



information sheet

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Zoe Harper, ILPA Legal Officer zoe.harper@ilpa.org.uk

Immigration Law Practitioners' Association www.ilpa.org.uk 020-7251 8383 (t) 020-7251 8384 (f)

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IMMIGRATION ACT 2016: HOME OFFICE SUPPORT AND ACCOMMODATION

The Immigration Act 2016 will make significant changes to support and accommodation for asylum seekers at the end of the asylum process and for other migrants. This information sheet outlines the changes to entitlements for Home Office support and accommodation and separate information sheets discuss services provided by local authorities to [families with children](#) and to [care leavers](#).

Much of the detail of the provisions will only become known once the accompanying regulations have been drafted. Detailed regulations will need to be laid before parliament and debated before the provisions can come into force. It is unlikely that the provisions will come into force before April 2017.

Repeal of section 4 of the Immigration and Asylum Act 1999

The Immigration Act 2016 will repeal section 4 of the Immigration and Asylum Act 1999. This is the provision under which destitute migrants whom the Home Office is satisfied cannot return to their country of origin, including those who have reached the end of the asylum process, may qualify for Home Office support and accommodation. The new Act makes alternative provision for some groups who would previously have been supported under this section but for others, it remains unclear whether they will have access to Home Office support and accommodation. Those already receipt of section 4 support when this section is repealed will be able to continue receiving this support for a period of time.

It is currently unclear how those who have never made an asylum claim, such as stateless persons or others who cannot return to their country of origin, will be supported, if at all. The same is true for individuals making submissions to the Home Office to remain in the UK for reasons not involving the need for asylum or protection, for example the need to remain in the UK to protect human rights to private and family life. The Home Office has a power to provide support to those on immigration bail (which will replace both temporary admission and current bail) in exceptional circumstances. It will be unclear whether the Home Office will use this power to provide support to these groups until its guidance is published. As the failure to provide support could lead to destitution and a breach of human rights, it may be possible to challenge a refusal to provide it in particular cases.

People making further submissions on asylum or protection grounds

Currently, people who reach the end of the asylum process and make further submissions that their removal would breach the Refugee Convention or Articles 2 or 3 of the European Convention on Human Rights (protecting the right to life and prohibiting torture or ill-treatment) are able to access support under section 4 of the Immigration and Asylum Act 1999. If their submissions are accepted as a fresh asylum or protection claim they are then

supported under section 95 of the Immigration and Asylum Act 1999 in the same way as they were when they made their initial asylum claim.

When this part of the Immigration Act 2016 comes into force, people will be able to access support and accommodation under section 95 of the Immigration and Asylum Act 1999 when they make further submissions on asylum or protection grounds and not only when these submissions are accepted as a fresh asylum or protection claim.

Asylum seekers at the end of the process who face a 'genuine obstacle' to return

A new section 95A will be inserted into the Immigration and Asylum Act 1999 to provide support and accommodation to asylum seekers whose applications are turned down but who are unable to leave the UK due to a 'genuine obstacle'. A 'genuine obstacle' will be defined in regulations and will include issues such as being medically unfit to travel or not having the necessary documents to return to their country but taking all reasonable steps to obtain these.

During the passage of the Immigration Act 2016 through parliament, the Government indicated that it would seek to place a time limit on accessing section 95A support and would require applications to be made within 21 days of the final decision on the asylum claim. This would have a significant impact on access to support as most people who currently qualify for support because they face a genuine obstacle to leaving the UK apply outside this timescale. The Government would need to place any such condition in regulations and may yet be dissuaded from doing so. A restriction on access to support could be challenged if it would leave a person destitute and breach their human rights.

There will be no right of appeal to the Asylum Support Tribunal against decisions to refuse or withdraw support under section 95A. This is a problem because Home Office decision-making on support applications is particularly poor. Currently 62% of appeals against Home Office decisions to refuse support are either allowed, sent back to the Home Office to make a fresh decision or withdrawn by the Home Office. The only challenge against an unfair decision to refuse, or to withdraw, section 95A support will be through judicial review.

The Home Office has stated that section 95A support will be provided in cash at the same level as section 95 support. Applicants may also be able to remain in their existing section 95 accommodation.

Families with children at the end of the asylum process

The other major change to entitlements to Home Office support and accommodation affects families with children at the end of the asylum process. Currently families with children who reach the end of the asylum process are treated for the purpose of support as if they remained asylum seekers and may access support and accommodation under section 95 of the Immigration and Asylum Act 1999 until they leave the UK. Under the new provisions of the Immigration and Asylum Act 1999, this will no longer be the case.

Families with children who reach the end of the asylum process will be given a 'grace period' of 90 days (which may be extended in certain circumstances) to prepare to leave the UK with the support of Home Office and local authority staff. Families who are unable to leave the UK due to a 'genuine obstacle' will have to qualify for support under section 95A of the Immigration and Asylum Act 1999 in the same way as single adults. Families with children who do not qualify for support will be able to access support from their local authority under a new framework for local authority support for families with children, discussed in a separate [information sheet](#). Though this safety net will exist for families with children, there is concern that the separate support systems will lead to families falling through the gaps.