



Home Office

Reforming support for migrants without immigration status

The new system contained in Schedules 8 and 9 to the Immigration Bill

January 2016

Introduction

1. Schedules 8 and 9 to the Immigration Bill reform the arrangements for Home Office and local authority support to failed asylum seekers and other migrants without immigration status in the UK. This paper sets out the background to the new arrangements and how they are expected to work in practice to provide a better system of central and local government support for, and engagement with, such migrants while they establish a lawful basis to remain here or prior to their departure from the UK.

2. This paper has been prepared in particular to inform House of Lords Committee stage consideration of the Immigration Bill. For illustrative purposes, it assumes that the Government Amendments to Schedule 9 tabled on 21 January 2016 stand part of the Bill. Those amendments take account of comments from local authority colleagues and other partners.

Background

Asylum seekers and their dependants

3. The UK is committed to fulfilling its international obligations to meet minimum standards for asylum seekers and their dependants who would otherwise be destitute until their asylum claim has been finally determined. These minimum standards are met through the support provided by the Home Office under section 95 of the Immigration and Asylum Act 1999. Support is usually provided in the form of free, furnished accommodation (with no utility bills or Council Tax to pay) and a weekly cash allowance to cover the asylum seeker's essential living needs; free access to healthcare and schooling is also provided. At 31 March 2015, we were providing section 95 support to an estimated 20,400¹ asylum seekers whose asylum claim had yet to be finally determined, including pending the outcome of an appeal, and who would otherwise be destitute. In 2014-15, such support cost an estimated £100 million.

4. The Immigration Bill makes no change to these arrangements.

5. A new weekly rate of asylum support of £36.95 per person was introduced in August 2015. We are satisfied that the methodology for assessing the level of support ensures that it is sufficient to meet essential living needs and prevent destitution. It reflects our assessment, based on data from the Office for National Statistics and our own market research, of the money required to meet essential living needs, including food, clothing and toiletries. It is provided in addition to free, furnished accommodation. Like the systems in place in France, Germany and Sweden, it takes into account the economies of scale available to multi-person households.

6. As Lord Bates confirmed in the House of Lords on 27 October 2015, we continue to keep the support rate under review. On 21 December 2015 we wrote to partner organisations inviting them to submit relevant evidence by 31 January 2016. We expect to make clear the outcome of the review for 2016 in March or April and will provide detailed reasons for our findings.

¹ This figure has been extrapolated from published Official Statistics as at 31 March 2015.

Failed asylum seekers and their dependants

7. At present, Home Office support is also being provided to large numbers of failed asylum seekers and their dependants. Section 94(5) of the 1999 Act allows section 95 support to continue after the asylum claim has been finally determined if the failed asylum seeker has with them a dependent child. At 31 March 2015, an estimated 2,900 families (around 10,100 people; approximately 33 per cent of the total on section 95 support) were supported on this basis: in 2014-15, such support cost an estimated £45 million. In addition, section 4 of the 1999 Act provides for support for other categories of failed asylum seeker and others. At 31 March 2015, around 4,900 failed asylum seekers and others were supported under section 4 of the 1999 Act: in 2014-15, such support cost an estimated £28 million.

8. So, in total, at 31 March 2015, we were providing support to around an estimated 15,000² failed asylum seekers, their dependants and others. In 2014-15, such support cost an estimated £73 million.

9. This means that the system of support for which Parliament legislated in the 1999 Act to discharge our international obligations towards those seeking asylum in the UK is now being used in large measure to support those whose asylum claim has failed and who have established no lawful basis to remain in the UK. This is not right in principle and provides incentives for migrants to remain in the UK where they have no lawful basis for doing so. It also undermines public confidence in our asylum system.

Consultation

10. A five-week public consultation on reforming support for failed asylum seekers and others was conducted from 4 August 2015 to 9 September 2015. The consultation document and impact assessment can be found on GOV.UK at: <https://www.gov.uk/government/consultations/reform-of-support-for-failed-asylum-seekers-and-other-illegal-migrants>
<https://www.gov.uk/government/publications/reforming-support-for-failed-asylum-seekers-and-other-illegal-migrants-impact-assessment>

11. The consultation document set out proposals to restrict the support the Home Office gives to those whose claims for asylum have been found unsubstantiated, and their dependants, to those who are destitute and face a genuine obstacle to leaving the UK at the point their appeal rights are exhausted. The consultation document sought views on how the Home Office, local government and other partners could best work together to conclude immigration cases as quickly as possible, ensure the departure from the UK of those migrants with no lawful basis to remain here and minimise burdens on the public purse. It also invited views on the framework for restricting access to local authority support by migrants without immigration status provided by Schedule 3 to the Nationality, Immigration and Asylum Act 2002.

12. 873 responses were received. On 3 November 2015 the government published a response to consultation document and a policy equality statement. These can be found on GOV.UK at:

² This figure has been extrapolated from published Official Statistics as at 31 March 2015.

<https://www.gov.uk/government/consultations/reform-of-support-for-failed-asylum-seekers-and-other-illegal-migrants>

<https://www.gov.uk/government/publications/immigration-bill-part-5-support-for-certain-categories-of-migrant>

Overview of the Immigration Bill provisions

13. As proposed in the consultation document, Schedule 8 to the Immigration Bill makes these key changes to the existing UK-wide framework for Home Office support for failed asylum seekers and others:

- Those with children with them when their asylum claim and any appeal is rejected will no longer be treated as though they were still asylum seekers and will therefore cease to be eligible for support under section 95 of the Immigration and Asylum Act 1999.
- Section 4 of the 1999 Act is repealed and Home Office support will only be available to destitute failed asylum seekers and any dependent children if there is a genuine obstacle that prevents them from leaving the UK at the point their appeal rights are exhausted.

14. The consultation also highlighted concern that the framework for restricting access to local authority support by migrants without immigration status provided by Schedule 3 to the 2002 Act can be burdensome for local authorities to administer, involving complicated assessments and continual litigation to establish what support should be provided in what circumstances. It also underlined how local authority duties under the Children Act 1989 for supporting adults leaving their care, which are geared to the needs of those whose long-term future is in the UK, currently require the support of adult migrants who the courts have agreed have no lawful basis on which to remain here and who should be leaving the UK.

15. Schedule 9 to the Immigration Bill therefore makes these key changes to the existing framework in England for local authority support for migrants without immigration status:

- A simpler mechanism is created under Schedule 3 to the 2002 Act, rather than section 17 of the Children Act 1989, to provide accommodation and subsistence support for destitute families without immigration status, pending resolution of their status or their departure from the UK. Local authorities will continue to provide support under section 17 of the 1989 Act to meet any other needs of a child, or their family, in order to safeguard and promote the child's welfare.
- Migrants leaving local authority care as adults, who have established no lawful basis to remain here, will generally no longer be able to access local authority support under the 1989 Act. The Bill makes alternative provision under Schedule 3 to the 2002 Act for their accommodation, subsistence and other support before they leave the UK. This means that local authorities will continue to be able to provide appropriate additional support for vulnerable young adults who need it.

16. The changes made by Schedules 8 and 9 will not affect those already receiving, or who have applied for and are granted, Home Office or local authority support under the existing framework when the changes are implemented.

17. Schedule 9 contains powers for equivalent changes to local authority or equivalent support for migrants without immigration status, under the UK-wide framework contained in Schedule 3 to the 2002 Act, to be made in other parts of the UK by way of regulations subject to the affirmative procedure. We are continuing to discuss this with the Devolved Administrations.

Detail of the Immigration Bill provisions on asylum support

Section 95 support for asylum seekers

18. The Immigration Bill does not alter the support framework for asylum seekers who are destitute. Support under section 95 of the 1999 Act will continue to be available to them and any dependants until their protection claim and any appeal against its refusal are finally determined.

19. The definition of “asylum seeker”, for the purposes of eligibility for section 95 support, is expanded under Schedule 8 to the Bill to include two categories currently supported under section 4 of the 1999 Act (which is repealed by the Bill):

- Those who have been refused protection but have been granted permission to apply for judicial review in relation to their asylum claim.
- Those who have been refused protection, but have lodged further submissions relating to the protection claim and where a decision on the further submissions has not been made within a period prescribed in regulations. We expect that the standard period prescribed will be five days, with this period reduced to two days where the person is assessed as vulnerable (e.g. because of a serious medical condition), mirroring the existing arrangements for this category under section 4 of the 1999 Act.

20. Of the 3,066 cases supported under section 4(2) of the 1999 Act as at 30 March 2015, around 72 per cent had been granted support on the basis of outstanding further submissions or an ongoing judicial review.

21. There will remain a right of appeal against a decision that the person is not qualified to receive section 95 support, e.g. because it is not accepted that they are destitute or because it is not accepted that they are an asylum seeker for the purposes of eligibility for support according to the Bill’s expanded definition of this.

Discontinuation of section 95 support

22. Where an asylum seeker and any dependants are granted asylum, humanitarian protection status or another form of leave to remain, section 95 support is discontinued after a ‘grace period’ of 28 days, as prescribed in regulations. This provides time for the person to seek employment, apply for housing assistance from the local authority and/or apply for any welfare benefits to which they may now be entitled. To assist the transition from Home Office support, the person is issued with a Biometric Residence Permit (the evidence they need to prove they can take employment and are eligible to apply for welfare benefits) and a National Insurance

number (which helps speed up the processing of a benefits claim). Home Office accommodation providers are contractually obliged to notify the local housing authority that a person has been granted refugee leave or other status and of the date their section 95 support will cease.

23. Where an asylum seeker without children in their household is refused asylum and has exhausted their appeal rights against this decision, section 95 support is discontinued after a 'grace period' of 21 days, as prescribed in regulations. This provides time for the person to make arrangements to leave the UK, or to demonstrate to the Home Office that there is a genuine obstacle to their departure, in which case support is available (currently under section 4 of the 1999 Act; under the Immigration Bill under the new section 95A of the 1999 Act) if they would otherwise be destitute.

24. There are no plans to change the grace period arrangements for those granted asylum or other status here or for those whose asylum claim and any appeal has failed and who do not have a child in their household at that point.

25. Under Schedule 8 to the Immigration Bill, those whose asylum claim and any appeal has failed, and who have a child in their household at that point, will no longer be treated as though they were still asylum seekers and will therefore cease to be eligible for support under section 95 of the 1999 Act. That support will be discontinued after a 'grace period' to be prescribed in regulations. This will provide time for the person and their dependants to make arrangements to leave the UK, or to demonstrate to the Home Office that there is a genuine obstacle to their departure, in which case support under the new section 95A of the 1999 Act will be available if they would otherwise be destitute.

26. The consultation proposed a grace period of at least 28 days before section 95 support is discontinued in these family cases. Many respondents took the view that a 28-day grace period would be too short and suggested that a period of 90 days would be more appropriate and commensurate with the practical work to be done to engage with appeal rights exhausted families, including presenting them with clear information about their situation and its implications and persuading and enabling them to leave the UK where there is no genuine obstacle to them doing so. We have reflected carefully on these representations and have discussed the issue further with local authority colleagues and other partners. In light of that further consideration, we can confirm that the grace period before section 95 support is discontinued in family cases will be 90 days.

27. There is currently no right of appeal against a decision to discontinue section 95 support because the person is no longer an asylum seeker and therefore not qualified to receive such support and the Immigration Bill does not create one. There will remain a right of appeal against a decision to suspend or discontinue section 95 support before it would otherwise come to an end (i.e. when the protection claim and any appeal is finally decided). These appeals most commonly arise where support is discontinued because new information shows that the supported person is no longer destitute or they breach the conditions attached to the provision of support (e.g. by failing to comply with a reporting condition).

28. The Immigration Bill provides no right of appeal for failed asylum seekers against the refusal of support under the new section 95A of the 1999 Act. This is because the assessment of whether there is a practical obstacle to departure from the UK generally involves straightforward matters of fact and we do not consider that a right of appeal is necessary. The published statistics on allowed asylum support appeals generally relate to appeals against the refusal of asylum support made for other reasons and many of these cases were allowed because the individuals only supplied the necessary evidence to establish their eligibility for support after the Home Office decision had been made. Relatively few related to the issue of whether there was a practical obstacle to departure from the UK.

29. It is currently possible for a failed asylum seeker and any dependants not in receipt of it to access section 95 support during the grace period if they become destitute during that period. This will remain possible under the new arrangements and such a person and any dependants will then be able to access section 95A support if there is a genuine obstacle to their departure from the UK.

30. Under the new arrangements it will not be possible to apply for section 95A support outside the prescribed grace period, except where the regulations permit this for reasons outside the person's control, e.g. because they were not promptly notified of the negative outcome of their asylum appeal or they were hospitalised or otherwise too unwell to make an application for section 95A support during the grace period.

Support for failed asylum seekers

31. Under Schedule 8 to the Immigration Bill, section 95 support will no longer be available to failed asylum seeker families and section 4 of the 1999 Act, which is currently used to support failed asylum seekers who cannot be expected to leave the UK, is repealed.

32. Instead, the scope of section 95 support will be expanded to cover destitute failed asylum seekers who have been refused protection but who have lodged further submissions relating to the protection claim and a decision on the further submissions has not been made within the prescribed period, or who have been granted permission to apply for judicial review in relation to their asylum claim.

33. In addition, support for destitute failed asylum seekers and any dependants will be available under the new section 95A of the 1999 Act where the person can show that they face a genuine obstacle that prevents their departure from the UK at the point their appeal rights are exhausted. This will include failed asylum seekers leaving local authority care as adults who face such an obstacle.

34. The circumstances in which a genuine obstacle to departure will be considered to exist will be set out in regulations subject to Parliamentary approval³ and will include where:

³ The Delegated Powers and Regulatory Reform Committee has recommended that the affirmative procedure should apply and we are giving due consideration to this.

- Medical evidence shows that a person is unfit to travel (including cases where this is because they are in the late stages of pregnancy); or
- A person lacks the necessary travel document to leave the UK but is taking all reasonable steps to obtain this.

35. The regulations and guidance relating to section 95A support will also set out as clearly as possible the evidence a person will need to provide to obtain support. For example:

- A claim to be unable to depart the UK because of a medical reason will generally need to be supported by medical evidence that the person is unfit to travel by air. It will generally not be sufficient to show that they are receiving ongoing treatment for a medical condition. In rare cases, a person may be allowed to remain in the UK in order to continue to receive medical treatment, where a requirement to leave would breach the European Convention on Human Rights (ECHR), but any such factors will have been considered when the asylum claim was decided.
- A claim to be taking all reasonable steps to obtain a travel document will need to be supported by evidence appropriate to the documentation procedures of their country or origin. In the last three years the main nationalities of families on section 95 support, who have been refused asylum and exhausted their appeal rights but continued to be supported, are Pakistani, Nigerian and Chinese. The Home Office has established procedures for an application for an Emergency Travel Document to be made to the authorities of each of these countries and many others. Individuals can also apply for a travel document directly to the relevant authorities of their country of origin, generally via the High Commission or Embassy in the UK.

36. Section 95A support will be provided for as long as the obstacle to departure remains, subject, under the regulations, to any conditions placed on support, e.g. to comply with re-documentation procedures.

37. Those granted section 95A support will generally have been in receipt of section 95 support at the point at which their asylum claim was refused and their appeal rights were exhausted. In such cases it will not be necessary for the Home Office to make a fresh assessment of whether they are destitute unless new information about this is received. In addition, it will generally be appropriate for the person or family to remain in the same accommodation and they will continue to receive a weekly cash allowance to cover their other essential living needs.

Securing the return of failed asylum seekers

38. The Home Office works with failed asylum seekers and other migrants, including families, who have failed to establish a lawful basis on which to remain in the UK to secure their return to their country of origin. We promote a culture of compliance to encourage voluntary returns or to take families through the returns process.

39. We also provide generous financial assistance to incentivise returns and assist with reintegration in the country of origin. The assisted voluntary return

scheme is now administered directly by the Home Office as part of a new integrated Voluntary Departure Service, together with our work on voluntary departures (which in 2014-15 achieved more than 5,000 voluntary departures of those with no lawful basis on which to remain in the UK and which in 2015-16 had exceeded this number by November 2015). Where our eligibility criteria are met, assisted voluntary returns are supported by up to £2,000 per person for families with children under the age of 18. Eligible single adults may qualify for up to £1,500 in overseas support, which includes cash on departure for immediate resettlement needs. 143 families (comprising 435 people), and 469 single failed asylum seekers, left under the assisted voluntary return scheme from 1 April to 31 December 2015.⁴

40. We recognise that, as part of our engagement with failed asylum seeker families and others as they become appeal rights exhausted and during the proposed grace period (for families) of 90 days before Home Office support under section 95 of the 1999 Act is discontinued, we will need to ensure that they know what is available to them if they leave the UK voluntarily and the full consequences of failing to do so. It will be important that they understand that they will have no right to call on Home Office or local authority support to remain here in circumstances when they could and should leave the UK. How this process of family engagement can be made as effective as possible, with the Home Office working in tandem with local authorities and other partners, is a priority for us.

41. A central/local government working group, formed under the auspices of the Local Government Association and involving local authority, Home Office, Department for Education and Department for Communities and Local Government officials, has been discussing the framing and implementation of the support measures contained in Schedules 8 and 9 to the Immigration Bill. The focus of the working group is on ensuring that those measures have the optimum impact in managing families without immigration status, maintain appropriate safeguards, reduce costs to the public purse and facilitate the departure from the UK of more families without a lawful basis to remain here. The next phase of the group's work will be to draw out best practice in effective engagement with appeal rights exhausted families from the range of such work already undertaken by the Home Office, local authorities and other partners and enable us to apply that to the design of the new operating procedures that will underpin the new system of support for families without immigration system for which the Immigration Bill provides.

42. This will involve continuing to reflect carefully on 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 the Immigration Bill for 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 the new section 95A of the 1999 Act provided by the Bill, the onus will be on the family to show that there is a genuine obstacle to their departure at the point their appeal rights are exhausted. Second, the 2005 pilot involved a largely correspondence-based process for terminating support in family cases that had exhausted their appeal rights in the 11 months prior to the pilot. By contrast, the new scheme will involve a managed process of engagement with the family, in tandem with the local authority, following the end of

⁴ Internal management information, which may be subject to revision.

the appeal process, to discuss their situation and the consequences of not leaving the UK in circumstances where they can do so.

43. We will also apply relevant experience from our operation of the Family Returns Process. This is comprised of three stages: assisted return (where the family is actively encouraged and assisted to leave the UK using a voluntary departure or via the assisted voluntary return scheme); required return (where arrangements are made for the family to depart and assistance provided on request to assist with travel to the airport); and ensured return (where the family is arrested and escorted to their flight for removal from the UK).

44. As part of the Family Returns Process a dedicated family engagement manager is allocated to the family. Their role is to hold a series of engagement meetings with the parents in order to ensure that the family understand their immigration status, the steps they need to take to leave the UK and the consequences of failing to do so. The family engagement manager works with the family to identify any issues relevant to enabling the family's return, and to address these where they can, e.g. by organising transport to the airport, paying for an agreed amount of excess baggage or assisting with arrangements for the family's initial arrival in the country of return. The family engagement manager encourages the family to leave voluntarily and to take advantage of the financial and other assistance on offer. If the family declines to take up these options, arrangements are made for the family to be arrested and removed from the UK.

45. From 1 April to 31 December 2015 the Family Returns Process achieved the return of 623 families.

Working with local authorities

46. Many respondents to the consultation were concerned that the proposals would result in a shift in the financial burden for supporting destitute failed asylum seeker families from the Home Office to local authorities, notwithstanding the commitment we have given to undertake a new burdens assessment of the final package of support measures contained in the Immigration Bill. Many also drew attention to the current pressures and challenges local authorities face in dealing with and supporting families who have not made a failed asylum claim and have no recourse to public funds (welfare benefits and social housing). These include families awaiting a Home Office decision or the outcome of an appeal in an immigration (non-asylum) case or who have exhausted their appeal rights against refusal in such a case. They also drew attention to the current pressures and challenges local authorities face in dealing with and supporting unaccompanied asylum seeking children and adult care leavers who have been such children.

47. We have considered these responses very carefully. We are keen to ensure that the measures contained in Schedules 8 and 9 to the Immigration Bill and their implementation minimise any impact on local authorities as a consequence of the Home Office no longer continuing to support failed asylum seekers solely because they have children. This remains a priority for the central/local government working group which is discussing the framing and implementation of these measures.

48. The Court of Appeal (e.g. in *Kimani v Lambeth Borough Council* [2004] 1 WLR 272) has 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 clear that they are able to. 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. Schedule 3 to the 2002 Act already provides that, across the UK, a range of local authority social care is unavailable to failed asylum seekers and others who remain in the UK unlawfully, except where, following what can be a complex and burdensome assessment process, the local authority decides that the provision of such support is necessary to avoid a breach of human rights or on the basis of other exceptions for which Schedule 3 provides.

49. Many respondents to the consultation thought that the existing legislation and a plethora of associated case-law was complex and burdensome for local authorities to administer and involved too much assessment and continual litigation to establish what support should be provided in what circumstances.

Detail of the Immigration Bill provisions on local authority support for families without immigration status

50. Schedule 9 to the Immigration Bill therefore amends Schedule 3 to the Nationality, Immigration and Asylum Act 2002, as it applies in England to destitute families without immigration status, to simplify the way in which local authorities assess and provide accommodation and subsistence support in such cases, pending resolution of their status or their departure from the UK. In particular, local authorities will no longer need to establish a family's immigration history and then work out which of the convoluted immigration categories currently in Schedule 3 to the 2002 Act they fit into. Nor in many cases will they also need to carry out a complex human rights assessment – including the lawfulness under the ECHR of expecting the family to leave the UK – which are matters for the Home Office and the courts to determine. Currently, all of this must be done before the local authority can actually get on with assessing and dealing with the family's needs.

51. Instead, Schedule 9 to the Immigration Bill inserts a new paragraph 10A in Schedule 3 to the 2002 Act under which the Secretary of State will make regulations, subject to Parliamentary approval,⁵ to enable local authorities in England to provide more easily for the accommodation and subsistence needs of destitute families without immigration status in circumstances where case-law (e.g. Birmingham City Council v Clue [2010] EWCA Civ 460) and human rights considerations may well mean that the provision of support is appropriate. Local authorities will continue to provide support under section 17 of the 1989 Act to meet any other social care needs of a child, or their family, in order to safeguard and promote the child's welfare.

⁵ The Delegated Powers and Regulatory Reform Committee has recommended that the affirmative procedure should apply and we are giving due consideration to this.

52. Local authorities⁶ in England will be able under the regulations made under paragraph 10A of Schedule 3 to the 2002 Act to provide accommodation and/or subsistence support to destitute families where one of five conditions is met:

- Condition A – the family has a specified immigration (non-asylum) application outstanding with the Home Office, e.g. an application for leave to remain on the basis of the ECHR Article 8 right to respect for family life. (The family will continue instead to be supported by the Home Office under section 95 of the 1999 Act if they have an outstanding asylum claim);
- Condition B or C – the family could bring, or has outstanding, an immigration (non-asylum) appeal that is not one which must be continued from outside the UK. (The family will continue instead to be supported by the Home Office under section 95 of the 1999 Act if they have an outstanding asylum appeal);
- Condition D – the family have exhausted their appeal rights and have not failed to co-operate with arrangements that would enable them to leave the UK. (The family will instead be supported by the Home Office under section 95A of the 1999 Act if they are failed asylum seekers who face a genuine obstacle to their departure from the UK at the point their appeal rights are exhausted); or
- Condition E – the local authority is satisfied that the provision of accommodation and/or subsistence support is necessary to safeguard and promote the welfare of a child of the family. This provision will enable local authorities to take any action which they consider necessary to prevent destitution pending the resolution of a family's immigration status or their departure from the UK. The regulations will be able to specify factors which a local authority may or must, or must not, take into account in making this decision. This will enable us to provide a clear framework for local authority decisions about support in these cases, e.g. to underline, consistent with case-law (*Kimani v Lambeth Borough Council* [2004] 1 WLR 272), that where migrants without immigration status could avoid the risk of destitution in the UK by returning to their country of origin, any support needs they may have on their return to that country are a matter for the relevant authorities there.

53. In light of local authority comments, 'Zambrano carers' (non-EEA nationals reliant on being the primary carer of a British citizen for the lawfulness of their presence here) are covered by this new scheme for local authority accommodation and subsistence support for destitute families as a more appropriate vehicle for such support in such cases than section 17 of the 1989 Act.

54. Local authorities will also be able where necessary to prevent destitution by providing a family with accommodation and/or subsistence support under the regulations made under paragraph 10A to the 2002 Act on an emergency basis, pending the local authority's determination of whether the family is eligible for such support and, where they are not eligible because they qualify for Home Office support (e.g. under the new section 95A of the 1999 Act because they are failed

⁶ These are not referred to on the face of paragraph 10A because this follows the existing drafting of Schedule 3 to the 2002 Act, which takes account, for example, of the fact that there are not local authorities in Northern Ireland.

asylum seekers who face a genuine obstacle to their departure from the UK at the point their appeal rights are exhausted), while their transfer to that support is arranged. The Home Office will work closely with local authorities to establish and manage the practical steps required to arrange the transfer of support effectively in these cases.

55. As noted above, there is no general obligation on local authorities to support those without immigration status who intentionally make themselves destitute by refusing to leave the UK when it is clear they are able to. The changes made by Schedule 9 to the Immigration Bill will help local authorities to reflect that principle in their approach to destitute families without immigration status. In particular, the changes will:

- Simplify the assessment local authorities must undertake, thereby enabling time and resource currently expended on assessing immigration matters which are for the Home Office and the courts to determine to be focused on meeting the family's needs where it is appropriate for the local authority to do so;
- Provide a more appropriate basis for local authorities to meet accommodation and/or subsistence needs of families without immigration status, pending resolution of that status or their departure from the UK, than section 17 of the 1989 Act, which was not intended as a vehicle for such support in such cases; and
- Maintain the local authority's duty under section 17 of the 1989 Act to meet any other social care needs of a child or their family which they consider it is necessary to meet in order to safeguard and promote the child's welfare.

56. The availability of accommodation and subsistence support to the family under the regulations made under the new paragraph 10A of Schedule 3 to the 2002 Act will mean that a child of the family will not be 'a child in need' under section 17 of the Children Act 1989 solely on grounds of destitution. But section 17 of the 1989 Act will continue to apply and the local authority will continue to provide under section 17 for any other needs of a child or their family, beyond destitution, which they consider it is necessary to meet in order to safeguard and promote the child's welfare, e.g. social worker support to help address a mental health issue or substance abuse problem of the child or a parent. Nothing will change in terms of a local authority's duties in that respect and, in such a case, the local authority will continue to draw on the range of services which may be provided under section 17.

57. This may include the provision under section 17 of adapted accommodation more appropriate to a child's particular needs than the accommodation provided (to prevent destitution) under the regulations made under the new paragraph 10A of Schedule 3 to the 2002 Act (or under section 95 or 95A of the 1999 Act, though the Home Office is generally able to provide accommodation for asylum seekers and failed asylum seekers which is appropriate to any special needs of a child or adult in the family).

58. The status quo will also be maintained in terms of the availability to the local authority of its other powers and duties for looking after and safeguarding children, e.g. under sections 22, 31 and 47 of the 1989 Act. The local authority's duty to

provide for the child's schooling and to address any special educational needs will also be maintained, including under Part 3 of the Children and Families Act 2014.

59. The main social care need of families without immigration status seeking local authority support is accommodation and subsistence to prevent destitution. A June 2015 study by the Centre on Migration, Policy and Society at the University of Oxford on local authority support for such families⁷ found that the welfare needs of the children at the point of referral to the local authority were overwhelmingly accommodation and subsistence needs. In the detailed survey undertaken for the study, parenting issues did not emerge as a significant concern (only 2.2 per cent of the children being supported under section 17 of the Children Act 1989 were subject to a child protection plan), and only a small number of the children had additional, complex needs relating to disability, health or behaviour. But under the new system of support introduced by Schedules 8 and 9 to the Immigration Bill, where a case involves other, sometimes complex needs, section 17 of the 1989 Act will remain available to the local authority, together with its other Children Act powers and duties, so that it can deal with those needs effectively.

60. At **Annex A** to this paper is a chart summarising the existing arrangements for providing accommodation and subsistence support to destitute families without immigration status and one summarising the new system introduced by Schedules 8 and 9 to the Immigration Bill.

61. We will produce statutory guidance, under paragraph 11 of Schedule 3 to the 2002 Act, for local authorities to follow in making assessments and decisions about the provision of support to families without immigration status under the regulations made under the new paragraph 10A of Schedule 3. We will work together with the Department for Education in drafting both the regulations and the guidance, ensuring that it is consistent with other statutory guidance, such as 'Working Together to Safeguard Children'. We will also invite the input of local authority colleagues and other partners to the development of the regulations and the guidance.

62. Alongside this work on the detail and implementation of the new system of support for migrants without immigration status, we will continue to build on the existing partnership work between the Home Office and local authorities to ensure that immigration decisions in cases receiving local authority support are made and implemented as quickly as possible. This includes the work of the No Recourse to Public Funds (NRPF) Network, which brings together senior managers in local and central government to discuss and resolve policy and process issues, and the continued development and operation of NRPF Connect, a secure, web-based, data-sharing system between local authorities and the Home Office. Connect provides a route into the Home Office for local authorities on individual cases, so that these can be dealt with expeditiously. This includes ensuring that any outstanding application that creates possible grounds for providing support can be prioritised and resolved. Since April 2014, Connect, to which 35 local authorities now subscribe, has enabled local authority support to be curtailed or refused in more than 2,620 cases.

⁷ <http://www.compas.ox.ac.uk/2015/safeguarding-children-from-destitution-local-authority-responses-to-families-with-no-recourse-to-public-funds/>

63. Home Office staff are also now embedded within four local authorities (Barking & Dagenham, Haringey, Lewisham and Southwark), with a key role in assisting the local authority to assess eligibility for support and encourage families to comply with the immigration application process and with voluntary departure, assisted voluntary return and other returns processes in order to reduce local authority-supported caseloads. We are keen to work with local authorities to expand this model.

Detail of the Immigration Bill provisions on local authority support for adults without immigration status leaving local authority care

64. The Immigration Bill makes no changes to the basis of the support arrangements for unaccompanied children from abroad (whether or not they claim asylum).⁸ They will continue to be looked after by local authorities under the Children Act 1989 (or the relevant legislation in the Devolved Administrations). It will remain important that the engagement and planning work undertaken with these children by local authority staff takes properly into account that, according to the asylum or immigration decisions reached in their case by the Home Office and the courts, their long-term future may or may not be in the UK and, if the latter, they will need to leave the UK and return to their country of origin, with support available from the local authority and/or the Home Office to assist them in doing so.

65. The Immigration Bill also makes no changes to the eligibility for Children Act support for care leavers of those unaccompanied children who, before or after they turn 18 years of age, are granted asylum or humanitarian protection status.

66. The consultation underlined how local authority duties under the Children Act 1989 intended to ensure that local authorities provide the right onward support to adults leaving their care whose long-term future is in the UK are engaged for the support of adult migrants who the courts have agreed have no lawful basis on which to remain here and who should be leaving the UK. The 1989 Act is not the appropriate mechanism for providing support in such cases prior to the person's departure. Under Schedule 9 to the Immigration Bill, therefore, migrants leaving local authority care in England as adults, who have established no lawful basis on which to remain here, will generally no longer be able to access local authority support under the 1989 Act. The Bill makes alternative provision under Schedule 3 to the 2002 Act for their accommodation, subsistence and other support before they leave the UK. This means that local authorities will continue to be able to provide appropriate additional support for vulnerable young adults who need it.

67. In particular, adults leaving local authority care in England who have established no lawful basis on which to remain here will generally be prevented from accessing local authority care leaver support under the following provisions of the Children Act 1989:

- Sections 23C, 23CA, 24A and 24B and under regulations made under section 23D: these require the local authority to make provision among other things for the care leaver to have a personal adviser, for the ongoing review of a pathway plan, and for support for education and training, including the

⁸ Clauses 39 to 43 of the Immigration Bill make provision for the transfer of responsibility for unaccompanied migrant children between local authorities, but make no change to the basis of the support provided.

payment of university tuition fees. These provisions are geared to meeting the needs and supporting the development of those leaving local authority care whose long-term future is in the UK. They are not an appropriate vehicle for delivering the support needs, pending their departure from the UK, of adult migrants who have established no lawful basis on which to remain here; and

- Section 23CZA: the ‘staying put’ duty under which an adult care leaver can remain with their foster parents. These adults should not be staying put; they should be leaving the UK.

68. Schedule 9 to the Immigration Bill also relieves local authorities in England of the burden created by case-law (*Kebede v Newcastle City Council* [2013] EWHC 355 (Admin)) that means that their leaving care duties under the 1989 Act may encompass payment of student tuition fees – normally at the international rates – for migrant care leavers who do not meet the Student Support Regulations. The international rates vary depending on the course and place of study, but most range from £12,000 to £15,000 per year: even one or two cases can therefore place significant pressure on local authority budgets. Schedule 9 therefore prevents local authorities in England from paying the higher education tuition fees of adult migrant care leavers deemed to be overseas students because of their immigration status. If they wish to have help with tuition fees, they will instead have, like other migrants and British citizens, to qualify for a student loan under the Student Support Regulations.

69. Schedule 9 to the Immigration Bill inserts a new paragraph 10B in Schedule 3 to the 2002 Act under which the Secretary of State will make regulations, subject to Parliamentary approval,⁹ to enable local authorities in England to provide for the accommodation, subsistence and (by virtue of paragraph 11 of Schedule 3) other social care needs of migrants without immigration status leaving their care as adults.

70. Local authorities¹⁰ in England will be able under the regulations made under paragraph 10B of Schedule 3 to the 2002 Act to provide accommodation, subsistence and/or other support to migrants without immigration status leaving their care as adults where one of four conditions is met:

- Condition A – the adult care leaver would otherwise be destitute and has a specified immigration (non-asylum) application outstanding with the Home Office, e.g. an application for leave to remain on the basis of the ECHR Article 8 right to respect for family life. Where the person has not claimed asylum and is making their first application to the Home Office to regularise their immigration status (e.g. having been taken into local authority care as a victim of trafficking), they will remain supported by the local authority under the Children Act 1989, pending the outcome of that application and any appeal. (If the person has an outstanding asylum claim, they will instead be supported by the Home Office under section 95 of the 1999 Act);

⁹ The Delegated Powers and Regulatory Reform Committee has recommended that the affirmative procedure should apply and we are giving due consideration to this.

¹⁰ These are not referred to on the face of paragraph 10B because this follows the existing drafting of Schedule 3 to the 2002 Act, which takes account, for example, of the fact that there are not local authorities in Northern Ireland.

- Condition B or C – the adult care leaver would otherwise be destitute and could bring, or has outstanding, an immigration (non-asylum) appeal that is not one which must be continued from outside the UK. (If the person has an outstanding asylum appeal, they will instead be supported by the Home Office under section 95 of the 1999 Act); or
- Condition D – the adult care leaver has exhausted their appeal rights and the local authority is satisfied that support needs to be provided. This will enable local authorities to take any action that they consider necessary to prevent destitution and meet any other social care needs pending the person's departure from the UK. It will enable the local authority to ensure that the support they have been providing does not end abruptly and there is a managed process of encouraging and enabling the person's departure from the UK. The regulations will be able to specify factors which a local authority may or must, or must not, take into account in making this decision. This will enable us to provide a clear framework for local authority decisions about support in these cases. It will also enable the pre-departure support to be based on need in the way the Joint Committee on Human Rights highlighted was important, including in appeal rights exhausted cases, in its June 2013 report on the human rights of unaccompanied migrant children and young people in the UK (paragraphs 209-210).¹¹

71. Local authorities will also be able where necessary to prevent destitution by providing a migrant leaving their care as an adult with accommodation, subsistence and/or other support under the regulations made under paragraph 10B to the 2002 Act on an emergency basis, while the local authority determines whether the person is eligible for such support and, where they are not eligible for local authority accommodation and/or subsistence support because they qualify for Home Office support (e.g. under the new section 95A of the 1999 Act because they are a failed asylum seeker who faces a genuine obstacle to their departure from the UK at the point their appeal rights are exhausted), while their transfer to that support is arranged. The Home Office will work closely with local authorities to establish and manage the practical steps required to arrange the transfer of support effectively in these cases.

72. Where an adult care leaver receives accommodation and/or subsistence support from the Home Office under section 95A of the 1999 Act, the local authority will be able (under the regulations made under paragraphs 10B and 11 of Schedule 3 to the 2002 Act) to meet any other social care needs the person has which the local authority is satisfied need to be met, e.g. social worker support in coming to terms with the fact that their long-term future is not in the UK and they need to prepare to return to their country of origin. This will also be the case where that accommodation and/or subsistence support is provided by the local authority under the regulations made under paragraph 10B of Schedule 3. This will allow local authorities to continue to provide on a case-by-case basis appropriate additional support for vulnerable young adults in this position, akin to that which could be provided were the care leaver provisions of the 1989 Act to apply.

¹¹ <http://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/9/9.pdf>

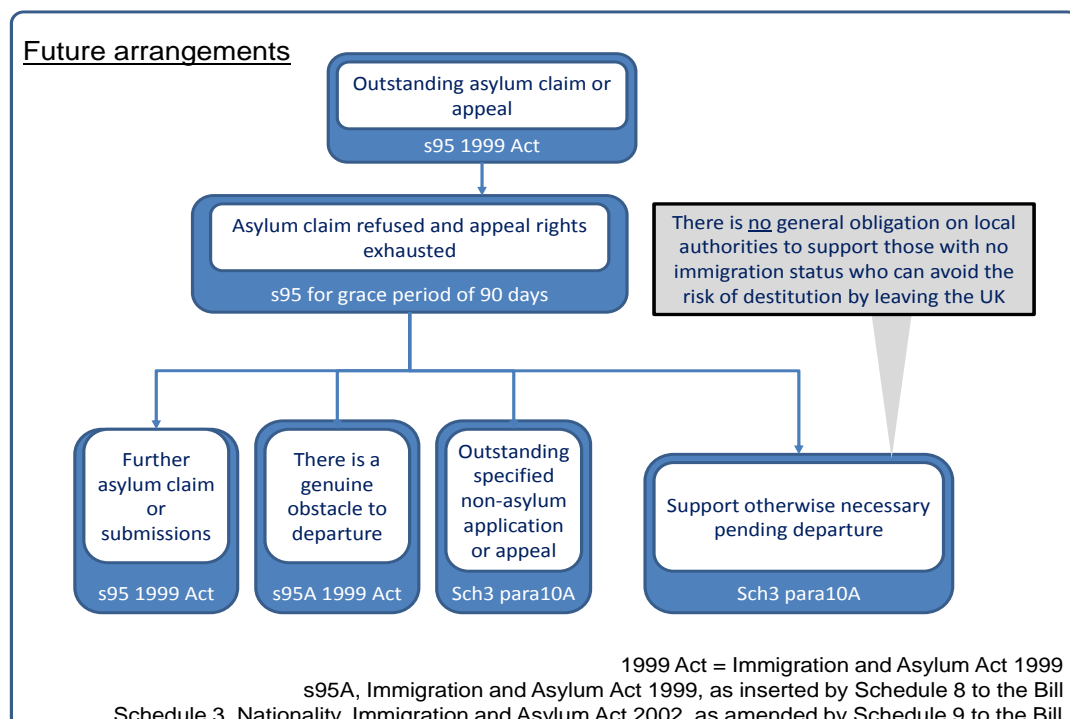
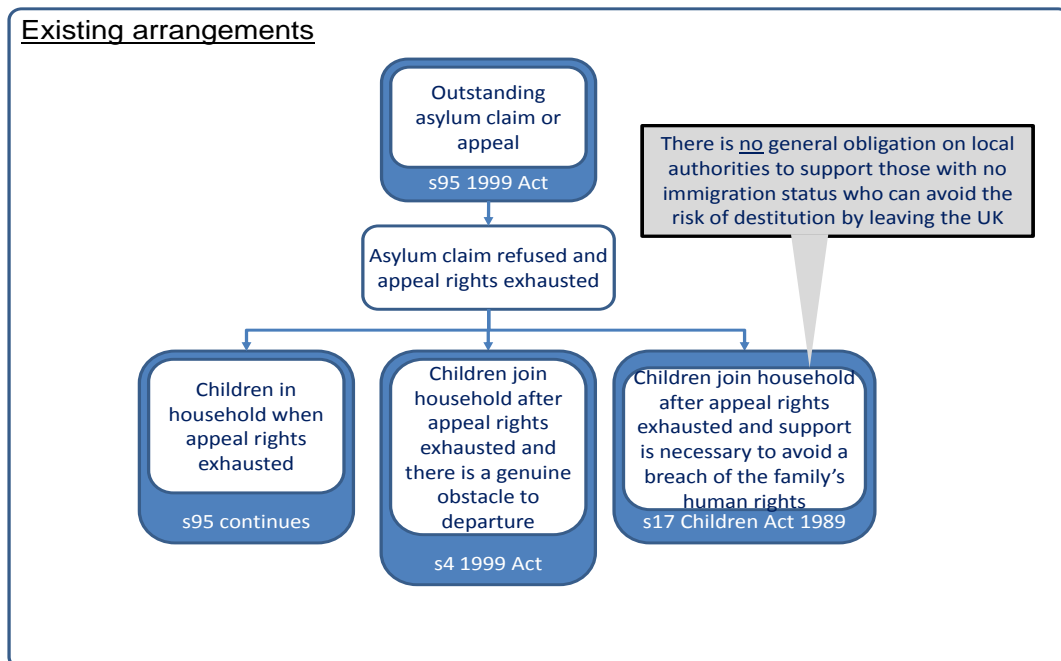
73. We want to discourage adult asylum seekers from claiming falsely to be under 18 and unaccompanied children from seeking to come to the UK to claim asylum for the wrong reasons, especially where this involves dangerous travel routes controlled by people smugglers and traffickers. For example, according to Eurostat, in 2014 the UK received almost 80 per cent of all asylum claims lodged by unaccompanied asylum seeking Albanians in the EU. Most of these were 16 and 17 year olds and very few will qualify to be granted asylum. Part of the reason for this figure is a perception that the UK provides generous long-term support for all those who arrive in the UK as children, regardless of whether they establish a lawful basis on which to remain here. Schedule 9 to the Immigration Bill will help to correct this.

74. As noted in paragraph 70, where an adult care leaver has an outstanding asylum claim or is making their first application to regularise their immigration status, having for example been looked after by the local authority as a victim of trafficking, they will remain subject to the care leaver provisions of the Children Act 1989 pending the outcome of that asylum claim or immigration application and any appeal.

75. At **Annex B** to this paper is a chart summarising the existing arrangements for providing accommodation, subsistence and other support to adults without immigration status leaving local authority care and one summarising the new system introduced by Schedule 9 to the Immigration Bill.

76. We will produce statutory guidance, under paragraph 11 of Schedule 3 to the 2002 Act, for local authorities to follow in making assessments and decisions about the provision of support to adult care leavers without immigration status under the regulations made under the new paragraph 10B of Schedule 3. We will work together with the Department for Education in drafting both the regulations and the guidance. We will also invite the input of local authority colleagues and other partners to the development of the regulations and the guidance.

Accommodation and subsistence support for destitute families without immigration status



Accommodation, subsistence and other support for adults without immigration status leaving local authority care

