of further submissions. We don’t have recent statistics on this because the Home Office has not published any. But 10 years ago 50% of s4 recipients qualified under that criteria (*footnote 8, IA16-003.pdf*). These people would receive s95 support sometime after their further submissions have been made. However, only submissions made on “protection grounds” will qualify. It may be that the Home Office tries to decide their further submissions quickly, rather than supporting people under s95.

s95A support would be an option for people who face other types of “genuine obstacles” to leaving the UK. Mainly, this will be people who are too ill to travel and who are taking steps to leave. But the consultation leaves open the possibility of there being other categories who might qualify.

However, the suggestion is that s95A would only be available to people who qualify and apply for it during the “grace period”. This would be 90 days for families with children and 21 days for everyone else. This will leave people destitute if their “genuine obstacle” to departure arises after this time and will inevitably lead to breaches of human rights.

**Points to consider in your answer:**

**You may want to answer ‘other’ and consider points including:**

- There should be no time limit for making applications. “Genuine obstacles” are not time limited: **you might want to draw on case examples from your own work showing that people become eligible outside the grace period.**
- Where a “genuine obstacle” exists, failure to provide support might constitute a breach of human rights. So the government is likely to face costly legal challenges unless there is a broad criteria of support ‘to avoid a breach of human rights’ which is accessible at any time (including outside the grace period).

**Question 13:** If an asylum caseworker is satisfied that there is already evidence that a family on section 95 support meets the eligibility criteria for section 95A support, do you agree that the family should be automatically transitioned to section 95A support (i.e. once the regulations come into force, the family will not need to make a new application for section 95A support themselves)?

- Yes (please specify)
- No (please specify)

**Commentary:** This question envisages the possibility of transferring people from one form of support to another without them needing to make an application. The Home Office has resisted doing this with people on s4 whose further submissions have been accepted as new claims, but the requirement to make a new application increases the risk of destitution, as backed up by a recent Asylum Support Tribunal case (appeal number *AS/25/10/50033*) - a powerful argument in favour of automatic transfer.

### Points to consider making:

**You may want to answer Yes.** A further application is not necessary for a person the Home Office has already accepted is eligible. In addition:

- Requiring people to reapply for support creates uncertainty and, therefore, stress.
- It also leads to the risk of destitution (**you might want to draw on your experiences of people falling through the cracks because of delays in decision making even though they were eligible for support all along or reference the tribunal case mentioned above**).
- The application process is time-consuming. Applying for support requires advice and support from a stretched sector, including adding pressure on Home Office contractors (**add any evidence you have here about people struggling to get through to Migrant Help and/or lodging applications**).
- It might cause eligible families to disengage from the system because they miss important correspondence, or don’t understand what is required of them, or, if they are particularly vulnerable, or are too affected by the process (**you**

might want to add any case examples of people disengaging from the process for these reasons). Applications will need to be processed by the Home Office, taking up contractor and Home Office staff time and costing tax payers' money.

- For these reasons, this system of automatic transfer should apply to everyone (not just families with children). For families with children, automatic transfer is also important, because creating unnecessary administrative hurdles to support would not be consistent with duties to safeguard the best interests of children under s55 Borders, Citizenship & Immigration act 2009.
- If transfer is automatic, people must be told, in writing, about that decision. Equally, if the caseworker decides that a person or family is not entitled to support, they must also be sent that decision in writing so they can take legal advice about next steps.

**Question 14:** Do you agree that an application process for section 95A support should be implemented for all new cases not currently in receipt of asylum support?

- Yes (please specify)
- No (please specify)

**Points to consider making:**

**You may want to answer Yes**

- If people are eligible while in the grace period, which is a narrow window, the Home Office will need an application process to assess the person's need for support. However, the Home Office should consider a shorter process in some cases, eg where the person came off s95 support in the last 14 days. You might want to find examples in your work where people needed to re-apply quite quickly after coming off support to show that the re-application process was a needless extra step.

**Question 15:** What actions do you agree that caseworkers should take to ensure children's welfare when considering discontinuation of support for failed asylum-seeker families? (Select all that apply)

- Referral to children's services
- Safeguarding assessment
- Provision of information on alternative support
- Continued provision of information on family voluntary returns and assistance available
- Other (please specify)

**Commentary:** The Home Office has a duty to safeguard the best interests of children in carrying out all of its functions. This should be the main (but not only) consideration when working with families with children.

Currently, when discontinuing support to families with children, Home Office policies require the approval of a senior caseworker (s4 policy), informing the social services of decisions to stop support (s4 policy and ceasing asylum support policy) and ensuring that decision letters explain why decisions to discontinue support are consistent with the Home Office's s55 duties (ceasing asylum support policy)

**Points to consider making:**

- Consider whether to tick all or some of these provisions

**Under 'other'**

- You may wish to highlight again opposition to the discontinuation of support for families. If it is to happen:
- Clear, consistent communication with the family about what is happening is important. The Home Office already provides information on voluntary returns in a lot of its correspondence - **you may want to think about whether, in your experience, this has any impact on people's decision making.**
- Discontinuation decisions should clearly set out what steps the Home Office has taken to comply with their Section 55 duty, to safeguard the best interests of children.
- You might want to consider whether the Home Office has a duty not just to make a referral but also to follow up to check whether the Local Authority has accepted the referral and identified housing for the family, before the Home Office discontinues support.
- **This is a good opportunity to raise concerns you might have about current poor practice when it comes to stopping support for families with children, by including examples of where they haven't adhered to their existing policies.**

**Question 16:** Do you agree with the proposal to transition failed asylum-seeker families, who have remained on section 95 support, onto section 95A support?

- Yes (please specify)
- No (please specify)

**Commentary:** It's not clear how this question differs from previous questions. But we think they may be asking here about the proposals to repeal the transitional provisions for families already on support. See commentary to question 10 for an explanation of what these are.

Alternatively, they may be seeking your views on the concept of stopping support to families. In which case, see commentary to question 11.

Given the grace period (dealt with in question 11) and the restrictive definition of “genuine obstacle” (see next question), it’s not clear that many families will qualify for s95A support. This question is therefore misleading because it seems to suggest that families will all qualify for s95A.

### **Points you may wish to make:**

You may wish to answer **No**

- You may wish to again object to the proposal of removing s95 support from families and the restrictive nature of s95A support.
- You may want to say that families currently on s95 support should remain on it (and point out the impact on families and LAs of making families who no longer qualify destitute, and of moving families who do qualify to LA accommodation).
- Refer to answers given to other questions

### *Definition of ‘genuine obstacle’*

**Question 17:** In addition to the examples proposed at paragraph 19, is there anything else that could be considered a genuine obstacle that might temporarily prevent a family from leaving the UK?

- Yes (please specify)
- No (please specify)

**Commentary:** s95A replaces s4 for except where people have made further submissions (or have permission to proceed with judicial reviews against refusals of these further submissions).

The list of genuine obstacles given in the consultation document appears to mimic the current s4 criteria except:

- The ‘reasonable steps to leave the UK’ criteria focus on obtaining travel documents. It is not clear yet how that would make a material difference. It is important that people who are in the process of obtaining documents or are taking different steps to leave the UK are also eligible.
- The criteria that support be provided in order to avoid a breach of human rights is replaced by “some other reasons”. Even though the Home Office seems to be taking control of this criteria by saying that the reason must be “in the opinion of the Secretary of State”, this will need to include circumstances where a person’s human rights would be breached.

The courts have stated on more than one occasion that what constitutes a breach of human rights needs to be assessed on a case by case basis.

- In *R (NS) v First-tier Tribunal (Asylum Support) and the SSHD* [2009] EWHC 3819, para 14, the judge found there were a “variety of factual circumstances” in which support would need to be provided.
- In *R (Secretary of State for the Home Department) v First-tier Tribunal (Social Entitlement Chamber)* [2021] EWHC 1690 (Admin), para 137, the judge stated “*It is not necessary, and would not be wise, to attempt to define here the precise boundaries of the category of destitute failed asylum-seekers whose ECHR rights require the provision of accommodation under reg. 3(2)(e). All that is necessary for present purposes is to say that a multifactorial assessment would be required in each individual case*”.

Therefore, in order to stay within the law, the Home Office will need to allow for individual assessments of people’s eligibility and won’t be able to tie themselves to a rigid list of “obstacles”, hence why they include “other reasons” in the list.

The problem with s95A support does not just come from the definition of “genuine obstacle”. The real problem arises because there is no right of appeal against decisions to refuse and stop support. This is very concerning because the Home Office often gets s4 decisions wrong and the alternative remedy, Judicial Review, is inaccessible to many people.

The other problem is the proposal to exclude from support anyone who qualifies outside the grace period. It is difficult to see how this condition might be in keeping with the human rights law. But again, challenging that will require Judicial Review, which is, again, inaccessible to many people.

Note that the “no viable route of return” option is a red herring: no one can qualify for that form of support unless the Home Secretary makes a declaration (the point was tested in court). This happened once in the early 2000 in the case of Iraq and has not happened since.

### **Points you may want to make:**

You may wish to answer **Yes**.

- You may want to use this question to raise concerns about the restrictions around s95A.

The consultation says the Home Office will have discretion to provide support in other cases where there is a ‘genuine obstacle to return’ but is not as broad as the current s4 criteria ‘to avoid a breach of human rights’. There are many examples of cases which might constitute another type of “genuine obstacle” These include:

**You may want to add examples from your own work , ideally with references to real case examples:**

- People with out of time asylum appeals.

- People who are poised to make further submissions but can't for reasons outside their control. The Home Office has never accepted this as a valid reason to provide s4 support. However, their decisions are frequently overturned by the AST. If you want to make this point in more depth, you might want to read [Section 4 and Human Rights - Resource library - ASAP](#)
- People with outstanding Article 8 or other types of immigration applications. (Note that for families with children and outstanding Article 8 applications, support will be available from the local authorities).
- People with outstanding NRM applications.
- People who have started the process of judicial reviewing an asylum decision but have not yet had permission to proceed (people with permission to proceed will be supported under s95 support). The Home Office was forced to provide support to this category of people following the *NS* case quoted above.
- People with other kinds of outstanding legal matters which could include bail conditions that oblige the person to stay in the UK or mandated court appearances.

You might want to refer the Home Office to their own [section 4 policy](#) which, at page 17, provides a non-exhaustive list of situations which may amount to a breach of human rights (including some included in the list above).

**Question 18:** What evidence should be required from applicants to demonstrate a 'genuine obstacle'? (select all that apply)

- Medical reports
- Police reports
- Documentation of ongoing legal proceedings
- Evidence which demonstrates they are trying to obtain travel documentation
- Other (please specify)

**Commentary:** Anyone applying for support or asserting that they are still entitled to support, has the legal "burden" to prove their case. It is therefore reasonable to expect people to provide some level of evidence. However, increasingly, the Home Office is requiring people to provide specific types of evidence which either costs money (like medical evidence or translations) or is very difficult to obtain.

**Points you may wish to make:**

**Under 'other'**

- The Home Office should fund the cost of obtaining medical reports and translations. They should explain that this funding is available in published information and how money can be claimed.
- The Home Office should recognise that some kinds of evidence (ie medical expert evidence) take time to obtain so policies should include ability to

extend deadlines if the person is unable to provide evidence in the required time.

- In the absence of expert reports, evidence like medical records, letters from support workers or advisers should be given proper weight.
- In medical cases, the Home Office should not automatically defer to the opinion of their Medical Adviser over the view of treating clinicians.
- You may want to draw on any examples you have of this evidence working under the current system, either with the Home Office or at the appeals stage.

**Question 19:** Are there any other conditions that you think should be required for the continued provision of section 95A support?

- Yes (please specify)
- No (please specify)

**Commentary:** The consultation document explains (para 14) that support will be subject to the same types of conditions as s95 support. You can find a list of these in the Home Office's Conditions of Support policy.

In addition, the document (para 22) proposes to add a condition that the person takes all reasonable steps to leave the UK whilst on s95A support. This seems inherently absurd. People who are too ill to travel may well not be in a fit state to take steps to leave the UK. In other cases, asking someone to obtain travel documents might be ill-advised if they are still trying to prove their right to stay in the UK.

**Points you may want to make:**

**You may wish to answer No**

- The conditions of support are already very restrictive. You may want to comment on this drawing on your own example of situations which caused hardship as a result of breach of conditions.
- You may want to question the validity of requiring a person to take steps to leave when it is recognised that they are facing a genuine obstacle to departure. You may want to draw on examples in your work of the impact that doing so might have had on people you were supporting (perhaps medical cases) or the inherent contradiction of requiring a person pursuing a claim to stay in the UK to take steps to leave.

**Section B: Reforms to the support provided by Local Authorities under Schedule 12 to the Immigration Act 2016 (the 2016 Act)**

*Changes to the provision of support for failed asylum-seeker families*

**Commentary**

This section of the consultation seeks to reduce and, in some cases, remove the availability of Home Office support to Appeal Rights Exhausted Refused asylum seeking families. It further proposes to limit and prevent Local Authorities from supporting some families and children from Local Authority support under The Children Act. Instead, the Home Office proposes to develop a new support provision to be implemented by Local Authorities outside of the core safeguarding and welfare provisions of the Children Act, under much narrower circumstances determined by the Home Office. These changes only apply to England.

For this section, the briefing provided by NRPF is a good summary: [NRPF Network | Overview of changes and impacts](#)

**Question 20:** For failed asylum-seeker families, do you agree that an application for leave to remain in the UK must be on the basis of Article 8 ECHR as set out in paragraphs 26 27?

- Yes (please specify)
- No (please specify)

**Commentary:** The question is around the core proposal of limiting LA ability to support relevant children to those who have an unresolved Article 8 claim that is not judged to be 'vexatious' by the Home Secretary.

You may wish to answer **No**.

**Points you may wish to make:**

- Other applications should also qualify and support for Children in Need should be based on need rather than immigration status or the status of their applications.
- You may want to consider examples of other cases you've worked with that were in need of support that did not fall within the narrow remit of Article 8.

**Question 21:** For failed asylum-seeker families, do you agree with the proposed factors that the local authority must and must not take into account when considering if condition E is satisfied as set out in paragraphs 26 and 28?

- Yes (please specify)
- No (please specify)

**Commentary:** The proposal requires LAs to assess whether the family have a 'genuine obstacle' to return as detailed earlier in question 15. It clarifies that the availability of medical treatment in a person's home country, or the engagement in medical treatment in the UK are not 'genuine obstacles'. Further, it requires LAs to disapply key provisions of the Children Act to refused asylum seeking children by considering anyone who refuses to return as making themselves 'intentionally

destitute' and therefore not covered by legal duties to accommodate and support under the Children Act. Meanwhile, core child protection duties, and Child in Need duties for reasons other than destitution will remain.

You may wish to answer **No**.

**Points you may wish to make:**

- The proposed factors for the local authority to consider fails to fulfill ethical and moral duties placed on LAs under the Children Act and undermine the professional standards for social workers as expressed by Social Work England.
- Duties under s17 to non asylum seeking children and families who are NRPF will remain, meaning these Government proposals may essentially create a subclass of migrant children who will be without the care, protection and support of the full provisions of the Children Act. Local social services experts must be enabled to assess children on the basis of their needs, this is a fundamental tenet of effective social care practice.
- Social Services are not immigration enforcement and a child's migration status is utterly irrelevant to their safeguarding needs. The principles of the Children Act must be applied to all children without fear or favour.
- Specifically exempting children in receipt of medical treatment presents a significant risk to the safety and welfare of the most vulnerable groups of children in the UK. It will lead to an increase in non engagement from the most vulnerable families with local social care where it is most in need. It will drive significant risk of harm to medically vulnerable children who will be homeless and destitute, and risk making ARE families resistant to engaging with adequate medical care and expert medical safeguarding services.
- Preventing LA social care teams from acting on child 'In Need' concerns would result in increasing the risk of children falling under the higher threshold of Child Protection concerns within the Children Act. Unmet need within any cohort of children will drive those children towards the protection thresholds, risking neglect, abuse or other significant harms. This would significantly exacerbate and compound capacity problems within social care teams, leading to an increase in children with open child protection concerns. This will significantly impact the resources at a Local Authority social care level and consequently impact capacity at child protection legal proceedings, including within court appointed expert teams, and family court systems.
- The risks around children will not disappear, but will re-present into other Local Authority and emergency teams, including schools and healthcare providers who will inevitably be left holding risk without referral pathways. This will create extra advocacy work for other partners which will impact multi-agency working.
- These proposals will create a significant rise in the number of homeless children on the streets.

## *Changes to the provision of support for adult care leavers*

**Commentary:** The proposed changes would disapply Children Act safeguards to children who leave care without legal status.

All of the proposals will simply encourage children under the receipt of LA care and support to leave their safe homes as soon as they become ARE or as they approach their 18th birthdays. Unaccompanied asylum seeking children are one of the most vulnerable groups of children in the UK - these provisions will drive more of them into danger and exploitation.

**Question 22:** For adult care leavers with no legal status, do you agree with the proposed factors that the local authority must and must not take into account when considering if condition D is satisfied as set out in paragraphs 31-32?

- o Yes (please specify)
- o No (please specify)

**Commentary:** The question is asking whether LAs should be limited to the same factors to determine support as above in question 19.

You may wish to answer **No**.

### **Points you may wish to make:**

- You could make similar points to question 19, whilst considering specific vulnerabilities for care leavers. You may wish to cite examples of your work in supporting Unaccompanied Asylum Seeking children as they turn 18, and how these proposals would have made their lives more at risk if they were implemented.
- A failure to provide adequate support to care leavers will increase the risk of absconding, more children will be lost to criminal, sexual and labour exploitation. More children will become non-compliant with immigration processes. More children will be subjected to significant risk of harm.
- The risks around children leaving care will not disappear, but will re-present into adult social care and schools, colleges and healthcare providers.
- The provisions of the Children's Act are built on the fundamental tenements of effective social care practice. Changes to the application of the Leaving Care provisions should only be informed by social care professionals and other experts in the support of children leaving care. They must never be used as a tool of harm to create an environment of hostility around vulnerable children for the purposes of immigration enforcement.

**Question 23:** For adult care leavers with no legal status, do you agree with the proposed proposals set out in paragraphs 33-35?

- o Yes (please specify)
- o No (please specify)

**Commentary:** These sections propose to further limit the application of the Children Act to the narrow criteria for support outlined in the earlier sections.

They prevent the LA from supporting the child via a personal advisor, tuition fees and even prevent the LA from enabling a child to 'stay put' in a foster care placement upon turning 18. Support will only be provided in very narrow circumstances if the child has an undetermined Article 8 claim that is not judged by the HO to be 'vexatious'.

You may wish to answer **No**.

**Points you may wish to make:**

- These proposals will only serve to force more vulnerable children out of regulated care and into significant risk of harm. Removing LA ability to support children engaged in education and training, removing the ability to keep children in safe homes they've already been placed into and instead turning LA Leaving Care teams into immigration enforcement will lead to young people absconding from care and immigration compliance and into more dangerous situations of criminal, sexual and labour exploitation in the UK as detailed above.
- You may wish to cite examples of your work supporting Unaccompanied Asylum Seeking Children who have been resident in foster care or engaged in education and how these proposals would have placed them at significant risk of harm.

**Question 24:** Do you agree with the proposed principles that local authorities must follow when making arrangements for adult care leavers with no legal status, as set out in paragraph 36?

- o Yes (please specify)
- o No (please specify)

**Commentary:** This paragraph enables LAs to continue leaving care support for children who turn 18 with an Article 8 Claim until it's determined, but crucially support will only be available if children have an Article 8 claim, and one that is not viewed as 'vexatious' by the Home Secretary.

You may wish to answer **No**.

**Points you may wish to consider:**

- Support for children leaving care shouldn't be based on their immigration status but their need for support as assessed by a relevantly skilled professional, as a first principle of all child protection and safeguarding approaches.
- As detailed above, failure to adequately support children leaving care based on their needs will increase the significant risk of harm to them both before and after they turn 18. This will drive up caseloads and costs for statutory resources at a local level as a response to the increased risk levels these children will be subjected to.
- You may wish to include examples from your practice of children who turn 18 and would fall outside of the narrow threshold of Article 8 claims, but have other forms of status or immigration applications outstanding.

**Question 25:** Are there other principles that should be considered?

- Yes (please specify)
- No (please specify)

You may wish to answer **Yes**.

**Points you may wish to make:** The proposal again fails to centre childcare support around the child's needs. This should be the only determining factor for support for any child under both the Children Act and the Leaving Care provisions.

**Question 26:** Do you agree with the proposals set out in paragraph 37?

- Yes (please specify)
- No (please specify)

**Commentary:** These paragraphs require the LA to maintain contact with the child while arrangements are made for their removal from the UK or return to their home country.

You may wish to answer **No**.

**Points you may wish to make:**

- Local Authority specialist child safeguarding support should have no involvement in the return of children to their home country. This is a clear conflict of interest and risks undermining the trust children and families have in their social care professional, and as such it risks undermining all safeguarding approaches to the child. This will foster significant barriers between local social care support and all families with insecure immigration status and presents a significant risk of harm to migrant children across the board.

- You may wish to cite examples from your work of community mistrust in local social care and the efforts Local Authorities have made to overcome these.

**Question 27:** Do you agree with the proposed changes to the availability of higher education tuition grants for the categories of adult care leavers set out in paragraph 38?

- o Yes (please specify)
- o No (please specify)

**Commentary:** This exempts LAs from providing grants for education and training for refused children leaving care. These changes are in paragraph 39.

You may wish to answer: **No.**

**Points you may wish to consider making:**

- The provision of training and education is a core tool for continued engagement in safety. Prohibiting LAs from providing this support is another erosion of the role of safeguarding professionals in assessing need and providing adequate responses to identified risk to keep children safe.

## Additional Questions on Impact Assessments

**Question 28:** Is there anything else you would like to add regarding the proposed reforms to asylum support?

**Points you may wish to consider:**

You might want to use this section to object to bringing in these proposals on point of principle. Other points include:

- The consultation goes much further than the Restoring Order paper or the title of this document. This is not just about returning families. The IA16 proposals, in their entirety, affect everyone in the asylum system.
- The Home Office has not published any statistics allowing us to understand the number of people who will be affected by these changes. There are no breakdowns given of people currently on s4 support who might qualify under the new s95 and s95A conditions. With regards to families with children, they have only said that “around a third of all failed asylum seekers receiving support were part of a family group”. However, without knowing the number of refused asylum seekers receiving support this fraction is almost meaningless. This is deeply unhelpful as we are unable to assess the real impact of bringing in the IA16 provisions.
- Consideration must be given to the impact on the different nations of the UK. Since local authority support is a devolved matter and the provisions under

para 10A and 10B only apply to England, there is a risk of deepening inequalities between nations and driving internal relocation of displaced families.

- Capacity, cost and resource implications: emphasise the cost of implementation and enforcement for local authorities, social care, NHS, the Home Office, courts and other services.
- The lack of a right of appeal in s95A cases will result in people being refused support when they are entitled to it, repeat applications for support and judicial reviews, which are more costly than appeals.
- During the passage of the IA16 in parliament, the government committed to consultation on the regulations that are needed for the IA16 to function (see bottom of page 3 of the attached letter). We trust that this commitment will be upheld.
- On top of consultation on the regulations, it will be important that the Home Office work with local authorities and other government departments so they are fully informed of what is coming.
- Reemphasising that these proposals seek to drive immigration control to the doors of social care professionals, a team traditionally centred around child safeguarding without the skill, knowledge or resources to implement these proposals. This approach goes against social workers' professional standards, particularly 'promoting the rights, strengths and wellbeing of people, families and communities'. It will cause a moral conflict within social work practice which creates a risk of personal bias informing social worker approach. Again, this will have a significant impact on wider cohorts of children as it actively promotes an immigration-based negative bias within social care practice.
- They're unworkable from a social care perspective and would be applied inconsistently due to lack of training in social care around immigration issues. It will result in some social workers thinking that all asylum seeking children are excluded from support, which will cause increased risks for families who are not ARE in addition to those being targeted for exclusion. The confusion and inconsistency will impact multi-agency approaches to safeguarding children and fundamentally undermine the safety of all children with any form of migration status.
- Using Child in Need support to drive immigration enforcement will fracture the relationship between Local Social Care teams and migrant communities, especially families with insecure immigration status, it will drive fear and put barriers to family willingness to engage with social care.
- Social care legislation must solely be centred around child wellbeing and safeguarding, not immigration control. To depart from this principle threatens the fabric of children's wellbeing throughout the UK.

- Serious Case reviews already demonstrate the additional risks children in families with insecure immigration status face; these proposals run counter to all learning within social care practice.

**Question 29:** Are there any comments you would like to add concerning the impacts on protected characteristics under the Equality Act 2010 or on children and/or vulnerable people as a result of the proposed support changes?

**Commentary:** The Home Office itself told Parliament that the Equality Impact Assessments and Children’s Impact Assessments for the consultation proposals were still “in development” when the consultation launched. That means stakeholders are being asked to comment on reforms affecting children and families before the Government has published the full rights and impacts analysis that should inform meaningful scrutiny.

**Points you may wish to make:**

- These proposals will have a disproportionate effect on women, children and those who are vulnerable and have health issues.
- The Government has not published these assessments. Any reform should be preceded by the publication of full Children’s Rights and Equality Impact Assessments, local authority cost modelling, information about the number of people that are estimated to be affected (with a clear breakdown between adults and children), and the Home Office evidence supporting the necessity of the proposed changes.
- These assessments should have been published in advance of the consultation to make it meaningful.