



Home Office

Immigration & Border www.gov.uk/home-office
Policy Directorate
2 Marsham Street
London
SW1P 4DF

**Members of the
National Asylum Stakeholders Forum**
(by email)

12 November 2015

Dear Colleagues,

IMMIGRATION BILL – SUPPORT FOR CERTAIN CATEGORIES OF MIGRANT

Schedule 6 to the Immigration Bill reforms arrangements for the provision by the Home Office of support to failed asylum seekers and other illegal migrants. It restricts the availability of such support, consistent with the UK's international and human rights obligations, and removes incentives for migrants to remain here where they have no lawful basis for doing so.

The Immigration Minister explained in debates on these provisions in Committee on 5 and 10 November that we are continuing to consult with colleagues on the detail of the new arrangements and how they will work in practice and that, in particular, we have been discussing with local government colleagues whether changes to Schedule 3 to the Nationality, Immigration and Asylum Act 2002, which controls access to local authority social care for migrants without immigration status, would be helpful.

Our public consultation on asylum support highlighted concerns that the framework provided by Schedule 3 to the 2002 Act and associated case-law was complex and burdensome for local authorities to administer and involved complicated assessments and continued litigation to establish what support should be provided in what circumstances. The Committee heard similar concerns in oral evidence to it on 22 October.

The government has now tabled amendments to the Immigration Bill to simplify and strengthen the provisions in Schedule 3 to the 2002 Act. A copy of these is enclosed.

The amendments make changes to the availability of local authority support in England for certain categories of migrant. As immigration is a reserved matter and immigration legislation makes provision for migrants' access to local authority services, the government has in mind to amend the Bill at a later stage to extend these provisions to the rest of the UK once we have had further dialogue with the Devolved Administrations.

The new Schedule makes two key changes. First, it simplifies the way in which local authorities in England assess and provide accommodation and subsistence for destitute families without immigration status. It enables local authorities to continue to provide under section 17 of the Children Act 1989 for any other needs of a child or their family which must be addressed to safeguard and promote the child's welfare.

Second, the new Schedule prevents adult migrant care leavers who have exhausted their appeal rights and have established no lawful basis to remain here from accessing local authority support under the 1989 Act. It makes alternative provision for their support before they leave the UK.

I would draw your attention to some specific provisions of the new Schedule.

Support for families without immigration status

Paragraph 7 inserts a new paragraph 7B in Schedule 3 to the 2002 Act. This provides a new simplified definition of a person without immigration status who will generally be ineligible for the forms of local authority support listed in paragraph 1(1) of Schedule 3. It replaces the definitions in paragraphs 6 to 7A of Schedule 3.

Paragraph 8 inserts a new paragraph 10A in Schedule 3 to the 2002 Act, under which regulations will be made by the Secretary of State to enable local authorities to provide for the accommodation and subsistence needs of destitute families without immigration status in circumstances in which case-law and human rights considerations may well mean that the local authority should provide support. These are where:

- The family has an outstanding specified immigration application or appeal (i.e. in a non-asylum case for which Home Office support is not provided);
- The family has exhausted appeal rights and has not failed to co-operate with arrangements to leave the UK (and does not qualify for the support available from the Home Office under section 95A of the Immigration and Asylum Act 1999 inserted by Schedule 6 to the Bill for failed asylum seeker families with a genuine obstacle to departure at the point their appeal rights are exhausted); or
- The provision of accommodation and subsistence support is necessary to safeguard and promote the welfare of a dependent child.

Paragraph 4 inserts a new paragraph 3A in Schedule 3 to the 2002 Act, which means that accommodation and subsistence support will be provided to a destitute family under the regulations made under the new paragraph 10A of Schedule 3 rather than under section 17 of the 1989 Act.

Support for adult migrant care leavers

Paragraph 2 of the new Schedule amends paragraph 1(1) of Schedule 3 to the 2002 Act so that adult migrant care leavers who have exhausted their appeal rights and have established no lawful basis to remain here are prevented from accessing local authority support for care leavers under the Children Act 1989. Those provisions under the 1989 Act are geared to supporting the needs and onward development of young adults leaving local authority care whose long-term future is in the UK and are not appropriate to the

support needs, pending their departure from the UK, of adult migrants who the courts have agreed have no right to remain here.

Paragraph 8 inserts a new paragraph 10B in Schedule 3 to the 2002 Act under which regulations will be made by the Secretary of State to enable local authorities to provide for the support of adult migrant care leavers who have:

- Exhausted their appeal rights in respect of their asylum claim but have an outstanding specified immigration application or appeal and are destitute; or
- Exhausted their appeal rights and do not qualify for Home Office support under the new section 95A of the 1999 Act inserted by Schedule 6 because there is no genuine obstacle to their departure from the UK, but the local authority is satisfied that support needs to be provided. This will enable the local authority to ensure that support does not end abruptly and there can be a managed process of encouraging and enabling departure from the UK.

Paragraph 4 inserts new paragraphs 3B and 3C in Schedule 3 to the 2002 Act, which mean that support will be provided to the adult migrant care leaver under the regulations made under the new paragraph 10B of Schedule 3, or under the new section 95A of the 1999 Act, rather than under the 1989 Act.

Yours sincerely,

C.R. Peckover

Clive Peckover
Asylum & Family Policy Unit
Immigration & Border Policy Directorate