



# information sheet

---

Information sheets provide general information only, accurate as at the date of the information sheet. Law, policy and practice may change over time.

ILPA members listed in the directory at [www.ilpa.org.uk](http://www.ilpa.org.uk) provide legal advice on individual cases. ILPA does not do so.

The ILPA information service is funded by the Joseph Rowntree Charitable Trust.

An archive of information sheets is available at [www.ilpa.org.uk/infoservice.html](http://www.ilpa.org.uk/infoservice.html)

Zoe Harper, ILPA Legal Officer [zoe.harper@ilpa.org.uk](mailto:zoe.harper@ilpa.org.uk)

Immigration Law Practitioners' Association [www.ilpa.org.uk](http://www.ilpa.org.uk) 020-7251 8383 (t) 020-7251 8384 (f)

---

01 November 2016

## **IMMIGRATION ACT 2016: LOCAL AUTHORITY SUPPORT FOR FAMILIES WITH CHILDREN**

The Immigration Act 2016 will introduce a new mechanism for local authorities to provide support to destitute families with children who do not qualify for mainstream welfare provision or for Home Office support and accommodation due to their immigration status.

### **When will the provisions come into force?**

It is unlikely that the provisions will come into force before April 2017. Detailed regulations on the operation of the new support arrangements under the Immigration Act 2016 need to be made and debated by parliament before the provisions can come into force. This means that many aspects of how the provisions will work in practice will not be clear until the draft regulations are issued.

### **Who will the provisions affect?**

The provisions were introduced during the passage of the Immigration Act 2016 through parliament to ensure a safety net system of support for families with children who reach the end of the asylum process and who will not qualify for support under section 95 or section 95A of the Immigration and Asylum Act 1999 when the relevant provisions of the Immigration Act 2016 come into force. The Immigration Act 2016 will remove the provision that allows families with children to continue receiving section 95 support at the end of the asylum process. See ILPA's [information sheet on Home Office support and accommodation](#) for details.

The new mechanism for support will also make provision for other migrant families with children who are destitute and not entitled to mainstream welfare support because of their immigration status. Such families are currently supported by local authorities to prevent breaches of their human rights through the exercise of local authority powers under section 17 of the Children Act 1989 to promote and safeguard the welfare of the child. They may include families who have never claimed asylum but have a pending application to remain on the basis of their rights to private and family life. They may also include non-EEA nationals who are lawfully present in the UK because they are the primary carer of a British citizen child (often named '*Zambrano* carers' after the case that established the entitlement of non-EEA nationals to live in the UK on this basis).

### **How will the new arrangements interact with duties under the Children Act 1989?**

The new support arrangements for destitute families with children will not replace local authority duties under section 17 of the Children Act 1989. Instead, the Immigration Act 2016 provides for the Home Office to determine a standard package of support, along with

simplified assessments, that would be accessed by destitute families from the local authority before its powers of section 17 of the Children Act 1989 come into play. Any additional needs of the child or their family would continue to be met by the local authority under section 17 of the Children Act 1989. This will be relevant where children and family have needs other than basic subsistence and accommodation, for example related to a disability or any particular welfare needs of the child.

### **How will the new local authority scheme for providing support to families work?**

Under the new mechanism, a local authority may not provide support or assistance to a family without leave to enter or remain under section 17 of the Children Act 1989 if this would be a type of assistance that could be provided to the family under the new scheme. The new scheme is established through the insertion of a new paragraph 10A into Schedule 3 of the Nationality, Immigration and Asylum Act 2002 by the Immigration Act 2016.

The scheme allows for the provision of accommodation and support to live on, either through providing subsistence support in kind (such as food), vouchers or cash. The detail of the scheme will only be clear after the regulations have been published but the government stated in parliament that the support would meet the family's essential living needs.

A person qualifies for support under this scheme if they are destitute, have a dependent child and would not qualify for support under section 95A of the Immigration and Asylum Act 1999. Section 95A support is provided by the Home Office to those who have reached the end of the asylum process but cannot leave the UK because of a genuine obstacle such as a medical reason or lack of documentation. A person who may be eligible for support under the scheme must also meet one of the other qualifying conditions for support. The family must have:

- a pending application for leave to enter or remain, which may need to be a particular type of application if the Home Office specifies this in regulations;
- a pending in-country appeal against an immigration decision or the possibility of bringing such an appeal within the correct time limit;
- exhausted all appeal rights but not failed to cooperate with arrangements to enable them to leave the UK; or
- the local authority must be satisfied that the provision of support is necessary to safeguard and promote the welfare of the child.

The Home Office will state in regulations what local authorities may or may be required to take into account when considering whether support is necessary to safeguard and promote the welfare of the child. This is a controversial provision as it is social services departments that are the experts in safeguarding the welfare of children and families and not the Home Office. The new guidance is likely to lead to more limited assessments of the welfare of children and families being undertaken.

The Home Office will set out in regulations arrangements for local authorities to support families who do not have leave to enter or remain and appear to be destitute whilst the local authority determines their eligibility for support and assistance.

The local authority will retain its power to provide assistance to families with children under section 17 of the Children Act 1989 where the support or assistance is not of a type that could be provided under the scheme, for example because the family is not destitute or does not otherwise qualify for support or because the family has additional support needs.