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Dear Ms Haimes

ILPA Response to consultation on NASS s.4 Support Draft Regulations

ILPA is grateful for the opportunity to comment on the draft regulations. We have read the responses of Citizens Advice and the response entitled *The Asylum Support Inter-Agency Partnership – The Immigration and Asylum (Accommodation) Regulations 2006* and would like to endorse the comments made in both those documents. We should also like to join others in drawing to your attention to the Report entitled *Shaming Destitution: NASS section 4 support for failed asylum seekers who are temporarily unable to leave the UK* (CAB Evidence Briefing, June 2006). The information in that report is consistent with the experience of ILPA members and we agree with all the recommendations made in that report. While these go wider than the consultation on the regulations, we consider that it is timely to consider them before regulations are made.

Vouchers and the separate s.4 regime

We supplement our endorsement of these materials with the following comments.

We recall the comments on the recipients of s.4 support made in parliament during the passage of what is now the Immigration, Asylum and Nationality Act 2006:

> *Section 4 support is currently provided for, in the main, failed asylum seekers who are temporarily prevented through no fault of their own from leaving the UK.* The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 581

Given that inability to return is a condition of receipt of s.4 support, suggestions that giving support in cash rather than vouchers could act as an incentive for people to remain in the UK are wholly misplaced. These are people who could not leave if they wanted to do so; so incentives do not come into it. Our experience accords wholly with that of the Inter-Agency Partnership (IAP): *"Vouchers do not meet the needs of section 4 clients and their dependants; they stigmatise and humiliate people and do not provide value for money"*.

At a time when Ministers have set a premium on improving efficiency in the Home Office we suggest that officials should be inviting them to consider whether the bureaucracy and expense of vouchers are reasons enough on their own to move to cash provision. Indeed we are unpersuaded that a separate s.4 regime, rather than provision to continue to support those who are unable to leave under the main NASS support scheme, can be justified. There is a limited amount of improvement that tinkering can make to the punitive, highly bureaucratic, and fundamentally flawed scheme that is accurately described in *Shaming Destitution.* A periodic cash payment to those on s.4 support, for example £50 every six months for clothes, and a similar sum at the same or more frequent intervals for travel and telephone calls would be not only so much more humane and dignified, but so much cheaper and less bureaucratic to administer.

Regulation 2

"ante natal eligible period" " "new mother" "post-natal eligible period" "pregnant women"
We remind NASS that the government is committed to the *Every Child Matters* agenda, and is a signatory to the UN Convention on the Rights of the Child. The treatment of nursing mothers and their children on section 4 support cannot be reconciled with the provisions of the regulations. It is not possible to predict with accuracy the day on which a baby will be born, and in the weeks leading up to and following the birth, a woman is not ideally placed to negotiate bureaucracy or to go bargain-hunting. The current and proposed regimes put children at risk and to fail to accept the IAP recommendations would be to perpetuate that risk.

"full birth certificate"
We see no need to make reference in the definition of a "full birth certificate" to specifying the names of the child's parents and foresee technical problems arising if only the mother is named on the birth certificate, for example in cases where the identity of the father is not known. We suggest that the definition end after the words "United Kingdom"

"qualifying journey"
It is not a question of supplementing the income of people who can chose whether or not to pay for shorter journeys out of their pocket: these people have no income whatsoever. The weather, the safety of walking in a particular area, as well as individual circumstances, militate in favour of amending the definition of 'qualifying journey' as IAP suggest. A person should not have to make every journey of under three miles on foot. The definition of a 'specified need' in regulation 2 should be extended to cover cases of people who have difficulties with mobility or have health problems and should not be limited to those who cannot walk three miles. Pregnant women and people with children, not only those with children under five, should be covered by the "specified need" provisions. People may be able to walk three miles, but only with considerable discomfort, or at the risk of exacerbating existing conditions. ILPA members' recent experience of the three mile rule in the context of traveling to report is that three miles is applied as a blanket policy and it is very difficult to get staff to process a request for travel expenses of a journey of less than 3 miles. Worse still, members' clients cannot obtain medical reports to confirm mobility needs as there is no automatic right to free treatment for people whose claims for asylum have failed, and doctors all charge for reports.

"qualified person"
We share the concerns expressed by Citizens Advice in their response to this consultation about the need to verify that the regulations make adequate provision for exempted persons under the OISC regime. Exemption from the OISC scheme under s. 84(4) of the Immigration and Asylum Act 1999 is essentially exemption from payment of the registration fee; it is for not-for-profit organisations who still have to apply to the OISC to be registered at their relevant competence level and may be the legal representatives in a particular case.

We are also concerned that the use of the term "qualified person" alone may not cover all visits to legal representatives. As with other people, people on s.4 support may need legal advice on matters outside immigration - on matters ranging from community care to the criminal law. Visits and telephone calls to legal advisors generally need to be covered.

Regulation 3 Travel

We share the concerns of the IAP at the narrowness of this list and the requirement to evidence the necessity of the journey. See comments under the definition of *"qualifying journey"* above.

In the case of appointments with legal representatives, which would fall under regulation 3(1)(b), we remind NASS that communications between a legal representative and his/her client are privileged and that they cannot set up a regime that would require people supported under s.4 to show these documents to a third

party, let alone to persons who may also be a party to the litigation in question. We also suggest that it is not best use of Legal Services Commission funding (to which many people on s.4 support will be entitled) to have representatives spend time providing documents to evidence the "necessity" of an appointment. Legal representatives are extremely busy and are also obliged to account for time spent on a case to the Legal Services Commission, where the Commission is funding them: there is no an incentive to make unnecessary appointments with clients. It is sufficient to provide in regulations that there be an appointment.

Our concern about legal privilege leads us to voice broader concerns about these provisions. Journeys to receive essential healthcare, legal advice or other assistance may be extremely urgent. The bureaucracy envisaged by this regulation will occasion delay. Establishing necessity is likely to involve a conversation or perusal of documents; and that will necessitate the person making the decision on the necessity of the journey using translation facilities such as Language Line, where it is not otherwise possible for him/her to have such a conversation with the person receiving section 4 support.

The very notion of a decision-making process by which it is established whether a person should undertake a journey or make a telephone call implies bureaucracy that ILPA cannot imagine could ever be justified on cost-effectiveness grounds, even before we begin to contemplate the extent to which it demeans and disables people. Overall, the level of bureaucracy that implementation of these provisions will require appears to us unworkable; and the costs of processing and evidencing necessity is wholly disproportionate to the savings occasioned by not funding an journey that is deemed to fail the necessity test.

Regulation 4 Telephone calls.

Again, we forsee huge bureaucratic complications. A person on s.4 support may be looking for a legal representative and may have to make a large number of telephone calls before s/he finds one. How will the "essential" nature of this series of calls be assessed? See also our comments on qualified persons.

Regulation 5 Additional support for pregnant women

See our comments on definitions above.

Process for applying for and granting additional support

We share the concern of the IAP that it would not be appropriate for accommodation providers to administer the support regime. Conflicts of interest are a grave concern, as is the risk of arbitrary and inconsistent decision-making, not to mention fraud. In addition, the bureaucracy becomes even more complex if a third party, such as an accommodation provider is charged with applying standards set by another agency.

We emphasise the importance of keeping new arrangements under review. The level of suffering detailed in *Shaming Destitution* is wholly unacceptable in anything purporting to be a civilised society. New Ministers in the Home Office with responsibility for IND have been vocal in their calls for a system that is 'fit for purpose'. As suggested above, a periodic cash payment for those on s.4 support would be a first to step toward a system that makes some attempt to respect human dignity, is workable, and does not involve a hugely costly bureaucracy. By contrast, a system such as that currently operating and that proposed, and a willingness to spend so much, to give people so little, is not, we suggest, a system fit for purpose.

Yours sincerely

Chris Randall, Chair of ILPA