Maternity Action is the UK’s leading charity committed to ending inequality and improving the health and well-being of pregnant women, their partners and children. We deliver a well respected and heavily used information and advice service, undertake research and policy analysis, and campaign to improve the rights of and support for pregnant women and new parents, including vulnerable migrant, refugee and asylum-seeking women.

General comments

It is surprising and greatly disappointing that a consultation on proposed legislative changes with the potential to impact severely on the health and well-being of vulnerable individuals – including pregnant women and young children – should have been issued with an unusually short consultation period of just four weeks, and in the middle of the summer holiday period. Furthermore, the associated regulatory impact assessment lacks a detailed evaluation of the likely impact of some of the consultation document’s specific proposals.

The remainder of this response follows the template set out in the consultation document.

1. The proposed repeal of section 4(1) of the 1999 Act.

While it may be true that s4(1)(a) and s4(1)(b) are rarely used – regrettably, neither the consultation document nor the regulatory impact assessment set out any relevant figures – s4(1)(c) is used in hundreds of cases each year, principally to provide a bail address for persons released from Immigration Act detention. Accordingly, the proposed repeal of s4(1) would appear to carry a consequential risk of unnecessarily prolonged detention in a significant number of cases. This has substantial cost implications. Detention of pregnant women has a negative effect on the health of pregnant women
Yet these risks are not addressed, let alone evaluated, in the consultation document or regulatory impact assessment. We urge that further consideration be given to the likely consequences of this proposal.

More generally, s4(1) provides an essential ‘safety net’ for a relatively small but not insignificant number of vulnerable individuals not covered by s4(2). We can see no good reason for removing this safety net, and strongly suspect that any associated cost savings would be more than outweighed by increased costs elsewhere in the immigration system.

2. The proposal to close off support for failed asylum seekers who make no effort to leave the UK at the point that their asylum claim is finally rejected, subject to continued support in cases with a genuine obstacle to departure at that point or in which further submissions are lodged with the Home Office and are outstanding.

As we understand it, under this proposal s4(2) support would no longer be available to failed asylum seekers from 1 July 2016, but support (effectively s95 and s4 support combined) would continue to be available to those whose asylum claim has been finally rejected but there is a genuine obstacle preventing their return to their country of origin, and to those who have outstanding further submissions with the Home Office. And the principal consequences would appear to be that there would then be no appeal against the termination of support, and that there would be no route back on to support, once support has ceased, on grounds of taking all reasonable steps to leave the UK or being medically unfit to travel.

We strongly oppose the effective removal of the right of appeal to the Asylum Support Tribunal against a termination of support. The fact that hundreds of appeals to the Tribunal are successful each year underlines the less than perfect quality of UKVI decision-making and the need for independent scrutiny. Without such independent scrutiny and feedback, the quality of decision-making would most likely decline further, resulting in severe hardship to vulnerable individuals in genuine need.

Similarly, the loss of a route back onto support, once support has been terminated, would inevitably result in severe hardship to vulnerable individuals in genuine need. The consultation document and regulatory impact assessment do not justify this specific proposal in terms of net cost savings.

Of particular concern to Maternity Action is the apparent loss of a route back onto support for women who become pregnant. Currently, such women can access s4(2) support six weeks before their due date (on the basis of being unfit to travel), and even earlier than this if there is evidence they are unable to travel earlier in their pregnancy. Indeed, we are surprised and disappointed that there is no specific mention of pregnant women in the consultation document. Asylum seeking women have very poor maternal health outcomes (CEMACH 2007) and reducing access to support will inevitably have a negative impact on the health of mother and baby. To our mind, it is essential
that whatever support scheme emerges from this consultation includes proper provision for pregnant women at all stages of their pregnancy. At the very least, the new provisions should replicate the existing s4(2) provisions in respect of pregnant women and ability to travel.

3. The proposed changes for failed asylum seekers with children.

We strongly oppose these proposed changes, which appear to rely on an unreasonable assumption that ‘behavioural change’ will result in unsupported failed asylum seeker families leaving the UK, and which will inevitably result in severe hardship to vulnerable individuals, including pregnant women and young children. This assumption is contrary to the findings of the Home Office’s own evaluation of the 2004-5 pilot, and the consultation document fails to set out any new research evidence to justify it.

For the reasons given in the previous section, we strongly oppose the specific proposal that there be no right of appeal to the Asylum Support Tribunal against a refusal to extend the grace period.

4. The length of the proposed grace period in family cases.

In our view, the proposed grace period of 28 days in family cases is grossly inadequate. We suggest a grace period of at least 90 days (i.e. the same as that provided under the voluntary returns programme).

5. The proposed transitional arrangements.

We agree that it would be hugely problematic to abruptly cease the provision of support to failed asylum seekers already in receipt of support, if and when legislation implementing these proposals comes into force.

6. The assessment of the impact of the proposals on local authorities.

We have no specific comments.

7. Whether and, if so, how we might make it clearer for local authorities that they do not need to support migrants, including families, who can and should return to their own country.

We have no specific comments.

8. Any suggestions on how the Home Office, local authorities and other partners can work together to ensure the departure from the UK of those migrants with no lawful basis to remain here and minimise burdens on the public purse.

We have no specific comments.
9. Any information or evidence that will help us to assess the potential impacts of the changes proposed in this consultation document and to revise the consultation stage Impact Assessment.

Due to the short consultation period and timing of the consultation, we are not in a position to provide such information or evidence at this time.

10. Any information or evidence that will help us to assess the potential impacts of the changes proposed in this consultation document on persons who have any of the protected characteristics as defined in the Equality Act 2010.

Due to the short consultation period and timing of the consultation, we are not in a position to provide such information or evidence at this time. We reiterate our concern that a consultation on such grave matters should be so limited.

Maternity Action
1 September 2015