



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

**Northern Ireland Human Rights Commission Briefing on Support for  
Certain Categories of Migrant- Committee Stage of the Immigration Bill,  
House of Lords (HL Bill 79-1)- Clause 37 and Schedule 8**

**28 January 2016**

**Introduction**

1. The Northern Ireland Human Rights Commission (NIHRC) is one of the three A status National Human Rights Institutions (NHRIs) in the United Kingdom and is required by Section 69 (1) of the Northern Ireland Act 1998, to “keep under review the adequacy and effectiveness in Northern Ireland of law and practice relating to the protection of human rights”. This mandate extends to both matters within the competence of the Northern Ireland Assembly and those within the competence of the Westminster Parliament.
2. The NIHRC bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR) as incorporated by the Human Rights Act 1998 and the treaty obligations of the Council of Europe (CoE) and United Nations (UN), emanating from the treaties ratified by the UK.

## **Clause 37 and Schedule 8 of the Immigration Bill on Support for Certain Categories of Migrant**

3. The NIHRC notes that Lord Rosser and Lord Kennedy of Southwark have given notice of their intention to oppose the question that Clause 37 stand part of the Bill.<sup>1</sup>
4. Clause 37 of the Immigration Bill gives effect to Schedule 8 which makes changes to the arrangements in place under the Immigration and Asylum Act 1999. The schedule amends the following provisions:<sup>2</sup>
  - Persons who have children in their household at the time their asylum claim and any other appeal is finally rejected will no longer be treated as though they were still asylum seekers and so will no longer be eligible for support under section 95;
  - Persons who have been refused asylum but made further submissions that they have asked to be treated as a fresh claim for asylum may be eligible for support under section 95 if a decision on further submissions has not yet been made;
  - Persons whose further submissions have been rejected but who have been granted permission to apply for a judicial review of the rejection may be eligible for support under section 95.
5. This schedule also repeals the whole of section 4 of the 1999 Act and creates a new power (Section 95A) to support failed asylum seekers and their dependents who can demonstrate that they are destitute and that they face a genuine obstacle to leaving the UK at the point their appeal rights are exhausted.<sup>3</sup>
6. The NIHRC provided advice on the policy proposals underpinning the Bill during the Home Office consultation on “Reforming Support for Failed Asylum Seekers and Other Migrants” in September 2015. The NIHRC advised the Home Office that the proposals are retrogressive concerning a number of rights contained within the International Covenant on Economic, Social and Cultural Rights (ICESCR) including

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<sup>1</sup> Immigration Bill, Marshalled List of Amendments to be Moved In Committee (Marshalled in Accordance with the Instruction 12 January 2016

<sup>2</sup> Explanatory Notes to the Immigration Bill 2015, para 372

<sup>3</sup> Explanatory Notes to the Immigration Bill 2015, para 373

the enjoyment of the right to an adequate standard of living (ICESCR Article 11) and the right to social security (ICESCR Article 9). The NIHRC advised that given the strong presumption against retrogression in human rights law, a full justification by reference to the totality of the rights provided for in the ICESCR and in the context of the full use of the maximum available resources should be given. The NIHRC advised that this should include an explanation of how any possible impacts of the measures are proportionate to the goal to be achieved. The Home Office did not reflect this in its response to the consultation.

7. The NIHRC also advised that removing section 95 support for failed asylum seekers with dependents and transferring the onus on parents and guardians to demonstrate why they cannot leave the UK and would otherwise become destitute before support can be continued is contrary to the best interests of the child principle under Article 3 of the United Nations Convention on the Rights of the Child. The NIHRC also raised these issues in its submission to the UN Committee on Economic, Social and Cultural Rights during its examination of the UK's State report in September 2015.<sup>4</sup>
8. The Home Office acknowledged in its response that many respondents were concerned that the proposal to cease asylum support to failed asylum seekers in the absence of a genuine obstacle to their departure from the UK was not consistent with Article 3 of the UNCRC or with the Home Office's duty to safeguard and promote the welfare of the child in the UK in carrying out immigration, asylum, and nationality functions under section 55 of the Borders, Citizenship and Immigration Act 1999. The Home Office responded that there were appropriate statutory and policy safeguards in place regarding child welfare.<sup>5</sup> The Home Office offered reassurance in its response that it would comply with Article 3 of the UNCRC and the section 55 duty without setting

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<sup>4</sup> The NIHRC suggested to the ICESCR Committee that it may wish to ask the UK how it will ensure that the proposed changes to the law concerning failed Asylum Seekers and irregular migrants do not as a consequence lead to individuals falling into destitution, see NIHRC "Submission to the UN Committee on Economic, Social and Cultural Rights: Parallel Report on the Sixth Periodic Report of the United Kingdom under the International Covenant on Economic, Social and Cultural Rights" September 2015, p45

<sup>5</sup> See Home Office "Reforming Support for Failed Asylum Seekers and Other Illegal Migrants: Response to Consultation", pp 8-9.

out how this would be achieved. The NIHRC advises that this issue therefore requires further scrutiny.

9. The NIHRC was disappointed that the Home Office did not act on its advice and that the proposals still form part of the Immigration Bill which is now at the House of Lords Committee stage. The NIHRC notes that an amendment was tabled by Labour in December 2015 which would have removed Clause 37 from the Bill.<sup>6</sup> Sir Keir Starmer speaking in favour of the subsequently defeated amendment, stated:<sup>7</sup>

Amendment 29 deals with the removal of support for certain categories of migrants. Such removal is wrong in principle and likely to be counterproductive. All the evidence is one way—support for families facing removal is the best means of ensuring that they leave. By support, I mean not only support in the terms set out in the Bill, but support by way of help with obstacles, documents and advice. It is the families that are supported in that broad way that are most likely to leave, and thus the objective is achieved by having the support in place. By contrast, withdrawing support has the opposite effect.

10. The NIHRC reiterates its previous advice that the proposals are retrogressive concerning the enjoyment of the right to an adequate standard of living and the right to social security. The NIHRC further advises that there should not be a shift of onus from the Home Office to the parents and guardians to demonstrate why they cannot leave the UK and would otherwise become destitute before support can be continued. Moreover, such an approach is contrary to the best interests of the child principle.
11. The NIHRC supports the amendment which would remove clause 37 from the Bill. In the absence of meaningful proposals as to how these obligations will be met, the NIHRC cannot support the introduction of clause 37. In the alternative should the amendment be rejected, the Commission supports amendment no.230 which would allow for appeal to the First Tier Tribunal, if the Secretary of State

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<sup>6</sup> See Report Stage of the House of Commons, 1 December 2015, available at <http://www.publications.parliament.uk/pa/cm201516/cmhansrd/cm151201/debtext/151201-0003.htm>

<sup>7</sup> See Report Stage of the House of Commons, 1 December 2015, Col 234

decides not to provide support to a person or not to continue to provide support to him or her. This would provide a procedural safeguard and enhance further protection for human rights, including Article 3 of the UNCRC.