



Home Office

# Asylum seekers with care needs

Version 2

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# About this guidance

This document outlines the approach taken by the Home Office to the duties and obligations owed to asylum seekers who have disabilities, care needs or both. In doing so it sets out how the framework of the Care Act 2014 should be interpreted by the Home Office and its external partners in the context of asylum support. It outlines how to identify a care need, initial actions to take and responsibility for assessing and providing for care needs.

## 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: Asylum Policy

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 **2.0**
- published for Home Office staff on **03 August 2018**

## Changes from last version of this guidance

Redraft to reflect changes brought about by the Care Act 2014 and to clarify expectations on the circumstances in which local authorities may be bound to accommodate asylum seekers with care needs.

### Related content

For context see asylum support policy and process instructions on Horizon, and the Healthcare needs and pregnancy dispersal instruction.

[Contents](#)

### Related external links

[GOV.UK](#). (asylum support instruction pages)

and the [Care Act resources](#) at: <https://www.gov.uk/government/publications/care-act-2014-part-1-factsheets/care-act-factsheets>

# The legislative framework

## The Care Act 2014

In April 2015, the Care Act 2014 replaced most previous law regarding carers and people being cared for. It outlines the way in which local authorities should carry out needs and carers' assessments; how local authorities should determine who is eligible for their care; how local authorities should charge for both residential care and community care; and how local authorities should plan care provision holistically.

The Care Act is mainly for adults in need of care and support, and their carers. Generally young carers (aged under 18) and adults who care for children with disabilities can be assessed and supported under legislation specific to children's needs. The Care Act embeds and extends the requirement to provide information on service provision, personalisation in social care as well as increasing the focus on wellbeing.

Local Authorities in England are obliged under the Care Act 2014 to assess any person who appears to need care and support and provide appropriate care in accordance with their assessment. Local Authorities in Wales are obliged to act in accordance with the [Social Services and Well-being \(Wales\) Act 2014](#). In Scotland Local Authorities are obliged to follow the [Social Work \(Scotland\) Act 1968](#) ("the 1968 Act"). Other references in this document to the Care Act 2014 should be taken to refer to these instruments in the devolved administrations and Northern Ireland.

Underpinning all the processes and responsibilities that are set out in the Care Act is the wellbeing principle. The Care Act 2014 therefore creates a shift from the previous position of delivering social care services to people who met eligibility criteria, which might vary across the country, to requiring local authorities to ensure that provision of care and support, prevention, or information and advice, focuses on the needs and goals of the person concerned.

## Relevant local authority

Section 18(1) of the Care Act (in England), requires a local authority to meet eligible needs for care and support if 'the adult is ordinarily resident in the authority's area or is present in its area but of no settled residence'.

A person is ordinarily resident in the area where they have voluntarily taken up residence for a settled purpose. This is usually where they are currently living, regardless of how long they have resided there. However, asylum seekers, particularly if newly arrived in the UK, may well not have become 'ordinarily resident' in any local authority area. Therefore, many asylum seekers will stand to be assessed by the local authority in whose area they are present at the time the potential care need is ascertained. So:

- where the person is presenting with urgent needs, the local authority in whose area the adult is present will need to conduct the initial assessment

- a person who has been accommodated (dispersed or placed in Initial Accommodation) in a local authority's area should be considered ordinarily resident in that area
- an authority that is accommodating someone in their care may also remain responsible if they move that person to another authority's area

## Those exempted from Care Act provisions

Section 21 sets out an exception for person's subject to immigration control whereby a local authority may not meet the needs for care and support of an adult to whom section 115 of the Immigration and Asylum Act 1999 applies and whose needs for care and support have arisen solely:

- (a) because the adult is destitute, or
- (b) because of the physical effects, or anticipated physical effects, of being destitute.

Section 21(5) also excludes migrants subject to immigration control from receiving preventative assistance under section 2(1) of the Care Act when their needs for care and support have arisen, or may in the future arise, solely because they are destitute or due to the physical effects, or anticipated physical effects, of being destitute. In such circumstances, the person may apply to the Home Office for asylum support.

Schedule 3 to the Nationality, Immigration and Asylum Act 2002 also provides that local authority social care is unavailable to failed asylum seekers and others who remain in the UK unlawfully, except where, after assessment, the local authority decides to provide support to avoid a breach of Human Rights or because of another exception set out in schedule 3.

The Court of Appeal (in *Kimani v Lambeth Borough Council* [2004] 1 WLR 272) confirmed that there is no general obligation on local authorities to accommodate migrants without immigration status who intentionally make themselves destitute by refusing to leave the UK when it is possible for them to do so. Neither Article 3 nor Article 8 of the ECHR imposes a duty on states to provide support to failed asylum seekers or other migrants without immigration status when there is no impediment to their return to their own country.

## Charges for care services

Whilst many types of care and support are provided free, some will be subject to a charge based on what the person can afford. Practically, supported persons would not be charged.

However, where necessary additional costs are incurred (for instance transport to an hospital appointment) asylum seekers may apply for additional support under section 96(2) of the 1999 immigration and Asylum Act.

### **Related content**

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# Assessing and meeting care needs

## Referrals to local authorities

Officers and relevant commercial partners should refer for needs assessment any adult customer who appears to have a care need outlined in the following three scenarios.

### Non-urgent needs

Where a newly arrived asylum seeker has potential care needs that do not appear to be urgent, or otherwise to require assessment prior to dispersal, assessment of those needs may await the person being dispersed. A person dispersed to a local authority's area should be considered ordinarily resident in that area, and any needs or carer's assessment will be requested from that local authority.

### Urgent needs

Where a person presents with urgent needs that may require any of the following:

- residential care
- specific accommodation
- day to day assistance with basic personal care

a needs assessment should be requested from the local authority in whose area the adult is present at the earliest practicable point in the process. For example, where a person claiming asylum at a port of entry presents with urgent care needs, the local authority in whose area the port is situated should be requested to do an urgent assessment. If in immediate need of medical care, it will be necessary in the first instance to refer the individual to the nearest hospital.

### Urgent needs where the person has already been accommodated by Home Office

Where, exceptionally, a person has already been accommodated by the Home Office before an urgent care need is revealed, and therefore no request for assessment has been made, an urgent assessment must be requested from the authority in whose area the accommodation is situated. Such an assessment should be requested by the first responder (for instance the accommodation provider, the caseworker or other person, using specialist safeguarding staff where appropriate) when made aware of the care need. Where a local authority is requested to do a needs assessment either because the asylum seeker is ordinarily resident in its area, or is present in its area but of no settled residence, that local authority is obliged to do so in accordance with the terms of the Care Act 2014.

## Access to Initial Accommodation (IA)

Those with an urgent care need, as opposed to a purely medical need (that can be addressed by the IA medical team or National Health Service as appropriate), should not be admitted into IA without a needs assessment having been conducted by a local authority. Neither UKVI nor our contracted providers are responsible for, or appropriate organisations to provide for, urgent care needs. Those officers with a gatekeeping function (for instance NAAU and the Command and Control Unit), should set the expectation that the referring officer first requests the care assessment from the relevant local authority. The local authority can be expected to accommodate in the interim if the person has no accommodation to occupy whilst the assessment is carried out.

Existence of a care need should not in itself be a barrier to dispersal, but the needs assessment should always be passed on to the local authority in any new area to which a claimant is routed.

## Local authority actions

The Care Act gives local authorities a duty to carry out a needs assessment to determine whether an adult has needs for care and support. For supported persons, the local authority duty includes:

- doing the needs assessment and any carer's assessment, in the same way they would for a British citizen in the same circumstances
- providing residential care if that is assessed as appropriate. The decision must be made according to the same criteria they would normally use
- assessing what the person does need (both in terms of care services and any specific accommodation needs) if residential care is not assessed as appropriate
- making appropriate provision for any care services that have been assessed as necessary, in the event the person is, or is going to be, accommodated in their area (regardless of who is providing the accommodation)
- in the event the person is going to be accommodated outside of the assessment area assisting with maintaining continuity of care by providing a copy of the person's care and support plan to the receiving authority (the LA in whose area the new accommodation is situated)
- considering whether to exercise their power to meet urgent needs under s.19(3) of the Care Act 2014, including needs for accommodation, until their assessment is complete if they are unable to conduct a prompt assessment

## Asylum support assessment

Where a local authority assesses that residential care is not appropriate, a copy of the needs assessment should be requested. The contents must then be considered when assessing any specific accommodation requirements and to inform the receiving local authority of any identified needs for care and support.

Existence of a care need should not in itself be a barrier to dispersal, but any request for accommodation to be provided in a particular area, for example for continuity of care, should be considered on its merits and advice sought as appropriate. When issuing cases with care needs that affect accommodation provision to an accommodation provider for dispersal, the assessment caseworker should give the accommodation provider a copy of the needs assessment via the secure portal, with an instruction to provide accommodation that is suitable in view of the needs assessment. The accommodation provider should then provide accommodation that is suitable in view of the assessed needs, liaising with the original assessor and the local authority in the new area as appropriate.

When assessing subsequent applications by the same person consider whether the person's circumstances have changed such that they require a fresh needs assessment - possibly because of deterioration in a known condition or because previously unknown issues have surfaced.

When considering asylum support requirements for someone who has or may have a care need, which has not already been referred to a local authority for assessment, the asylum seeker should be referred to the [relevant local authority](#) for a needs assessment.

Local authorities (LA) are generally only expected to provide accommodation to asylum seekers if their assessment shows that the person needs the sort of residential care that LA adult services are required to provide. An asylum seeker who has care needs which can be appropriately addressed in asylum support accommodation, and is otherwise eligible, should be accommodated by the Home Office following a care assessment.

**To note:** If a local authority assesses that a supported person's needs cannot be met without residential care they must arrange accommodation and care to meet the assessed needs. This is so that even when the person is residing in Home Office accommodation at the time of the assessment.

**To note:** The fact that a person has applied for a needs assessment from Initial Accommodation should not by itself be accepted as a reasonable excuse for failing to travel.

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# Common care needs scenarios

The following table sets out some common care needs scenarios with process actions. The list is not exhaustive.

Potential Care Need	Home Office Action	Social Services Action
Person presents with an urgent care need	<p>In these cases:</p> <ul style="list-style-type: none"> <li>encountering officer to request a needs assessment from the local authority in which the person presents, in all cases</li> <li>the needs assessment should be completed before IA is considered</li> <li>update case records with actions taken and any onward actions</li> </ul>	<p>The local authority in which the person presents should carry out a care assessment on request, and:</p> <ul style="list-style-type: none"> <li>accommodate in the interim if the person has nowhere to stay whilst the assessment is carried out</li> <li>admit the person to their residential accommodation if appropriate</li> <li>advise us of any specific accommodation requirements if residential care is not necessary</li> <li>provide appropriate care in accordance with their assessment, if the person is accommodated in their area</li> </ul>
Person presents with or is assessed to have a non-urgent care need	<p>In these cases:</p> <ul style="list-style-type: none"> <li>route as usual</li> <li>update case file to indicate clearly that a care needs assessment should be requested once the person's dispersal address is known</li> </ul>	<p>The local authority will conduct an assessment on request, for a person resident in their area, then either:</p> <ul style="list-style-type: none"> <li>provide appropriate care in accordance with their assessment</li> <li>advise us about any adjustments we should make to the person's accommodation</li> <li>admit the person to their residential</li> </ul>

Potential Care Need	Home Office Action	Social Services Action
		accommodation if appropriate
Person's care needs are revealed only after the person is in Home Office accommodation	<p>In these cases:</p> <ul style="list-style-type: none"> <li>• refer case to local authority for a needs assessment without delay</li> <li>• caseworker to update case records and act on the assessment recommendations</li> <li>• give the accommodation provider (via a secure portal) a copy of the assessment as appropriate</li> <li>• update case records with actions taken, and any necessary onward actions</li> </ul>	<p>The local authority will conduct an assessment on request, for a person resident in their area, then either:</p> <ul style="list-style-type: none"> <li>• provide any appropriate care, and a list of any required adjustments to accommodation</li> <li>• admit the person to their residential accommodation if appropriate</li> </ul>

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