

Immigration Act 2016

Factsheet – Availability of Local Authority support (Sections 68 - 73)

What will we do?

- Reduce pressures on Local Authorities and simplify support for migrants pending resolution of their immigration status or their departure from the UK.

How will we do it?

- Simplify the way in which Local Authorities assess and provide accommodation and subsistence support for destitute families without immigration status.
- Simplify the way in which Local Authorities support migrants leaving their care as adults. And relieve Local Authorities of the cost of funding university tuition fees for that group.
- Provide statutory backing for new arrangements for the care of unaccompanied asylum seeking children to be shared more evenly across Local Authorities.

Immigration Minister James Brokenshire said:

“We are confident these reforms will reduce pressures on Local Authorities.

“They will help us work together so that more migrants with no right to remain here leave the UK, while still maintaining essential safeguards.

“These measures will also underpin new arrangements to make it easier to transfer unaccompanied asylum seeking children from one Local Authority to another”.

Background

- Schedule 3 to the Nationality, Immigration and Asylum Act 2002 already restricts the availability of Local Authority support to migrants without immigration status.
- However, the Home Office’s public consultation on support for failed asylum seekers and other illegal migrants highlighted concerns that this framework can be burdensome to administer and involves complicated assessments and continued litigation to establish what support should be provided in what circumstances.
- The Immigration Act will simplify the way in which Local Authorities assess and provide accommodation and subsistence 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 Children Act 1989 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 exhausted their appeal rights and established no lawful basis to remain here, will no longer be able to access Local Authority support under the 1989 Act. The Act will make alternative provision for their accommodation, subsistence and other support before they leave the UK. It will still be open to Local Authorities to provide appropriate additional support for vulnerable young adults in this position.
- Local Authorities will no longer have to pay the higher education tuition fees of migrants leaving Local Authority care as adults, where they are deemed to be overseas students because of their immigration status. Instead, to obtain such support, the person will be required, like other migrants, to qualify under the Student Support Regulations.
- The Act will also facilitate the transfer of responsibility for caring for an unaccompanied asylum seeking child from one Local Authority to another. It will also provide statutory backing for new arrangements for the care of unaccompanied asylum seeking children to be shared more evenly across Local Authorities.

Key Questions and Answers

➤ **Local Authorities will still have to comply with the Human Rights Act. How will these changes make any difference?**

Case-law is clear that there is no general obligation on Local Authorities to accommodate illegal migrants who intentionally make themselves destitute by refusing to leave the UK when it is clear they are able to. These reforms will help Local Authorities to reflect that principle in their approach to destitute families and others without immigration status. In particular, the changes will simplify the assessment Local Authorities must undertake and make more appropriate provision for support to migrants leaving Local Authority care as adults who have not established a lawful basis to remain in the UK, while still maintaining essential safeguards.

➤ **What is meant by ‘simplifying’ assessment?**

Local Authorities will no longer need to establish a family’s immigration history and then work out which of the immigration categories currently in Schedule 3 to the 2002 Act they fit into. In many cases, they will also no longer need to carry out a complex human rights assessment – including the lawfulness under the European Convention on Human Rights of expecting the family to leave the UK – which are matters for the Home Office and the courts to determine. The Home Office will work together with the Department for Education and Local Authorities to produce guidance on the provision of support under Schedule 3, consistent with existing statutory guidance.

➤ **How will a child’s welfare be safeguarded and promoted?**

The Local Authority will continue to apply their Children Act responsibilities to provide for any other needs of a child, beyond destitution, which they consider it necessary to meet in order to safeguard and promote the child’s welfare. The Local Authority’s other Children Act powers and duties for looking after and safeguarding children will also be maintained, together with their duty to provide for the child’s schooling and to address any special educational needs.

- **How are these changes compatible with the UN Convention on the Rights of the Child?**
Article 3 of the UN Convention on the Rights of the Child requires that children's best interests are a primary consideration in all decisions affecting them. That will remain the case under these new arrangements.
- **How are the changes for migrants leaving Local Authority care as adults justified?**
These are adult migrants whose asylum claims and any subsequent appeal have failed. As such, it is wrong that Local Authorities should have to support them under Children Act provisions geared to the needs of those leaving Local Authority care whose long-term future is in the UK. We also want to discourage 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.
- **Do these changes involve new burdens on Local Authorities?**
An assessment will be conducted of the support measures for which the Immigration Act provides. It will be conducted in conjunction with the Department for Communities and Local Government. Local Authorities will be consulted.
- **Why are you stopping migrants leaving Local Authority care as adults from being helped to go to university?**
We are not. We are requiring that they qualify, like other migrants, for a student loan under the Student Support Regulations rather than requiring Local Authorities to fund their tuition fees as overseas students.
- **Why is it necessary to transfer unaccompanied asylum seeking children between Local Authorities?**
The number of unaccompanied asylum seeking children in some areas has risen rapidly. The most notable example has been in Kent. We have written to local council leaders to offer additional funding for any Local Authority willing to take over responsibility for some of these children from Kent to ease the pressure on its children's services. We hope this will lead to more voluntary offers of support. However, it is important that we also have sufficient powers to prevent a situation like this arising again. The Immigration Act therefore gives the Secretary of State a power to direct such a transfer to take place unless the Local Authority in question can provide reasonable grounds for not complying with the direction.
- **Will these various changes extend to Scotland and the other Devolved Administrations?**
Schedule 3 to the 2002 Act already provides a UK-wide framework for restricting access to Local Authority social care by migrants without immigration status. We are therefore minded to apply these changes to Schedule 3 and the other new provisions concerning Local Authority support across the UK, through secondary legislation under the Immigration Act. A final view will be taken after further dialogue with the Devolved Administrations.

Home Office

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