# PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

## Public Bill Committee

# IMMIGRATION BILL

*Twelfth Sitting*

*Thursday 5 November 2015*

*(Afternoon)*

CONTENTS



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**Monday 9 November 2015**

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES

**The Committee consisted of the following Members:**

*Chairs:* Mr Peter Bone, † Albert Owen

† Blomfield, Paul *(Sheffield Central)* (Lab)
† Brokenshire, James *(Minister for Immigration)*
† Buckland, Robert *(Solicitor General)*
† Champion, Sarah *(Rotherham)* (Lab)
Davies, Byron *(Gower)* (Con)
† Davies, Mims *(Eastleigh)* (Con)
† Elphicke, Charlie *(Lord Commissioner of Her Majesty's Treasury)*
† Harris, Rebecca *(Castle Point)* (Con)
† Hayman, Sue *(Workington)* (Lab)
† Hoare, Simon *(North Dorset)* (Con)
Hollern, Kate *(Blackburn)* (Lab)
† Lewell-Buck, Mrs Emma *(South Shields)* (Lab)
† McLaughlin, Anne *(Glasgow North East)* (SNP)
† Newlands, Gavin *(Paisley and Renfrewshire North)* (SNP)
† Smith, Chloe *(Norwich North)* (Con)
† Starmer, Keir *(Holborn and St Pancras)* (Lab)
† Tolhurst, Kelly *(Rochester and Strood)* (Con)
† Whittaker, Craig *(Calder Valley)* (Con)

Marek Kubala, Joanna Welham, *Committee Clerks*

**† attended the Committee**

# Public Bill Committee

*Thursday 5 November 2015*

*(Afternoon)*

[Albert Owen *in the Chair*]

## Immigration Bill

### Clause 32

Continuation of leave: repeals

2 pm

*Question proposed,* That the clause stand part of the Bill.

**The Solicitor General (Robert Buckland):** Clause 32 repeals section 3D of the Immigration Act 1971, which extends a migrant's leave where that person's leave to enter or remain is revoked or was varied with the result that he or she has no leave to enter or remain in the United Kingdom, and an appeal or administrative review of the variation or revocation decision could be brought or is pending.

Following the changes to the appeal system introduced by the Immigration Act 2014, it is no longer possible to appeal against the revocation of leave or the decision to vary leave where the consequence of that variation is that the person has no leave; it is also not possible to seek an administrative review of those decisions. Where somebody still has a pre-2014 Act appeal pending against the decision to revoke immigration leave or a relevant variation decision, there are transitional arrangements in place so that their leave extended under section 3D continues until their appeal is finally determined.

In a nutshell, given that section 3D no longer serves any purpose, it is right that it and references to it be removed from the statute book to avoid unnecessary confusion, and indeed to nod to a recent judgment by the Court of Appeal in which Lord Justice Elias said that he was concerned about over-complexity in the law in this area. It is in pursuance of that important function that I move the clause.

**Anne McLaughlin** (Glasgow North East) (SNP): The clause will also cause problems for anyone seeking to have their claim handled in a just manner, because leave can be revoked if a person no longer meets the requirements for leave: for example, if someone is here as a spouse and they split up with their partner. Often, nobody is at fault, but imagine being the injured party who, to add insult to that injury, is then considered not to have the right to live where they have been living. By forcing the departure of those whose leave has been revoked but who are already well integrated into society and are law-abiding citizens and who have freshly been deemed illegal for whatever reason, including the one that I just mentioned, but who may in fact not be here illegally, the Government are making it difficult for justice to be done.

No immigration worker will make a correct judgment in all cases. I think we have all accepted that the accuracy of far too many judgments has been shown to be wanting by an appeal. The Minister talked about his frustration that Opposition Members seem to refer constantly to wrong decisions by the Home Office, and he is right—it is not always the Home Office's fault—but sometimes it is about things that, although they may be the fault of the person applying, are trivial. For example, I had a friend who was married to a Sri Lankan and wanted her husband to live here with his wife and child, understandably. She was refused, and she had to start the entire process all over again because she inadvertently enclosed a photocopy of the wedding certificate instead of the original. *[Interruption.]* I can see from the Solicitor General's response that we all agree that that is trivial. Sometimes it is the fault of the person applying, but the reasons are silly.

**The Solicitor General:** I am very familiar with cases of that nature, as I have many such constituency cases; I know exactly what the hon. Lady is talking about. There is an important policy purpose behind ensuring that we have original documents. I think that she can see the obvious point about the danger of relying on a copy that might not be a true representation of the original. If that is explained clearly to people—the guidance discusses the need for original documents rather than copies—hopefully such misunderstandings will cease. Probably in the case in question the application is entirely genuine, but there is a need to rely on original documents, and that is important.

**Anne McLaughlin:** I do not disagree, and my friend was very aware of the need to submit the original document; she just put the photocopy in accidentally without realising, but that meant that she had to start the entire process over again—and, if memory serves me correctly, she had to pay all over again. As well as people understanding how important it is to do the correct thing and provide the correct information, it would be useful if the Home Office could take into account the fact that someone made a mistake, and just ask them to sort it out. That is just one example.

The Government are looking at this situation the wrong way around. Instead of improving the accuracy of the original judgments or taking into account what we just talked about—the fact that problems could be sorted out relatively quickly—if feels as if they are trying to hinder reviews and appeals, worthy or not, by hampering appellants in submitting their claims. Human error alone will lead to faulty judgments which—given the consequences, such as having to appeal from overseas, or criminalisation for remaining in the UK—will inevitably lead to human suffering that could have been avoided. That is why previous legislators included a workable administrative review and appeals system. Those of us who have knowledge of that system will be familiar with its problems, but they pale into insignificance in comparison with the general policy of appeals from overseas and the criminalisation of those whose leave has expired.

There should be no doubt: those who support part 4 of the Bill will needlessly split up families. The fact that it will be impossible for families to stay together while appeals are dealt with makes a mockery of the Government's professed support of family values.

The family life of British citizens with foreign family members could hinge on such minor matters as faulty judgments, typos, stray documents or, to use my recent example, the accidental submission of a photocopy, which should be picked up during the appeal. Tat is no way to run an immigration system.

**Keir Starmer** (Holborn and St Pancras) (Lab): I want to make sure I have understood the measure. As I understand it, section 3D leave was for people whose leave had been cancelled or curtailed by the Home Office for various reasons including deception, so that they could bring an appeal—so they would be entitled to remain to bring an appeal. That seems sensible. There might be an error and it is usually best to put errors right. I have worked in a big organisation of 9,000 staff making hundreds of thousands of decisions. There is an always an error rate, however well trained the staff. It seems sensible therefore that if there has been an error the person in question should have the right to remain and appeal.

What happened, I think, is that the right of appeal was removed last year, but on an undertaking that there might be administrative review. Again, that might be quite sensible: we will remove the right of appeal but provide a different mechanism so that someone can simply correct a wrong decision. I understand that the administrative review procedure has not been put in place. Now, in cases where a decision is made to cancel someone's leave, the Government want to strike out section 3D on the basis that since they will not let the individual affected do anything about it, there is no point in it. So when a wrong decision is made about an individual, what are they to do—in a nutshell?

**The Solicitor General:** I am grateful to hon. Members for their contributions to the debate. The hon. Member for Glasgow North East is concerned about the availability of administrative review. I am grateful for her more general observations, and I hope I answered them in response to the debate on clause 31; I hope that she will forgive me for not repeating my observations on those points. I mean no disrespect.

On the hon. Lady's specific points, we do not think that administrative review should be available where a person has their immigration leave cancelled or revoked. There are a number of circumstances where it would not be appropriate. One example would be where a migrant worked in breach of their immigration conditions and had their leave cancelled. Another example would be a person whose conduct or behaviour has made it undesirable for them to remain here—people who facilitate sham marriages, for example.

**Anne McLaughlin:** Did the Solicitor General just say that the reason there should not be administrative reviews is because there are a number of circumstances in which they would not be appropriate? Surely we can surely write out the right for cases where it would not be appropriate, but still allow administrative reviews? If there are some cases where review would not be appropriate, there must be some where it would be very appropriate.

**The Solicitor General:** I will come to that point and the point that the hon. Lady made about error. It is an amplification of the intervention she kindly allowed me to have. In place of administrative review, the Home Office has an error correction policy for when immigration leave is cancelled. So an application for error correction under the policy does not extend the immigration leave, but it does allow errors to be raised with the Home Office. We are getting the balance right between effective immigration control on the one hand and the fairness point that the hon. Lady quite properly raised.

**Keir Starmer:** Will the Solicitor General give way?

**The Solicitor General:** I will in a moment. I just want to finish this point. The Home Office contacts people who make applications and who have paid a fee to give them the opportunity to correct errors in their applications.

**Anne McLaughlin** *rose—*

**The Solicitor General:** There are examples. The case of Iqbal, which we cited yesterday, was an example where individuals were invited to correct errors. So the process works. Statistics show that only 2.45% of applications were found to be invalid—invalid is when an application is made, but because of error it is of no effect, so the process is having an impact, which is good. I accept the point that the hon. Lady made about the case that she raised, but we believe that the error correction policy fills a particular gap and addresses the mischief that hon. Members have raised.

**Keir Starmer:** An error correction mechanism is a very good idea. I tried to introduce one in the Crown Prosecution Service to avoid people having to go to court. It provides a much quicker process and allows staff to understand where errors have occurred and correct them, but it is not foolproof by any stretch of the imagination, and there will be wrong decisions that are not picked up by an error correction mechanism. What happens in such cases? Simply saying there are some people who might bring inappropriate appeals, therefore there should not be a right of appeal, is, when broadened, an argument against any appeal in any case of administration decision. Of course some people will bring inappropriate cases.

**The Solicitor General:** Let us not forget the context here. We are dealing with situations in which people have had their leave revoked or varied because of due process, and a trigger event will have allowed that to happen. It is not fair to say we should look at such cases as a blank page where an administrative review might be the first opportunity for the issues to be aired. There is a residual and important right to judicial review of Executive decisions as well, so the checks and balances are there.

**Keir Starmer:** I am interested in this because, as we have gone through the proceedings, every time we hit the problem that there is no simple appeal or review, the suggestion is to go for a long shot—judicial review, which everyone knows is a long and expensive process. Has there been consultation with the judiciary on the policy of requiring all these cases to go to the High Court by way of judicial review as the only avenue of review? I think there would be concern about all these cases going to the High Court when they could have been dealt with much more cheaply, swiftly and efficiently.

**The Solicitor General:** in the context of how we approach judicial review applications, the hon. and learned Gentleman will remember that concern was expressed a few years ago by members of the coalition Government about the rise in judicial review applications. He will know that the lion's share arose from immigration cases. As a result of the adjustments and changes made under the previous Government's legislation, that rise will be checked. There will therefore be a situation in which, rather than adding to an additional upward trend, this measure will make little difference. To respond to his question, I do not have a formal assessment, but I am not overly alarmed or concerned about a potential spike in applications for judicial review.

2.15 pm

There is a temptation for us to start moving away from the subject matter—I know you would be quick to intervene and rule that out of order, Mr Owen—so let us not forget that the clause is all about tidying up legislation. The purpose of section 3D no longer exists; in many ways, it is now an artificial construct. Bearing in mind the need for members of the public and legal representatives to be able to navigate their way through immigration law as clearly and effectively as possible, it is right for us to clear the decks and remove superfluous clauses and provisions so that immigration law reaches a state of clarity and simplicity, which we would all desire. For those reasons, I commend the clause to the Committee.

*Question put and agreed to.*

*Clause 32 accordingly ordered to stand part of the Bill.*

**Clause 33**

DEEMED REFUSAL OF LEAVE TO ENTER: REPEALS

*Question proposed,* That the clause stand part of the Bill.

**The Solicitor General:** I hope I can deal with clause 33 as expeditiously as possible. As I mentioned earlier, the 2014 Act reformed rights of appeal and refocused the appellate system on appeals against decisions that affect protection and human rights claims. Before the changes made by the 2014 Act, there was a right of appeal where leave to enter the United Kingdom had been refused. Paragraph 2A(9) of schedule 2 to the 1971 Act provided a right of appeal where a person who had been granted entry clearance prior to their arrival had had that clearance cancelled on arrival at the UK border. It did that by providing that such cancellation decisions equated to refusals of leave to enter—in other words, it brought them within the definition of section 3D of the 1971 Act.

The changes made to appeal rights by the 2014 Act mean that there is no longer a right of appeal against the decision to refuse leave to enter, so paragraph 2A(9) no longer serves any purpose. For the same reasons I outlined earlier, it is right to remove it from the statute book to avoid unnecessary confusion. There is a saving provision in place to preserve the appeal rights of persons with a pending appeal against the cancellation of entry clearance under the previous appeals regime. Transitional provisions are in place so that there is no undue prejudice to individuals whose cases are currently in the system. For those reasons, I commend the clause to the Committee.

*Question put and agreed to.*

*Clause 33 accordingly ordered to stand part of the Bill.*

**Clause 34**

SUPPORT FOR CERTAIN CATEGORIES OF MIGRANT

*Question proposed,* That the clause stand part of the Bill.

**The Minister for Immigration (James Brokenshire):** We now move to a new part of the Bill, part 5, which deals with support for certain categories of migrant. Some detailed amendments have been tabled to schedule 6, and clause 34 is almost like a bookmarker to insert schedule 6 into the Bill's substantive provisions. It might help the Committee in its consideration of those amendments when we debate schedule 6 if I set out the Government's overall intentions in introducing the measures and explain how they are intended to operate.

The starting point should be the basic policy that we are seeking to advance. We say that it is not appropriate for public money to be used to support illegal migrants, including those whose asylum claims have been found to be without merit, who can leave the UK and should do so. That is the starting point for understanding how schedule 6 will apply. It will restrict the availability of such support, consistent with our international and human rights obligations, and will remove incentives for migrants to remain in the UK when they have no lawful basis for doing so—I stress the latter point. In doing so, the Bill addresses long-standing issues with the system of asylum support.

**Paul Blomfield** (Sheffield Central) (Lab) *rose—*

**James Brokenshire:** If I may, I will finish this point and then give way.

The system that Parliament legislated for in the Immigration and Asylum Act 1999 to discharge our international obligations towards those seeking asylum in the UK is too often used to support those whose asylum claim has failed and who have no lawful basis to remain in the UK. On 31 March this year, we were providing support to an estimated 15,000 failed asylum seekers, their dependants and others. In 2014-15, such support cost an estimated £73 million.

**Paul Blomfield:** The Minister said a moment ago that the Government's intention for this measure is to remove the incentives for people to stay in the UK. Does he acknowledge that the Home Office's pilot, among a wealth of other evidence, demonstrated that there is no indication that this measure will succeed in helping the Government to achieve that policy objective?

**James Brokenshire:** The hon. Gentleman, in his normal, sage way, has pre-empted me. I intend to address the 2005 pilot directly. I will explain to the Committee why we judge that the arrangements in schedule 6 are different and why they are appropriate. In some ways, we have learned from the provisions that applied under the previous Labour Government.

Let me return to my principal point about providing support for those whose appeal has been analysed by the court and who have, as the lawyers would say, exhausted their appeal rights in relation to asylum and article 8 and have not made further submissions—we will discuss a detailed amendment to schedule 6 that pertains to further submissions. We believe it is wrong in principle to provide support in those cases, because it sends the wrong message to people who do not require our protection and seek to exploit the system. It also undermines public confidence in our asylum system.

Under the current system, failed asylum-seeking families continue to receive Home Office support as though their asylum claim and any appeal had not failed. The onus is on the Home Office to demonstrate non-compliance with return arrangements for support to be ceased. We believe we need a better basis on which to engage with those families, with local authorities and others, and a process that secures more returns. Our judgment is that schedule 6 will support that aim. We should focus on supporting those who have not yet had a decision on their asylum claim and who may need our protection, not on those who the courts have agreed do not need our protection and should leave the UK, subject to certain caveats in relation to proposed new section 95A of the Immigration and Asylum Act 1999, which we will debate in detail.

Schedule 6 makes two key changes to the existing support framework. First, those who have children with them when their asylum claim and any appeal is rejected will no longer be treated as though they are still asylum seekers. They will cease to be eligible for support under section 95 of the 1999 Act. Secondly, section 4 of the 1999 Act will be repealed, and support will be provided to failed asylum seekers and any dependent children only if there is a genuine obstacle that prevents them from leaving the UK. I appreciate that those changes raise important issues, as our public consultation highlighted. We have provided members of the Committee with a copies of our response to the consultation and the policy equality statement on these measures. I look forward to discussing many of those issues when the Committee debates the amendments to schedule 6.

**Keir Starmer:** The Minister dealt with the issue of cost and said that money ought to be spent on other cases, and he has now moved on to children. A concern was expressed in evidence about the duties under the Children Act 1989. Has there been an assessment of the likely cost overall—not to the Home Office budget but to public funds—of bringing these provisions into effect? In other words, has there been an assessment of how many are likely to go to local authorities and what the cost will be?

**James Brokenshire:** The hon. and learned Gentleman will have, in his detailed way, seen the impact assessment, which gives the macro impact on cost savings. I would make the point—which I will underline in further comments—about the new burdens analysis that we will conduct with local authorities. I have been clear in all my discussions with local government and other partners that this is not about trying to move a cost from one budget to another.

We will come to the detailed provisions of the separate support under schedule 3 to the Nationality, Immigration and Asylum Act 2002 which local authorities may have a duty to fulfil under their human rights obligations. There is a separate mechanism that can apply and can fall on local authorities in those circumstances. It is precisely the work we are doing with local authorities to ensure an effective join-up between this arrangement and the separate schedule 3 arrangements which would apply to local authorities. I will come back to some of these points when discussing later amendments, because I know that some of the cost issues and minimum support requirements are further explored by them.

We have reflected carefully on what the consultation responses said about the experience of the 2005 pilot of the cessation of support for failed asylum seeker families under schedule 3 to the 2002 Act. We have taken account of that experience in providing, under this Immigration Bill, what we judge is a different approach.

First, under schedule 3 to the 2002 Act, the onus is on the Home Office to show that a family is not co-operating with arrangements for return. To qualify for support under new section 95A of the 1999 Act, as provided for by this Bill, the onus will be on the family to show that there is a genuine obstacle to their departure.

Secondly, the 2005 pilot involved a largely correspondence-based process for terminating support in family cases that had exhausted their rights of appeal in the 11 months prior to the commencement of the pilot, so some of the cases in the study were actually quite old. By contrast, the new approach will involve a managed process of engagement with the family, in tandem with the local authority, following the end of the appeal process, to discuss their situation and the consequences of not leaving the UK in circumstances where they can do so. Rather than this being a sudden change, it is part of a continuing process and dialogue with those families who will be affected.

Hon. Members will no doubt have noted that the transition provisions make it clear that this is about new cases, thus underlining that sense of a transition from appeal rights being exhausted and the cessation of potential support. No doubt we will get into the cooling-off period in moving from that arrangement to the cessation of support. That is something we are still reflecting on, on the basis of the submissions we received during the consultation. It is important to see this in that way: Home Office support will remain available if there is a genuine obstacle to the family leaving the UK.

Thirdly, we think circumstances have changed. It is now generally recognised that the taxpayer should not have to support illegal migrants who could leave the UK. We intend to work closely with partners in local government and elsewhere to achieve that outcome, because this is not simply about changing the law; rather, it is about some of the practical join-ups for local authorities. As I have reflected, some of the other regimes equally apply to local government.

We continue to consult with local government colleagues, in particular on the details of the new arrangements. I am grateful to the Local Government Association, the Association of Directors of Children's Services, the No Recourse to Public Funds network and other colleagues for their continued engagement with the Home Office on these issues. All are clear that we want to reduce overall costs to the public purse and encourage and enable more migrants, without any lawful basis to remain here, to leave the UK in circumstances when they can do so.

**Chloe Smith** (Norwich North) (Con): I recall from our evidence sessions that many of the organisations that the Minister has mentioned agreed wholeheartedly that we need to be able to control our costs where somebody is not eligible for support in order to be able to do more where somebody is—I have in mind the 20,000 Syrian refugees whom we all wish to welcome to this country. Does the Minister agree?

2.30 pm

**James Brokenshire:** My hon. Friend's point relates to my earlier point about confidence in the asylum system and ensuring that we are using public funds effectively and appropriately. The Committee may differ on that principal point, but I respect that and we will no doubt come to discuss it.

I return to the point that, for those who have had an asylum claim assessed and considered invalid by the court and who have not made further submissions, then unless there are obstacles that mean that they should not return, we say that, as a matter of policy, public funds should not remedy that. The remedy is that those people leave.

**Keir Starmer:** Will it not cost more if families disappear, as they did under the 2005 pilot, when 16 families dropped off the radar? I do not know whether they were ever picked up again. Does the idea that money can be saved and slipped into the Syrian refugee budget take families disappearing into account?

**James Brokenshire:** I was certainly not saying that money would transfer in that direct sense. As the hon. and learned Gentleman will know, we seek to provide support through the official development assistance that applies in the first year. That was why I was making a point about overall confidence in the asylum and immigration systems and in the rules being upheld. That is the broader issue.

I underline that we are continuing, with local government colleagues, to look at whether further provisions would assist in reducing costs, perhaps in respect of schedule 3 to the 2002 Act, which controls access to local authority social care for migrants without immigration status. We are listening carefully to what local authorities are telling us about the scope for simplifying and strengthening some provisions. Some of the processes are quite clunky and complicated, such as the separate human rights assessments that local authorities must undertake, so we are having discussions with local government about implementing a clear, streamlined process that still recognises existing human rights obligations. We need to understand that properly and appreciate how the asylum and immigration systems sit alongside each other so that safety nets operate effectively.

On the hon. and learned Gentleman's point about people disappearing, this process is part of a continuum and is not a sudden arrangement. We will reflect further on the cooling-off period from indications being made and families being reminded of what will happen, which is currently 28 days. Discussions on such issues continue. We want families to be in no doubt. Clarity in the immigration system, in particular around assisted return, as we have debated previously, is really important to help people to make decisions.

**Keir Starmer:** I am grateful to the Minister for his generosity in giving way. I understand his point about the policy objective and the rules on removal being complied with, but in circumstances when the desired objective is not achieved and when the family does not go and there are children, will the cost to the taxpayer go up or down as a result of the change?

**James Brokenshire:** The hon. and learned Gentleman is clearly thinking about some of the hypotheticals and the relationship with local government. Our regulatory impact assessment has given us the best assessment based on our analysis of the operation of the scheme in terms of the potential savings. It has therefore taken into account some of those detailed thoughts on whether this represents a transfer of a burden from one place to another. We continue to discuss that with local government, because it concerns the new burdens analysis. I believe that is the point the hon. and learned Gentleman is trying to make: what the new burden on local government might be as a consequence of these changes and how local government might see some issues arising. It is precisely on that detail that we are continuing our engagement with local government, in order to understand that as clearly as possible and to reassure local authorities that this is not about a budgetary transfer.

**Keir Starmer:** I am grateful to the Minister for allowing me to explore the matter in this iterative way. In order to make that assessment of cost, there must be some analysis of how many families will not leave as a result but will, in fact, stay. It is not possible to work out the cost to local authorities, however streamlined and whatever the discussions, without having in mind an assessment of how many families will not leave and will have to be provided for. What is that number and percentage?

**James Brokenshire:** Obviously we are looking at schedule 6 provisions and the changes under the new section 95A support mechanism within schedule 6. The regulatory impact assessment sets out our best analysis of the overall savings to the public purse, and it would be invidious for me to try to provide percentage assumption rates.

This is about departures and encouraging people to leave. It is also about section 95A support where there are barriers to removal. That is likely to be where there is no documentation or difficulty in obtaining it to facilitate departure, or medical issues. Let us not forget that, in conducting its duties, the Home Office will have obligations under section 55 of the Borders, Citizenship and Immigration Act 2009 which it will need to factor in when taking decisions.

**Mrs Emma Lewell-Buck** (South Shields) (Lab): When referring to the impact assessment, the Minister said the cost was around £32 million. Is that not a drastic underestimation? I do not believe that takes into account the local authorities' statutory duties under homelessness legislation, the Children Act 1989 or the principles of the Care Act 2014. Will the Minister please clarify?

**James Brokenshire:** I think the hon. Lady is alluding to some of the points I discussed concerning schedule 3 of the 2002 Act: the Human Rights Act assessments

that local authorities need to undertake. We seek to continue our engagement with local authorities about the new burdens assessment.

The published impact assessment will be revisited and republished, if required, in relation to further analysis of the new burdens work. Although we have published our regulatory impact assessment based on the evidence provided at the date of the Bill's publication, it will continue to be reviewed in the light of further discussions with local authorities.

It is not that our minds are closed on that. Rather, having given the best assessment of the savings that the hon. Lady has identified, we will keep this matter under examination. If the measures led to, or risked leading to, migrants being supported by local authorities when they would previously have been supported by the Home Office, we have made it clear through the consultation that we would wish to discuss and address those impacts and their financial implications with local authorities and the devolved Administrations in accordance with the new burdens doctrine.

**Mrs Lewell-Buck:** I think what the Minister is saying is that the £32 million is an underestimate.

**James Brokenshire:** Not necessarily.

**Mrs Lewell-Buck:** I am struggling with this. The Minister says that conversations are going on with local authorities, but should those conversations not have happened before the legislation was put in place? It seems a bit back to front to me.

**James Brokenshire:** No. As always with legislation, we have to have it in place and, as a result, that sometimes provokes further discussion. We have been running a consultation, which we published earlier this week, and the hon. Lady will find in it the response and the feedback, as well as some of the points that we have said we will reflect on further. That is the right and appropriate way in which to deal with the matter. We judge the provisions to be appropriate to the policy intent that I have outlined, so the clause should stand part of the Bill.

**Keir Starmer:** The Minister rightly makes the point that if there are rules, they should be complied with, and that there is a public interest in ensuring that rules are complied with. I concur with that. He said that another objective behind the measure is to facilitate removal, according to the rules. That is the objective, but one of the concerns about the clause is that all the evidence suggests that that objective will not be fulfilled.

I will turn first to the 2005 pilot and then address the Minister's points about what is in the Bill being different. The pilot, under the existing scheme, involved 116 families, and there were two reports or evaluations, one published in 2006 and the other in 2007. It is worth running through some of the numbers, because they show a lot of the causes of concern.

The 2006 evaluation, published by the Refugee Council and Refugee Action, found that of the 116 families, only one left the country as a result of the pilot under section 9 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, while three signed up for voluntary return and another 12 took steps to obtain travel documents. By contrast, 32 families—I think I said 16 earlier—went underground, without support, housing or access to health or welfare services. That was the impact. Nine families were also removed from the pilot because their cases were reviewed as part of the process and it was found that their claims should not have been refused. Many of the families had serious health and mental health problems. The 2006 review therefore found the approach in the pilot to be wholly counterproductive, even for the Government's own objective.

The Home Office review was published a year or so later, in 2007, and concluded:

> "In the form piloted section 9 did not significantly influence behaviour in favour of cooperating with removal—although there was some increase in the number of applications made for travel documents. This suggests that the section 9 provision should not be seen as a universal tool to encourage departure in every case."

The scheme has been rarely if ever used since, because it was considered a policy failure, but now that failure is to become the norm under the provisions of the Bill. The Minister said that in the Government's judgment there was such a difference between the new scheme and the one piloted in 2005 that the results of the pilot were unlikely to be repeated. He gave three reasons. First, the onus is now on the applicant and not on the Home Office to prove or disprove, as the case may be, the obstacle to return. I will hear whatever the Minister has to say on that, but I am not sure that that is a reason. It is a difference between the two schemes, but why that difference makes it more likely that people will leave, rather than not leave, as in 2005, he will have to enlighten me about.

Secondly, the old scheme was correspondence-based, but the new one is a managed process involving contemporary decisions. I can see that that makes a difference and it might have some impact, but the results of the pilot were so profoundly claimed by pretty well everyone to be a complete failure that it is hard to see that that difference will be the silver bullet.

2.45 pm

The third reason the Minister gave was the change of attitudes to whether support should be provided for that category of individuals. Again, he will have to enlighten me as to why that is thought to be a reason why the objective of people going has changed in the past 10 years. How that impacts on the minds of the families is difficult to assess and I would have thought it was un-evidenced. When we strip those reasons away, we see that the Government's judgment that this measure will have realistically different consequences from the 2005 pilot, which was a complete failure, is based on little.

I listened carefully to what the Minister said about costs. I recognise why he said that the Government's mind is not closed on the cost implications and that further assessments are being carried out. However, when the costs are fully assessed and local authorities' various assessments and duties are satisfied, if it transpires that this measure costs more than it saves, how will the Government respond?

**James Brokenshire:** Let me respond to the points raised in the debate. I want to underline the change in the nature of administration in the immigration system

*[James Brokenshire]*

which has taken place. We scrapped the UK Border Agency and we have now established separate commands: UK Visas and Immigration, which processes asylum and other visa claims, Immigration Enforcement, and Border Force.

The proposals I have outlined are about embedding the work with local authorities. We are working more closely with local authority colleagues, drawing on their experience and ours of effective family engagement. In particular, that work will build on our existing family returns process, in which a dedicated family engagement manager works directly with the family. From 1 April to 2 October, the process achieved the return of 377 families. The point I therefore make to the hon. and learned Gentleman—perhaps this is why he did not grasp my third point, on the public policy objective—is about the alignment between activity in local and central Government, with that shared endeavour.

In many ways, that takes us back to the point made by the hon. Member for South Shields about these measures simply passing the cost of supporting destitute failed asylum seekers and their families on to local authorities. The proposals have been carefully framed to avoid that. The Home Office has consulted local authorities on the proposals and will continue to do so. There is no general obligation on local authorities to accommodate illegal migrants who intentionally make themselves destitute by refusing to leave the UK when it is clear that they can. None the less, we are considering whether it might be necessary or helpful to clarify that, perhaps in schedule 3 to the Nationality, Immigration and Asylum Act 2002.

Schedule 3 to the 2002 Act provides that, across the UK, a range of local authority-administered welfare provisions are generally unavailable to failed asylum seekers and their families who remain in the UK unlawfully. It enables such support to be provided where necessary to avoid a breach of a person's human rights, but such a breach will not generally arise if the person or family can leave the UK. We are working with local government on precisely that interface and whether further clarification may be helpful.

Let me provide further amplification of what I have said about the impact assessment. It currently assumes that 10% to 20% of individuals who lose Home Office support under schedule 6 may move on to local authority support, pending the outcome of a further non-asylum, article 8-based application to the Home Office. We have factored in a figure in relation to that. The figure will be reviewed as part of the "no new burdens" analysis, but as I have said, the legislation has been framed to avoid that. We have considered that as part of the impact assessment. Although the hon. Lady suggested the figure may be an underestimate, our judgment is that we have undertaken the best assessment and have carefully factored in some of those issues.

**Keir Starmer:** I think the Minister may be moving on from the question of what impacts on the minds of individuals and their families. In the end, whether the Government have aligned or realigned with local authorities or are working well with them is not the central question. The central question is: what operates on the minds of these individuals that improves the chances they will leave in circumstances where, in the past, they have not?

As I understand it, the 2005 pilot was a failure. The family returns policy, by contrast, is thought to have been successful, but that scheme runs under the current support regime. Rather than introducing an element that has failed in the past, would it not be far better to simply put the focus on improving the family returns process—in other words, to focus on what persuades people to go? We have a scheme that seems to be working pretty well, so we should focus on that and make it work even better. How does taking away support help to improve the scheme running at the moment?

**James Brokenshire:** I have two points for the hon. and learned Gentleman. The first comes back to my point about administration and public policy and aligning local and central Government to give families a consistent and clear message about the likely outcomes. This scheme will start before the cessation of support, and we have underlined that. A clear message is important in order to ensure that families understand what is likely to happen to them, and consistency is being provided by both the Home Office and local government.

Secondly, the hon. and learned Gentleman rightly touched on issues with assisted voluntary return and on family returns. This is about both elements combined. Assisted voluntary return for families is a scheme for families comprising a maximum of two adult parents and at least one child. Families who leave the UK under that scheme qualify for support in the form of advice and financial assistance both pre and post-departure, help with travel arrangements, medical assistance and support following arrival in the country of return.

From January, the assisted voluntary return programme will be administered directly by the Home Office, which we judge will enable us to work closely with local authorities and other partners to deploy the scheme more flexibly. In particular, we will be able to ensure that the scheme is targeted at and promoted effectively for newly appeal rights-exhausted families as part of a focused engagement with them about the available options and the consequences of not accepting the help and advice available. Those factors, together, respond to the hon. and learned Gentleman's point about what is likely to change behaviour, and we judge that they are the right way forward to meet the underlying policy objective.

*Question put*, That the clause stand part of the Bill.

*The Committee divided:* Ayes 9, Noes 7.

**Division No. 24]**

**AYES**

| | |
|---|---|
| Brokenshire, rh James | Hoare, Simon |
| Buckland, Robert | Smith, Chloe |
| Davies, Mims | Tolhurst, Kelly |
| Elphicke, Charlie | Whittaker, Craig |
| Harris, Rebecca | |

**NOES**

| | |
|---|---|
| Blomfield, Paul | McLaughlin, Anne |
| Champion, Sarah | Newlands, Gavin |
| Hayman, Sue | Starmer, Keir |
| Lewell-Buck, Mrs Emma | |

*Question accordingly agreed to.*

*Clause 34 ordered to stand part of the Bill.*

**Schedule 6**

SUPPORT FOR CERTAIN CATEGORIES OF MIGRANT

**Keir Starmer:** I beg to move amendment 222, in schedule 6, page 90, leave out lines 28 to 30 and insert—

'(i) in subsection (2A) for "accommodation" each time it occurs substitute "support" and for "section 4" each time it occurs substitute "section 95A", and

(ii) in subsections (6) and (7), for "section 4 or 95" substitute "section 95 or section 95A"'.

*To provide a right of appeal against decisions of the Home Office to refuse or discontinue support under new section 95A for asylum seekers at the end of the process who are unable to leave the UK.*

The amendment would provide a right of appeal against Home Office decisions to refuse or discontinue support, under new section 95A of the Immigration and Asylum Act 1999 as inserted by the schedule, for asylum seekers at the end of the process who are unable to leave the UK.

The right of appeal would be against decisions on support that are wrong. To give some context, Home Office decision making about support is particularly bad. We have heard statistics about Home Office decision making in general, but the success rate for challenges to support decisions is very high indeed. For example, from September 2014 to August 2015, the asylum support tribunal received 2,067 applications for appeals against Home Office refusal of asylum support. Of those, 44% were allowed by the tribunal, and 18% were remitted to the Home Office for a fresh decision or withdrawn because of an acknowledgment that the decision making was flawed. Together, that is a 62% success rate.

I caveat that figure, as I have in previous discussions about appeal rates, but it is an incredibly high success rate. It beggars belief that, when the statistics are of that order, there is to be no right of appeal in a simple case of a wrong decision on support. It is another example of removing the ability of people—often vulnerable people—to challenge a decision that is wrong and put it right. Therefore, we have tabled the amendment.

**Gavin Newlands** (Paisley and Renfrewshire North) (SNP): We have heard from other Members about the serious impact on individuals and their children of losing all forms of support. The amendment would ensure that we did not leave people, including children, helpless and possibly destitute while awaiting removal from the UK.

If the schedule is not amended we will be treating refused asylum seekers with complete contempt. We will be saying to them that we do not care how they support themselves while awaiting removal. I ask Members this: if that bleak scenario were to become a reality, what advice would they give those people when they came to their surgeries? Would Members walk past them in the street when they needed our help? Would Members close their eyes, put their heads down and walk past children who had been affected and needed something to eat or a place to stay? I think not, but that is what the schedule allows for. I hope that Members see the stark reality that faces us if it is not amended.

Liberty has pointed out that the Government's own document, "Reforming support for failed asylum seekers and other illegal migrants", states that the removal of any support for failed asylum seekers should be seen in the context of the wider enforcement powers that the Government have at their disposal. I have to say that that way of looking at the issue is crude, verging on inhumane. Are we honestly at a stage now where we are telling people to go cold and hungry to enforce immigration measures?

Not only is the position inhumane, but removing a person's support does not achieve the aim of deporting them from the country any sooner, as was highlighted by the 2005 pilot that has often been mentioned in our discussions. I accept that the Home Secretary may wish to have the power to discontinue support for refused asylum seekers, but an avenue of appeal should exist to allow those affected to explain their circumstances and have their bare minimum support—let us not forget that they will have been surviving on a pittance—reinstated. The right of appeal proposed in the amendment is essential to ensure that impoverished asylum seekers are able to access the support that they are entitled to and desperately need.

As I have said, routes of appeal exist for a reason—to correct a wrongful decision. On the evidence of appeals against decisions on loss of support taken by the Home Office, we would conclude that a power of appeal against wrongful decisions made by the Home Office is of the utmost importance. The Immigration Law Practitioners Association has produced a helpful briefing detailing statistics from the asylum support tribunal. According to ILPA, 62% of appeals received by the tribunal had a successful outcome. From September 2010 to August 2015, the tribunal received 2,067 applications for appeals against a refusal of asylum support, of which it allowed 44% and remitted 18%. Furthermore, research conducted by the Asylum Support Appeals Project found that the majority of support cases are overturned at the appeal level, with the number of successful appeals varying between 6w0% and 80%. A range of sources put forward the strong argument that the Home Office has a poor track record of decision making when it comes to removing support from an individual, and the consequences are of the utmost seriousness.

3 pm

In concluding, I echo the words of ILPA's written evidence:

"Without a right of appeal to the Tribunal, the only remedy against destitution and breach of human rights will be judicial review of the section 95A decision. This would be an inadequate remedy, falling short of the requirements of article 6 of the European Convention on Human Rights…The right of appeal to the Tribunal ensures judicial oversight of Home Office decisions in a cost-effective, straightforward and accessible way. Appeals are quick. If they are dismissed, then appellants lose their support immediately."

The Government should not be afraid of the appeals process. If someone is not entitled to support, they will not receive it. The amendment would simply ensure that the right of appeal exists for those left in penury by the potential wrongful removal of support, and I urge hon. Members to accept it.

**Mrs Lewell-Buck:** As always, it is a pleasure to serve under your chairmanship, Mr Owen. I will speak briefly to amendment 222, which would grant a right of appeal

*[Mrs Lewell-Buck]*

to those who are refused support by the Home Office, or whose support is discontinued. The right to appeal is important both for the individual concerned and because of the difficulties that the withdrawal of support for failed asylum seekers will create for local authorities, about which hon. Friends and I have already spoken.

It is necessary to set out the effect of clause 34 and schedule 6, to underline exactly why it is vital to have a right of appeal. The schedule as it stands will inflict destitution on families with children. Whereas in the past the Secretary of State could provide accommodation and support to help families survive, the new mechanism will impose a burden of proof on asylum seekers. They will need to show that they are destitute and that there is a genuine obstacle preventing them from leaving the country.

**James Brokenshire:** The hon. Lady has just said that the schedule will have an impact on asylum seekers; it will not. The mechanism in it relates to those whose asylum applications have been determined and have been found to have no grounds. I make that distinction because I want to underline that support is there for those who are having their asylum claims assessed.

**Mrs Lewell-Buck:** I thank the Minister and apologise for my semantics.

We do not know what the "genuine obstacle" that must be preventing people from leaving the country means, because it has yet to be defined in regulations. We are potentially talking about denying support to extremely vulnerable families, so the House should be able to discuss and vote on that in primary legislation. My hon. Friend the Member for Rotherham made that point well in our evidence sessions. That definition will effectively define the scope of support given to people, and it could leave families homeless and destitute. We should be debating that definition now. It is not something to be nodded through the House at the whim of the Secretary of State.

**Simon Hoare** (North Dorset) (Con): I do not know whether the hon. Lady was as struck as I was by the evidence sessions. There was only one organisation—I cannot for the life of me remember which it was—that actually prepared people who had gone to see it for a potential answer of no to their application. Everybody else just seemed to be keeping people's hope alive and burning brightly. Does she agree that if more organisations prepared people for a no, people would be able to plan ahead and think about that, rather than wake up one morning and find, "Gosh, that's a bit of a surprise"?

**Mrs Lewell-Buck:** I think we have different recollections of the evidence sessions. I do not recall just one organisation doing that.

**Sarah Champion** (Rotherham) (Lab): I agree with my hon. Friend; I did not hear only one organisation say that. I will say that I used to run a children's hospice and, even when people were told the reality of what was going to happen, they always had hope. Even if it is to someone through the entire process, not everyone listens to reality.

**Mrs Lewell-Buck:** I believe it is clear that whatever happens, the Government intend to introduce stricter conditions than currently exist for supporting failed asylum seekers, to try to encourage people to leave the UK more quickly once an asylum claim has failed. There is one obvious problem with that approach, which is that the evidence shows that it simply does not work. I will return to that when we discuss later amendments, but for the moment it is enough to say that cutting off support will make families less, not more, likely to engage with the Home Office and leave the UK voluntarily. Denying people support will be counterproductive if the Government aim to increase the number of voluntary returns. If those are the consequences of withdrawing support, having a proper right of appeal becomes even important.

The reason to support the amendment is simple. The right of appeal is needed because on far too many occasions, initial decisions are incorrect. Nearly two thirds of appeals are successful, and that amounts each year to hundreds of cases or, to put it another way, hundreds of people and families. When new section 95A comes into force, those people will be wrongly deprived of food and shelter.

The Home Office's assessments of destitution are very poor. The asylum support tribunal overturns a high proportion of decisions; in 2011, the figure was an incredible 82%. If those people had not had a right of appeal, how would they have accessed the support that they were entitled to? How will they be able to do so in future? Without a right of appeal, the only recourse for those individuals would be judicial review, which is no substitute for a proper right of appeal. Judicial review, as we all know, requires time and money, which are things that people whose asylum claim has failed simply do not have.

Inevitably, hundreds of people who will have every right to support under new section 95A will be unable to access it. I cannot accept that the Minister and the Government are comfortable knowing that hundreds of people who are legally entitled to support will be left with nothing, but that will be the effect of schedule 6 if it is not amended. Ultimately, the debate is about the quality of decision making. Are the Government prepared to accept poor decision making and the injustices that stem from it? If they are not, they should accept our amendment.

**Sarah Champion:** I, too, want to speak in support of amendment 222. Throughout the Bill, the Government propose various measures to remove the right to appeal against Home Office decisions. Reading the Bill, one cannot but conclude that the Government are fundamentally opposed to their decisions being challenged in anything approaching an independent manner.

The consequences of the decision to deny support are potentially catastrophic. A migrant who is denied support has no right to work and no right to rent. Their bank account is closed and their assets are frozen. The choices that people in that position face are bleak. The Bill acknowledges the need to support refused migrants who have genuine obstacles to leaving the UK, but it has not been made clear what a genuine obstacle will be, even though my Opposition colleagues have been pushing for clarity. My hon. Friend the Member for South Shields has just raised the matter yet again. What is

clear, however, is who decides whether the obstacle exists. It is the Home Office, without scrutiny, oversight or effective challenge. That is bad practice in any process, but in the light of the Home Office's frankly miserable record of making the correct decision the first time, it will be disastrous.

There is currently a right of appeal on decisions made about section 4 support. Statistics from the asylum support tribunal should make for uncomfortable reading for the Government, because 62% of appeals between September 2014 and August 2015 were successful. The claims were allowed, sent back to the Home Office for a fresh decision or withdrawn in acknowledgement of a flawed decision.

The Home Office has a similarly poor record in assessing destitution. In 2014-15, the Asylum Support Appeals Project represented 168 asylum seekers whom the Home Office had denied support on the grounds that it did not believe that they were destitute. Of those decisions, 70% were overturned on appeal. Such figures cannot but lead us to the conclusion that there is a serious problem with Home Office decision making. During the Committee's evidence sessions, witnesses offered various explanations for those failings, from inadequate training to overly complex immigration regulations, and Ministers have given other examples. Whatever the reasons, however, when nearly two thirds of decisions are being overturned on appeal, something needs to be done to address the problem.

The Government's solution in the Bill and in previous immigration legislation is indeed novel: simply abolish the right to appeal. That will certainly result in far fewer Home Office decisions being reversed, but it is hardly a solution that will in any way contribute to better decision making. Children and families will be badly affected by the loss of appeal rights. Section 95 support will no longer continue for families with children at the end of the asylum process. That poses a serious risk of leaving children destitute with no judicial oversight, as was clearly detailed by my hon. Friend the Member for South Shields.

Given the high proportion of Home Office decisions that will be overturned by the tribunal, the lack of appeal rights will inevitably transfer the responsibility for supporting destitute children to local authorities. We have heard from the Minister that the Department is in good consultation with local authorities, which is great, but the reality is that children who should be being supported by the Home Office will instead have to rely on overstretched local authority budgets to meet those most basic needs.

Much has been said of the need to ensure that our immigration system is one in which the public can have confidence. However, the way to achieve that confidence is not to pander to sensationalist headlines, but to ensure that most of the time the Home Office gets it right first time. Abolishing the right to challenge poor decisions and forcing people into the most abject poverty will not in any way contribute to achieving a goal that I am sure we all share.

**Paul Blomfield:** I am pleased to have an opportunity to contribute to this debate. I will not repeat the woeful statistics that others have mentioned in relation to successful appeals, but I think that all those points should draw the Committee's concern to the appropriate response, which must be about getting the process right, as opposed to abolishing people's rights, because the net effect of the proposals will be that people who could otherwise win appeals will be left destitute.

The Minister talked at length about the dialogue between the Home Office and local authorities. I would like to share some concerns that local authorities in the region that I represent have expressed. They come together in an organisation called Migration Yorkshire, from across the entire county. They are anticipating that the impact of the provisions will be to leave significant numbers of refused asylum seekers destitute. They make a point, which is worth bearing in mind when the Minister says that measures such as this are about encouraging people to return: they ask, "Return to what?" We are talking about people who, in many cases, come from unstable and dangerous states. In their evidence, they cite Eritrea, Iran and Sudan. The choice of returning, or being destitute in Britain might not be a hard choice to make for many people, actually. Destitution in the UK is probably better than going back to a war zone and being destitute there.

It is clear that, under this policy, more refused asylum seekers will become destitute without the right to appeal. The local authorities' concern is that the amount will increase in several towns and cities across Yorkshire, with all the related health and cohesion issues that will disproportionately affect some of our bigger cities, where we already face problems with the rise in rough sleeping and wider destitution. They are worried that local agencies will lose contact with refused asylum seekers, who will have very little incentive to stay in touch. They are concerned that unsupported, refused asylum seekers will feel compelled to use illegal forms of accommodation —to be in overcrowded, unhealthy conditions, potentially putting their friends in breach of tenancy agreements—and that they will feel compelled, in conflict with the Government's policy objectives, to undertake illegal forms of employment to survive, opening themselves up to exploitation and abuse.

In Committee so far I have cited the Prime Minister and the Home Secretary; now I will turn to the thoughts of another member of the Cabinet. The comment is not contemporary, but arose from a 2008 study by the Centre for Social Justice, which, incidentally, stated:

> "Making refused asylum seekers homeless and penniless is hugely counterproductive: it makes it much more difficult to work with them to encourage voluntary return or to ensure timely removal, and in driving them underground makes it harder to keep track of them."

The foreword to the report was provided by the right hon. Member for Chingford and Woodford Green (Mr Duncan Smith), now the Secretary of State for Work and Pensions, who has provided inspirational guidance to the Government in a number of areas. We should pay serious attention to his words. He said:

> "It also appears that a British government is using forced destitution as a means of encouraging people to leave voluntarily. It is a failed policy…still driven by the thesis, clearly falsified, that we can encourage people to leave by being nasty."

I rest my case.

3.15 pm

**James Brokenshire:** I will respond to each of the points made by Labour Members. The points made by the hon. Member for Sheffield Central undermine the appropriateness of the various measures in the Bill to

*[James Brokenshire]*

confront illegal working, including the extension of the right to rent scheme to ensure against abuses. We are joining up enforcement against rogue landlords and those who are abusing their position in that way.

Furthermore, the immigration system in operation in 2008 was in a poor condition under the previous Labour Government. It was in need of significant change and reform to get it to do the job in hand. That is why I emphasised the coalition Government proceeding to scrap the old UK Border Agency and putting in a different form of administration, which we judge to be improving the system, rather than making it worse.

I will also respond to some of the statistics proffered in support of change, because that might paint a slightly different characterisation from the one we have heard thus far.

**Paul Blomfield** *rose—*

**James Brokenshire:** First, I will give way to the hon. Gentleman, who was trying to catch my eye.

**Paul Blomfield:** Indeed I was trying to catch the Minister's eye. I think he would recognise—as I hope he will now—that the comments made by the now Secretary of State for Work and Pensions were not related to the particular forms of administration or organisation at the time. They were made about the principle of pushing people into destitution in order to create an environment that might encourage them to leave, which was one of the objectives that the Minister present said were behind his policy.

**James Brokenshire:** What I have said is behind the policy is a question of a firm and clear approach on the options and on the process that I outlined in the preceding debate.

I am sorry if the hon. Member for South Shields thought that I was trying to be pedantic in some way; I was not. There is an important distinction between those who are claiming asylum but have not had their rights assessed—it is appropriate to support them, but I am sure we will come on to those issues generally—and those who have had their claim assessed by the courts and determined to be not valid, or not grounded. In that context, therefore, if those families and people decide to remain here unlawfully, rather than leaving voluntarily, they should not automatically continue to receive Home Office support simply because they have made a failed asylum claim.

That is the principle. It is not about being "nasty", as the hon. Member for Sheffield Central pejoratively sought to characterise things. It is about fairness, confidence and clarity in the system. That is the approach that we are setting out in the Bill and, as I hope he will understand, the approach that I have sought to annunciate in the manner in which I have put forward the proposals.

**Paul Blomfield:** Specifically on the point about fairness in the system—which we would all agree with—why is fairness assisted by removing the right to appeal?

**James Brokenshire:** I will come to that. The issue is equally one of fairness to those who play by the rules—those who put in applications, are here lawfully, and have not sought to overstay their visa or put in an asylum claim to try to drag it out in a further attempt to remain in the country. It is fair to those people who have done the right thing that people who do not have that right should leave. We need a better basis of incentives and possible sanctions and, together with local authorities, we need to engage with families in the process to secure more returns and to underline those clear messages.

**Sarah Champion:** I genuinely do not think that any of my colleagues are disagreeing that we want a strong, robust system. We are trying to argue that, looking at the number of appeals decisions that are overturned, the system is not strong and robust. We want a fair system too, but there are people falling through the net, who then get a fair outcome on appeal. To lose that right of appeal does not seem to provide that justice that the Minister seeks.

**James Brokenshire:** Obviously we have existing arrangements under sections 95 and 4 of the Immigration and Asylum Act 1999. We are moving towards a different arrangement under proposed new section 95A, which will apply where there is a genuine obstacle to departure. To be clear, that will be defined in regulations. We expect that obstacle to be either the lack of necessary documentation or a medical reason. Of course, the person will need to show that they are making reasonable steps to obtain the relevant documentation. The Bill does not provide a right of appeal against the decision that no such obstacles exist because that should be a straightforward matter of fact for which a statutory right of appeal is not needed.

**Keir Starmer:** Will the Minister give way?

**James Brokenshire:** Before I give way to the hon. and learned Gentleman, I want to return to the issue of standards and Home Office decision making. I think the hon. Member for Rotherham said that her figures were from 2011. I point to the report of the previous independent chief inspector of borders and immigration, John Vine. I do not think anyone on the Committee would be backwards in coming forwards to identify weaknesses in the system and to expose matters of concern to him. It is worth highlighting his report of July 2014—a later period than that of some of the statistics that have been cited. He conducted an investigation of the whole system of asylum support. It is a long report, but the "positive findings" section of the executive summary noted:

> "We found that the decision to grant or refuse asylum support was reasonable in most of the cases we sampled (193 cases out of the 215 cases—90%). We saw many examples of good practice, including staff taking extra steps to ensure that they made the right decision first time."

He continued:

> "In cases where applicants were refused support, we found that in 92 of 103 cases (89%) the decisions made by Home Office staff were reasonable. This was a good performance. Additionally, we found that of 12 cases where an appeal was lodged, only two (17%) were allowed by the First-Tier Tribunal. This is lower than the overall allowed appeal rate for asylum support refusals or terminations."

The system has been characterised as not operating well and, in fairness to the Committee, it is important that I put that report on the record.

We always look for improvement, which is why we changed the system. We have separate directorates looking at different aspects so that we can hold to account and have better clarity of focus and attention. I will always challenge the relevant directors general to achieve that sense of continued improvement, but it is important to contextualise.

**Keir Starmer:** I want to take the Minister back to the question that my hon. Friend the Member for Sheffield Central asked about the fairness of removing the right of appeal. The Minister's response was that, equally, we have to be fair to those who play by the rules and make their applications properly. What about the failed asylum seeker who establishes a genuine obstacle and takes on the onus? What happens if that is accepted but the assessment of whether he or she needs support—whether he or she is destitute—is wrong? He or she has done all they can and accepted the burden, but the assessment of whether they need support is wrong. The Red Cross told us that there are a number of cases where that is precisely the situation. The Red Cross often supplies a report, and it is a dead cert winner on appeal. Why is it fair to that person to remove their right to appeal when they will otherwise be destitute?

**James Brokenshire:** The issues that we are dealing with are specific matters of fact, and it remains open to the individual concerned to draw their circumstances to the Home Office's attention. I take the hon. and learned Gentleman back to how we intend to operate these arrangements. We are not doing this by correspondence; it is being worked through as part of an overall process towards the removal of that individual. The judgment has effectively been taken, and contact is therefore being maintained with the individual, so it is more of the joined-up approach on which I have already responded. That is why, in our judgment, it is a question of looking at the simple elements and at what will be the barriers to removal.

**Simon Hoare:** I do not want to add an unnecessarily acid tone to the debate—*[Interruption.]* I do not necessarily want to do it, but that does not mean that I will stop myself. I hear what Opposition Members are saying about fairness, but was it fair to those who were making applications and appeals, and so on, who discovered post-2010 that the Home Office had shoved all their paperwork down the lift chutes of abandoned offices? The Home Office had let the whole damned business get so out of control and had become so overwhelmed that it decided that putting the paperwork into the "too hard to deal with" tray was the best option.

**James Brokenshire:** I know this message might not be appreciated by some members of the Committee, some of whom were not here when we experienced some of those practices after coming into government in 2010. I heard, and continue to hear, some extraordinary stories about some of the practices that existed before some of the arrangements that we have now put in place, which is why it is right to focus on some of the administration issues. That is why I referenced the chief inspector's report. Yes, there is still work to do, and we have been clear on the change and reform that we seek to make to the effective operation of the immigration system. The situation that we picked up was pretty bad. My hon. Friend makes the point clearly and firmly on why some—

3.30 pm

**Simon Hoare:** My right hon. Friend is being terribly kind and generous in saying that the situation was not very good. I thought that "not fit for purpose" was the description by the noble Lord Reid when he was Home Secretary of the situation that he discovered.

**The Chair:** I call the Minister to come back to the amendment before us.

**James Brokenshire:** I appreciate your direction, Mr Owen, but I think that the history has some relevance to how we administer these rules and requirements and some of the evidence that has been adduced to the Committee. I have tried to bring us into the here and now with what these provisions are intended to do and, through reference to the ICI's report, to give further clarity on the focus attached to this matter and the decision-making processes. I recognise that this debate is primarily about the rights of appeal. In many ways, we have strayed quite widely, but I appreciate that there are strong feelings on this issue. I respect that, and the House should be able to allow for lively and robust debate where there are differences of opinion. The debate has been helpful, I am sure. Obviously it will be a matter for you, Mr Owen, as to whether we have a subsequent schedule 6 stand part debate, given the wider discussions. I understand that there is a point of difference on some of the principles and I respect that difference. Obviously it will ultimately be for the Committee to determine the decision in relation to the amendment.

**Keir Starmer:** We should all support the measures to improve the decision making. It is good that decisions are improving, and if the success rate is going up in the way suggested in the latest statement, we should put it on the record that we support that; that is a good thing. But is there a target or expectation for right decisions? In other words, is there a target of 90% right or 95% right? What is the threshold? What is the level that the Home Office considers good enough to remove the right of appeal?

**James Brokenshire:** I think the hon. and learned Gentleman is seeking to frame this in a slightly different way. The figures that I referred to related to the system as was. Obviously we are contemplating changes. The point I have made to the Committee is about the nature of the decisions—the very fact-based approach that in our judgment should be clear as to whether there are those barriers to removal. It is on that basis that we judge the formal right of appeal. That is not to say that the person would not make representations to the Home Office—or, through the regular contact that we would have, that assessment could be made—but it is on that basis that we have formed that judgment.

**Paul Blomfield:** I would like the Minister to respond to statistics that have been cited. He made a powerful case and cited a report in favour of the effectiveness of

*[Paul Blomfield]*

the system, but by doing so sought to invalidate the suggestion of a 62% success rate in the appeal system. He will know, I think, that the Asylum Support Appeals Project receives the statistics from asylum support tribunals and analyses them. Does he recognise that the figure cited of 62% was based on that analysis, between September 2014 and August 2015, where, of the 2,067 applications for appeals against a Home Office refusal of asylum support, 44% were allowed by the tribunal and 18% were remitted—sent back—to the Home Office for it to take the decision afresh or withdrawn by the Home Office as it acknowledged its decision making was flawed? That 62% is therefore robust, is it not?

**James Brokenshire:** No. As I think my hon. and learned Friend the Solicitor General has highlighted, our judgment is that appeal statistics are not a good indicator of the quality of decision making. That is why I referred to the ICI's report, in which he does the audits of performance. That obviously gives us oversight. Those figures do not, for example, take into account the fact that many appeals are allowed, as my hon. and learned Friend said, or remitted, because the appellant provides the necessary evidence of their eligibility to receive support only at a later stage. It is therefore important to contextualise this properly.

I recognise that there is a fundamental difference of opinion. We can continue the debate in the same manner, but our judgment is that, on the basis of the measure—ultimately, we are debating this particular amendment on appeals—and on the basis of my characterisation of how the system is intended to operate and how the administrative arrangements will function, the amendment is not needed. I therefore ask the hon. and learned Gentleman to withdraw it.

**The Chair:** Before I call Keir Starmer, the Minister was being helpful and measured when he talked about having a debate on schedule 6. We have a lot of amendments to go through; we might cover a lot more ground before we get to schedule 6. I will make a judgment at that time, so I ask Members to speak to the amendments before us, whether they be Opposition or Government amendment.

**Keir Starmer:** You have been generous in letting us discuss amendment 222, Mr Owen. In the course of those discussions and the interventions, probably everything that could be said has been said. I just have a final point. I accept that within the figure of 62% being successful on appeal, there will be cases in which the Home Office, in truth, was not at fault because, for example, information came to light after the event or circumstances changed. However, there will be many cases in which it was at fault. The Government cannot simply put a figure like 62% on one side and say that it does not demonstrate anything. There is palpably a need for a right of appeal in this type of case more than any other. Given those circumstances, I will not withdraw the amendment.

*Question put,* That the amendment be made.

*The Committee divided:* Ayes 7, Noes 9.

**Division No. 25]**

**AYES**

| | |
|---|---|
| Blomfield, Paul | McLaughlin, Anne |
| Champion, Sarah | Newlands, Gavin |
| Hayman, Sue | |
| Lewell-Buck, Mrs Emma | Starmer, Keir |

**NOES**

| | |
|---|---|
| Brokenshire, rh James | Hoare, Simon |
| Buckland, Robert | Smith, Chloe |
| Davies, Mims | |
| Elphicke, Charlie | Tolhurst, Kelly |
| Harris, Rebecca | Whittaker, Craig |

*Question accordingly negatived.*

**James Brokenshire:** I beg to move amendment 96, in schedule 6, page 91, line 2, after "(2)" insert ", (5), (6)".

*This is a minor and technical amendment. It is consequential on the repeal of section 4 of the Immigration and Asylum Act 1999. Section 43(5) and (6) of the Immigration, Asylum and Nationality Act 2006 contain provision about tenancies granted to provide accommodation under section 4 of the 1999 Act.*

**The Chair:** With this it will be convenient to discuss Government amendments 97 to 104.

**James Brokenshire:** I hope to be brief in explaining this group of amendments. Amendments 96 to 99 are all minor and technical amendment relating to the repeal by schedule 6 of section 4 of the Immigration and Asylum Act 1999. Amendments 96 and 99 relate specifically to the repeal of section 43 of the Immigration, Asylum and Nationality Act 2006, which cross-relates to section 4 and tenancies granted to provide accommodation under section 4 powers. Amendment 98 is also linked to the repeal of section 4 of the 1999 Act. Amendment 97 is also a technical and minor provision. The term "claim for asylum" no longer appears in part 6 of the Immigration and Asylum Act 1999, so the same change is needed in respect of section 141 of the 1999 Act.

Amendment 101 relates to persons supported under section 4 of the Immigration and Asylum Act 1999 when the new arrangements under schedule 6 take effect. Those persons will continue to be supported under section 4 by transitional arrangements. Section 4 support currently consists of accommodation and a weekly non-cash allowance to buy food and other essential items. The allowance is provided through an Azure card that can be used at supermarkets to purchase necessary items. There are no current plans to change those arrangements, but amendment 101 gives the flexibility to do so in future, subject to parliamentary approval of changes in regulation. Such a change might, for example, be appropriate if the numbers supported under section 4 decreased to a point at which the costs of administrating the Azure card outweighed the benefits.

That leaves amendments 100 and 102 to 104, which are minor and technical and relate to those who will remain supported under either section 4 or section 95 of the 1999 Act under transitional arrangements. The amendments will ensure that future and current dependants of those persons may be supported under the provisions. That will mean, for example, that a child born to a person already in receipt of support under section 4

or section 95 of the 1999 Act under the transitional arrangements will also be able to be supported under those arrangements.

*Amendment 96 agreed to.*

**Keir Starmer:** I beg to move amendment 223, schedule 6, page 91, line 7, at end insert—

'(2A) Schedule 3 to the Nationality, Immigration and Asylum Act 2002 (withholding and withdrawal of support) is amended as follows.

(a) in paragraph 6(1), after "person" insert "who entered the United Kingdom as an adult"

(b) in paragraph 7, after "person" insert "who entered the United Kingdom as an adult""

*To ensure that all care leavers—including young asylum-seekers and migrants who came to the UK as children—are given the support they need while they are in the UK by amending Schedule 3 of the Nationality, Immigration and Asylum Act 2002 so it does not apply to people who initially came to the UK as children. It will not create an automatic right to support but make sure that a young person is not discriminated against on the basis of his or her immigration status.*

I can deal with this amendment shortly. The intention is to ensure that all care leavers, including young asylum seekers and migrants who come to the UK as children, are given the support they need while they are in the UK by amending schedule 3 to the Nationality, Immigration and Asylum Act 2002 so that it would not apply to people who initially came to the UK as children. The amendment would not create a right to support but would ensure that a young person was not treated differently on the basis of his or her immigration status.

I will come to the nub of what sits behind the amendment. For adults, support continues under schedule 3 to the 2002 Act until the individual fails to comply with removal directions, whereas support can be withdrawn for young people if they are found to be unlawfully in the UK but have not been served with removal directions. There has been criticism of the impact of schedule 3 by the Joint Committee on Human Rights and the Office of the Children's Commissioner. The Refugee Children's Consortium has also expressed concern about it. This is a narrow but important point.

**Anne McLaughlin:** I am going to speak very slowly and clearly. For many years, this country and other countries have struggled to support children who are leaving the care system. It has been well documented that those children's life chances are measurably lower than those who do not go through the care system. Of course, various Governments have taken different measures to address that issue over time. When it comes to asylum seekers, however, we have a situation where children who are even more vulnerable find themselves destitute and without proper legal support when their appeal rights are exhausted, despite growing evidence that approximately 3,000 unaccompanied children come to the UK each year. This is another example of immigration legislation not keeping pace with the legislation protecting the rights of children and young people who are in our communities already but are no longer being supported by the Home Office.

We know that destitution forces young people into grave situations, some of which will be made worse by the Bill. Exploitation in all its forms, homelessness and ill health all follow on from the state turning its back on a desperate and isolated young person who has left care. It is worth highlighting an example given by the Children's Society of a torture survivor from Iran who came to the UK aged 17. His initial claim was rejected and he went without legal representation for his appeal. Once that, too, was rejected, his support from children's services was cut off and he was made homeless. He lost the support of the counsellor who had been helping him to deal with the trauma of the torture he had suffered. His health deteriorated further as a consequence of sleeping on the streets. I always find it useful to try to put myself in someone else's shoes, and I think that sleeping on the streets for one night would be enough to finish most of us off. The good news is that he then received support from a charity and a fresh solicitor. His new claim was successful and he was granted leave to remain. His life was on course to be so much worse than I imagine it is now he has that support.

Amendment 223 is a sensible measure that would provide some protection for asylum seekers who have been in the care system and who are, by their very nature, among the most vulnerable in our society. I feel confident and hopeful that the Minister will support it.

**James Brokenshire:** I thank the hon. Member for Glasgow North East and the hon. and learned Member for Holborn and St Pancras for their comments, which were brief, clear and to the point.

3.45 pm

I am not willing to accept amendment 223. It would allow persons who entered the UK when they were children to be provided with support, including local authority support, under the legislation on leaving care—and here I come back to the point of principle—even though they have since reached adulthood and all their applications to stay here and appeals have been refused by the independent judiciary.

I come back to the primary issue and the policy. From a policy perspective it would be wrong, in essence, to create other risks. In our judgment the amendment would create obvious incentives for more unaccompanied children to come to the UK to seek asylum, often by dangerous routes controlled by smugglers and traffickers, and for more young asylum seekers to claim falsely to be under 18. Those are problems that local authorities already struggle to deal with.

According to Eurostat in 2014 the UK received almost 80% of all asylum claims lodged by unaccompanied asylum-seeking Albanians in the EU. Most of the claimants were 16 and 17-year-olds and very few will qualify to be granted asylum. In our judgment part of the reason for that is a perception that the UK provides generous long-term support for all those who arrive in the UK as children, regardless of whether their asylum claims made out or not. The amendment would only add to that, because it is framed so that there would be local authority support regardless of the outcome of the asylum claim.

The existing legislation ensures that unaccompanied children who apply for asylum receive the same support from local authorities under the Children Act 1989 as any other child in need. Their entitlement to support is not affected by their immigration status. When they reach 18 years of age the position is different, if their asylum claim has been finally refused and an independent judge has dismissed their appeal. Automatic access to further support from the local authority should cease at that point; but it is important to recognise that it may continue where there is a genuine obstacle preventing

the person from departing from the UK. The Bill creates a support system for those who have failed in their claims who face such an obstacle, as we have explained.

The Government remain committed to ensuring that young people leaving local authority care, whose immigration appeal rights are exhausted, do not face an abrupt withdrawal of all support, and the mechanism is constructed accordingly. If there are practical problems that need to be addressed, we are obviously content to find further ways to do that, but in our judgment the blanket approach that the amendment would apparently create would cut across important policy objectives and could, sadly, add to risk.

**Simon Hoare:** I too will oppose the amendment. I think that the hon. Lady has put her finger on the problem of why immigration has become such a huge issue in our constituencies, especially when juxtaposed with what we hear in the House and in Committee about councils' central funding being reduced, and an overall cap on Government expenditure. I think that most ordinary folk in our constituencies, irrespective of their political affiliation, conclude on the basis of common sense that once a fair system has been tried, tested and exhausted, there must be a point at which the state, centrally or locally, withdraws.

**Anne McLaughlin:** The hon. Gentleman speaks about when rights have been exhausted, but the example I gave was not of someone who had exhausted his rights; it was someone who did not have the legal support to make a proper appeal, which is why he lost. When he managed to get the help of a charity it was found that he was entitled to support here. We are not talking only about people who have exhausted all appeal rights but about people who have had poor decisions or poor representation, or no representation.

**Simon Hoare:** I hear what the hon. Lady says, but I have to say I find it slightly surprising, given the quantum of those bodies that came to give evidence during our witness sessions. Most of those organisations—indeed, the lion's share—were clearly focused, on either a regional or national basis, on providing advice, help and support to people who were seeking to make an application. I am not doubting the veracity of what she says, but I would be rather surprised if the problem she mentioned was large scale. Clearly, even the individual to whom she referred was ultimately able to find professional advice and support, and the response that they were looking for.

The nub of the issue is this: the British taxpayer—the council tax payer and income tax payer—cannot be expected to keep signing blank cheques to continue to support people to reside in this country when all of the systems have been tried and tested and their right to remain has not been proved or accepted. Just a few months ago, I am sure all of us heard on the doorsteps—

**Gavin Newlands** *indicated dissent.*

**Simon Hoare:** The hon. Gentleman shakes his head. There must be some very eccentric voters in his constituency. Every constituency will have had people—on the doorstep, in the market square or wherever—who will have said that this is a problem about which political correctness has become just a little too wayward.

**Kelly Tolhurst** (Rochester and Strood) (Con): I support my hon. Friend. In Kent, we have seen significant numbers of unaccompanied minors over the past few months. I have noticed that the cost of looking after those unaccompanied minors has put massive pressure on our local authorities. Although we accept that we need to look after those young people and make sure that they feel safe when they come here, we must also recognise that we have a duty to the children already in state care in our county. When there is extra pressure on social workers and foster places, it is—

**The Chair:** Order. I call Simon Hoare to speak to the amendment.

**Simon Hoare:** I am trying to explain why, like the Minister, I oppose the amendment, Mr Owen. My hon. Friend the Member for Rochester and Strood is absolutely right. During our evidence sessions we were all concerned to try to ensure that the measures in the Bill helped community cohesion. When one section of the community feels that it is losing the local services, to which it has contributed through its taxes, in order to support the funding requirements of people who should not be here, people start to get annoyed and we start to see some of the rather ugly scenes we saw in Burnley and other areas where that little bit of racial tension became a little too hot and too heavy.

**Anne McLaughlin:** Will the hon. Gentleman give way?

**Simon Hoare:** I think you are keen for me to finish, Mr Owen, so if the hon. Lady does not mind, I will not give way.

**The Chair:** Order. I am keen for you to address the amendment directly and not have a general discussion on immigration.

**Simon Hoare:** I am bringing in my generic thinking on the issue to explain why we should oppose the amendment. The amendment flies in the face of the common-sense approach that the British people want to see and that underpins the Bill.

In conclusion, the Minister made the apposite point that unless a clear message goes out to say that we are not a "soft touch"—I use that in inverted commas, because I appreciate that it could be inflammatory—or an easy target just because someone is a minor, far too many vulnerable youngsters will, I fear, be trafficked across the channel and elsewhere to come into the UK. This is all about signals and messages. That is why I oppose the amendment—argued for in a heartfelt manner, but fundamentally wrong—backed by the hon. Member for Glasgow North East.

**Keir Starmer:** I will be brief. We are talking about children coming out of care. It has been proposed that a message needs to go out to other countries—to be picked up by and to influence those coming to this country—that we treat those coming out of care unfairly. That proposition beggars belief. I will press the amendment.

*Question put,* That the amendment be made.

*The Committee divided:* Ayes 7, Noes 9.

**Division No. 26]**

**AYES**

| | |
|---|---|
| Blomfield, Paul | McLaughlin, Anne |
| Champion, Sarah | Newlands, Gavin |
| Hayman, Sue | Starmer, Keir |
| Lewell-Buck, Mrs Emma | |

**NOES**

| | |
|---|---|
| Brokenshire, rh James | Hoare, Simon |
| Buckland, Robert | Smith, Chloe |
| Davies, Mims | Tolhurst, Kelly |
| Elphicke, Charlie | Whittaker, Craig |
| Harris, Rebecca | |

*Question accordingly negatived.*

*Ordered,* That further consideration be now adjourned. *—( Charlie Elphicke. )*

3.56 pm

*Adjourned till Tuesday 10 November at half-past Nine o'clock.*

## Written evidence reported to the House

IB 31 UNHCR

IB 32 Immigration Law Practitioners' Association further submission part 6 and 7

IB 33 Shelter

IB 34 Letter from the Home Office on reform of support for certain categories of migrants

IB 35 Immigration Law Practitioners' Association further submission on Part 5 Support for Certain Categories of Migrants

IB 36 Airport Operators Association (AOA)