



# information sheet

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## **IMMIGRATION ACT 2016: LOCAL AUTHORITY SUPPORT FOR CARE LEAVERS**

This information sheet describes changes that the Immigration Act 2016 will make to the provision of local authority support for young people leaving care and to local authority duties to pay higher education tuition fees for young people supported by them.

### **Local authority duties towards young people leaving care**

Local authorities have continuing duties to young people who leave their care. These are described in detail in the Children Act 1989 and recognise the particular vulnerability of care leavers as well as the support that children in families would expect from a reasonable parent in the transition to adulthood.

Local authority duties to care leavers continue until the young person reaches the age of 21 years, or the age of 25 years if they remain in full-time education. They include the provision of financial support and accommodation, including the option of remaining in any existing foster placement, as well as the provision of advice and assistance with education, training and employment. For young people who were in local authority care for a specific period (at least 13 weeks from the age of 14 years with some period after the age of 16 years), the local authority has further duties to remain in contact with the young person, to allocate a personal adviser and to review their 'pathway plan'. A 'pathway plan' provides an assessment of the young person's need for advice, assistance and support and how those needs will be addressed.

Unaccompanied young people aged 18 or over whose immigration application has been finally refused without leave to remain being granted may still be supported by local authorities. Local authorities have powers to provide support if to do so would prevent a breach of the young person's human rights. If there is a risk of such a breach, for example, because the young person would face homelessness or destitution, then support is provided in accordance with the normal leaving care duties under the Children Act 1989.

### **Changes to local authority support for young people leaving care**

The Immigration Act 2016 will restrict access to leaving care support under the Children Act 1989, and make different provision, for certain groups of young people. The changes will be applied in England though the Government may choose to extend them to Wales, Scotland and Northern Ireland. The provisions are unlikely to come into force before April 2017. Regulations that will provide much of the detail of the changes must first be made and debated in parliament and the Government has also committed to consulting with care leaver and other organisations on these.

Access to leaving care support under the Children Act 1989 from the age of 18 years will only be available for young people who:

- Have been granted leave to enter or remain in the UK; or
- Are asylum seekers awaiting a decision on their claim or the result of an appeal; this includes young people who were refused first time around but have made further submissions or a fresh claim based on their need for asylum or international protection; or
- Have made another type of immigration application (for example to remain under Article 8 of the European Convention on Human Rights protecting the right to private and family life) and the application or an appeal against refusal has not been finally determined. In this case, unlike asylum or protection applications, it must be the person's first application for leave or any kind.

The Government's stated intention is to make different provision for young people who do not have a lawful basis to remain and whose future will not be in the UK. However the changes affect a wider group of young people who may ultimately be allowed to stay, such as those who have lived in care in the UK from an early age but were not assisted by their local authority to access advice on their immigration status while they were a child. In the legislation, there is a power to make regulations allowing a wider group of young people to retain access to leaving care support so some of those young people whom it is proposed to exclude could end up supported after all.

Young people who fall outside the criteria for support under the Children Act 1989 may qualify for support under separate arrangements that will be established under a new paragraph 10B in Schedule 3 of the Nationality, Immigration and Asylum Act 2002 if they meet certain conditions. For young people who have exhausted all their appeal rights, a local authority will need to be satisfied that support should be provided, in accordance with guidance that will be set out in Home Office regulations. The type of support will only be described in regulations. In parliament, it was stated that local authorities would have a power to continue support, including the possibility of retaining the young person's existing foster placement, and that after a period of transition, young people who had a genuine obstacle to leaving the UK would go into adult support and accommodation under section 95A of the Immigration and Asylum Act 1999 (see ILPA's information sheet on [Home Office Support and Accommodation](#) for information on this provision).

### **Changes to local authority duties to pay higher education tuition fees**

The Immigration Act 2016 contains a separate provision that will prevent local authorities in England from providing grants to unaccompanied young people in their care for higher education tuition fees. Local authorities should currently pay these as part of their duty to provide assistance and support with education to young people leaving care. The change is not yet in force, however.

The legislation will affect a wider group of young people than those affected by the restriction on access to leaving care support under the Children Act 1989 above. Local authorities will not be able to pay fees for courses leading to a degree, a diploma in Higher Education, a certificate of education or other specified qualifications if the young person in their care is over 18 years and is an asylum seeker (or has another type of immigration application) or if they have been granted limited leave to enter or remain, such as Refugee Leave, Humanitarian Protection or Leave to Remain as an Unaccompanied Asylum-Seeking Minor ('UASC leave'). There may be arrangements made to protect young people who are already part way through their course, otherwise legal challenges will be likely in those cases.

The changes may leave young people unable to access higher education in many cases. A person granted Refugee Leave may apply for a student loan as soon as they are recognised as a refugee so they do not need to rely on local authority funding. However, in England, care leavers in the other categories listed above may not qualify for a student loan. Those with humanitarian protection become eligible for a student loan after they have spent three years with leave to remain. Those with other forms of limited leave to remain only become eligible once they meet the criteria under the long residence category (see <http://www.justforkidslaw.org/let-us-learn/let-us-learn-blog-let-us-learn/what-has-changed> for information on this category). Those whose asylum or immigration application is still under consideration do not qualify for student loans at all under the student finance regulations.