Home Office

Support provided under section 4(1) of the Immigration and Asylum Act 1999: handling transitional cases

Version 1.0

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About this guidance

This instruction sets out the policy in respect to support provided under section 4(1) of the Immigration and Asylum Act 1999.

Section 4(1) of the 1999 act was repealed on the 15 January 2018 by the Immigration Act 2016, but anyone supported on it at that time continues to be eligible to receive it under transitional arrangements, unless and until a later decision is made that they are no longer eligible to receive it.

Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors, then email the: Asylum Policy inbox.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance Rules and Forms team.

Publication

Below is information on when this version of the guidance was published:

- version 1.0
- published for Home Office staff on 16 February 2018

Changes from last version of this guidance

This is a new instruction to reflect the repeal of section 4(1) of the Immigration and Asylum Act 1999 and commencement of schedule 10 to the Immigration Act 2016.

Related content
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For context and further information see the asylum support policy and process instructions, and the Criminal Casework schedule 10 instruction on Horizon.

Related external links
GOV.UK. (Asylum support instruction pages)

Background and legislative provisions

Section 4(1)(a) and (b) of the Immigration and Asylum Act 1999 has provided the Secretary of State with the power to provide, or arrange for the provision, of facilities for the accommodation of persons temporarily admitted to the United Kingdom under paragraph 21 of schedule 2 to the Immigration Act 1971 or released from detention under that paragraph.

Section 4(1)(c) of the 1999 act has provided the Secretary of State with the power to provide, or arrange for the provision, of facilities for the accommodation of persons released on bail from detention under any provision of the Immigration Acts.

These provisions were repealed with effect from 15 January 2018, to coincide with the commencement of schedule 10 to the Immigration Act 2016.

Schedule 10 replaces the previous legal framework used to monitor people without immigration status, as an alternative to detaining them, with a single framework providing for their bail and the conditions that may be attached to it.

Schedule 10 also provides the Secretary of State with powers to provide, or arrange for the provision of, facilities for the accommodation of persons on bail if both of the following apply, they are:

- required to reside at a specified address as a condition of their bail
- unable to support themselves at the specified addressed

However, the power only applies if the Secretary of State thinks there are exceptional circumstances. The exceptional circumstances criteria are set out in the relevant section of the Immigration Bail instruction, which contains the policy on using the power.

Under transitional arrangements, however, any persons receiving accommodation provided under any of the powers in section 4(1) of the 1999 act on 15 January 2018 should continue to receive it unless and until a decision is made that they are not qualified to receive it.

Additionally, anyone with an outstanding application for section 4(1) accommodation on 15 January 2018, that falls to be granted, or if they have an outstanding appeal against its rejection should continue to receive accommodation unless and until a decision is made that they are not qualified to receive it.

Reasons for providing accommodation under section 4(1) prior to its repeal

The circumstances in which the Secretary of State has been prepared to provide accommodation under section 4(1)(a) and (b) of the 1999 act are when all of the following apply:

- the person appears to be destitute
- the person has no avenue to any other form of support (this provision excludes asylum seekers and failed asylum seekers because they are able to access support under the provisions set out in sections 95, 98 and 4(2) of the 1999 act and also excludes those with children because they have in practice been able to access support under section 17 of the Children Act 1989 or its equivalent in Scotland and Northern Ireland)
- the provision of support is necessary to avoid a breach of their human rights (a consideration of the circumstances in which it might be necessary to provide support for human rights reasons is set out later in this guidance)

Accommodation has also been provided under section 4(1)(c) of the 1999 act to people detained under provisions in the Immigration Acts. This was generally in order to facilitate an application for bail to the First-tier Tribunal under the arrangements in place before the commencement of schedule 10 to the Immigration Act 2016 on 15 January 2018. In cases where the Tribunal granted bail the person moved into the accommodation provided.

Nature of support provided under section 4(1)

People supported under section 4(1) of the 1999 act are provided with accommodation and a pre-paid payment card (the “Aspen card”) that they can use at supermarkets to purchase food and other essential items.

Cash payments are not provided to those receiving support provided under section 4(1) of the 1999 act and the pre-payment card cannot be provided unless the person is being provided with accommodation.

Special accommodation arrangements for certain foreign national offenders

Accommodation arrangements for those supported under section 4(1) of the 1999 Act are generally similar to those for people supported by the Home Office under other powers in the 1999 act, but special arrangements sometimes need to be made in certain circumstances, particularly if the person is a foreign national offender subject to deportation procedures.

In these circumstances, the following factors should be taken into consideration:

- accommodation in a multi-person “initial accommodation centre” is not appropriate if the person has a conviction for a violent, sexual or serious drug offence - in such cases, standard “dispersal accommodation” or “complex bail dispersal accommodation” will need to be arranged
- the location of the accommodation and nature of the accommodation (whether for example self-contained accommodation is appropriate) provided to a person who falls to be considered for “complex bail dispersal accommodation” should be decided after taking account of the views of the person’s Offender Manager

- the objective in all such cases should be to provide the best available accommodation that is suitable for the particular person and mitigates against any risk of harm they pose to the public
- some foreign national prisoners detained under immigration powers will have completed the custodial part of their criminal sentence, but still be under licence – in such circumstances, approval from Her Majesty's Prison and Probation Service must be sought for any proposed accommodation for the person if they are released from detention on bail

Reviewing and discontinuing support provided under section 4(1)

The support provided under section 4(1) to those receiving it after 15 January 2018 should be reviewed regularly. There should not normally be longer than three months between reviews. In some cases, it will appear that the person is eligible to receive support under a different provision in the 1999 act. These cases include:

- where the person is an asylum seeker and appears to be destitute - so is therefore eligible to receive support under section 95 of the 1999 act
- where the person is a failed asylum seeker, appears to be destitute and meets one or more of the conditions set out in paragraph 3(2) of the Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005 - so is therefore eligible to receive support under section 4(2) of the 1999 act
- where the person's conditions of bail require them to reside at a specified address and they meet the eligibility criteria to be provided with accommodation under the powers set out in schedule 10 to the Immigration Act 2016

If the person is found to be eligible to receive support for any of these reasons they should be given notice that they will now be supported under the appropriate provision and will no longer be supported under section 4(1) of the 1999 act.

It will not usually be necessary to change their accommodation arrangements, but for those found to be eligible to receive support under section 95 of the 1999 act, arrangements should be made to enable them to use their Aspen card to obtain cash support at the appropriate weekly allowance rate for those supported under section 95.

In all other cases, support should be discontinued unless it is considered that it needs to continue to be provided in order to prevent a breach of the person's rights under the European Convention on Human Rights.

When making decisions about discontinuation, it is important to remember that the right to freedom from inhuman and degrading treatment set out in Article 3 of the European Convention on Human Rights is an absolute right, and that interference with that right can never be justified.

Each case should be considered on its individual merits, but as a general rule support should only continue to be provided where both the following circumstances apply:

- there is a genuine (legal or practical) obstacle that prevents them from leaving the United Kingdom
- the person is likely to suffer inhuman or degrading treatment as a result of not being provided with accommodation and the means to meet their essential living needs

Undertaking a human rights assessment

Article 3 of the European Convention on Human Rights (ECHR) is the prohibition on torture or inhuman or degrading treatment or punishment.

The first step in determining whether accommodation and or support may need to be provided for human rights reasons is to note that in ordinary circumstances a decision that would result in a person sleeping rough or being without food, shelter or funds, is likely to be considered inhuman or degrading treatment contrary to Article 3 of the ECHR (see: R (Limbuela) v Secretary of State [2005] UKHL 66).

The decision maker will therefore need to assess whether the consequences of a decision to deny a person accommodation would result in a person suffering such treatment. To make that assessment it may be necessary to consider if the person can obtain accommodation and support from charitable or community sources or through the lawful endeavours of their families or friends.

Where the decision maker concludes that there is no support from any of these sources then there will be a positive obligation on the Secretary of State to accommodate the individual in order to avoid a breach of Article 3 of the ECHR.

However, if the person is able to return to their country of origin and thus avoid the consequences of being left without shelter or funds, the situation outlined above is changed. This is because of the following:

- there is no duty under the European Convention on Human Rights to support foreign nationals who are freely able to return home (see: R(Kimani) v Lambeth LBC [2003] EWCA Civ 1150)
- if there are no legal or practical obstacles to return home, the denial of support by a local authority does not constitute a breach of Human Rights (see: R (W) v Croydon LBC [2007] EWCA Civ 266)

A genuine obstacle would only usually exist if either:

- the person is unable to leave the UK because of a physical impediment, or other medical reason**:**
  - the test here is usually whether the person is physically able to travel by air to their country of origin or another country where they may be admitted

    - a person who claims to be unfit to travel will usually need to provide supporting evidence from a medical practitioner

- the person is unable to leave the UK because they do not have the necessary travel documentation but are taking reasonable steps to obtain one:
    - reasonable steps should usually be taken to mean that they have applied for the necessary travel document from their national embassy, but may also include where they are complying with Home Offices processes to obtain an emergency travel document to facilitate their return

Unwillingness to return is not regarded as the same as inability to return, so where there is a genuine obstacle to return the person can be expected to take steps to resolve the obstacle where it is reasonable to do so (for example by applying for a travel document through the national embassy or high commission).

If there are no legal or practical obstacles preventing the person leaving the United Kingdom, it will usually be difficult for a person to establish that the Secretary of State is required to provide support in order to avoid breaching their human rights.

Clearly, however, if there are obstacles in place that mean the person cannot leave the United Kingdom, or they are taking reasonable steps to put themselves in a position whereby they can leave the United Kingdom but there is likely to be an unavoidable delay in those steps reaching fruition, then it may be necessary to continue to provide accommodation support to avoid the inhuman treatment described above.

If unsure as to whether it would be appropriate to provide, or continue to provide, support in any given case, a senior caseworker should be consulted as part of your decision-making process.

Giving notice that support provided under section 4(1) is to be discontinued and the right of appeal

Where it is decided that a person no longer qualifies for support under section 4(1) of the 1999 act they should be given written notice that support will be discontinued 15 calendar days from the date of the letter.

If the person is an asylum seeker or failed asylum seeker the notice should inform them that they may apply for support under section 95 or section 4(2) of the 1999 act.

The letter should inform them that they may appeal against the decision under section 103 of the 1999 act to the Tribunals Service – Asylum Support.

A Notice of Appeal form should also be included with the letter.

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