



No Recourse to Public Funds Network

Immigration Bill 2015-16: local authority support for families (England)

The Immigration Bill is currently being debated in Parliament and contains measures which reform local authority support for the following destitute migrants with no recourse to public funds (NRPF): families where the parents have no immigration status or have a right to reside under EU law due to being the primary carer of a British Citizen child. This factsheet sets out these provisions of the Immigration Bill with reference to the Home Office guidance, [Reforming Support for migrants without immigration status](#), which has been produced to explain the Government's intentions behind the reforms.

Currently the new scheme will only apply in England although the Bill allows for regulations to be made to extend the measures to the devolved administrations.

See our [factsheet](#) for information about how similar reforms will apply to care leavers.

Current position for supporting families with no recourse to public funds (NRPF)

Social services may provide accommodation and financial assistance to families when, due to their immigration status, they have no access to welfare benefits, council housing or homelessness assistance, i.e., they have NRPF. This duty arises when there is a child in need under section 17 Children Act 1989. A child who does not have accommodation, has inadequate accommodation and/ or no money for basic living needs will be a child in need.

Families with no immigration status

Exclusions to such assistance are set out in Schedule 3 Nationality, Immigration and Asylum Act 2002, and apply when parents have no immigration status, for example, they are visa overstayers. However, assistance under section 17 Children Act 1989 can be provided if this is necessary to prevent a breach of the family's human rights or rights under EU treaties, which the local authority will determine by undertaking a human rights assessment. This will consider whether the family can return to their country of origin.

In practice, there are many barriers which prevent a local authority from considering whether the family can return to their country of origin, in which case, it will fall to the local authority to

provide support, for example, when there is a pending (non-asylum) human rights application or appeal.

Zambrano carers

A person who is from outside of the European Economic Area (EEA) and is the primary carer of a British Citizen may derive the right to reside in the UK under EU law, and is referred to as a Zambrano carer. This right to reside is commonly acquired by a single parent of a British child. Zambrano carers are able to work but are unable to access council housing or claim many benefits, including housing benefit, child tax credit and child benefit. If they are destitute and their child is therefore in need, social services may be required to provide accommodation and/ or financial assistance under section 17 Children Act 1989. Zambrano carers are lawfully present and so are not excluded from support by Schedule 3 of the Nationality, Immigration and Asylum Act 2002. See our [factsheet](#) for more information.

Asylum seekers and refused asylum seekers

Local authorities are generally not required to provide accommodation and financial support to asylum seekers or refused asylum seekers.

Local authorities are prohibited from providing support to asylum seeking families when they could access accommodation and financial support from the Home Office under section 95 Immigration Asylum Act 1999. Such support will continue to be provided to a family after they are refused asylum. (Section 122 Immigration and Asylum Act 1999)

Refused asylum seeking families may not be receiving section 95 Home Office support when the child was born after the parent's initial claim was determined. They may instead qualify for Home Office support for refused asylum seekers under section 4 Immigration Asylum Act 1999, but a local authority may only refer a family for such support when this is available and adequate to meet the needs of the child. (*R (VC) v Newcastle City Council* [2011] [EWHC 2673](#) (Admin))

However, refused asylum seeking families will be excluded from support under section 17 Children Act 1989 when parents:

- claimed asylum in-country rather than at port of entry, or
- have failed to comply with removal directions, or
- have been certified by the Home Office as failing to take steps to leave the UK voluntarily. (Schedule 3 Nationality, Immigration and Asylum Act 2002)

If any of these apply, the provision of accommodation and financial support under section 17 Children Act 1989 will be subject to a human rights assessment - see 'families with no immigration status'.

Immigration Bill: changes to Home Office asylum support for families

Asylum seeking families will cease to be provided with support under section 95 of the Immigration Asylum Act 1999 when they are refused asylum. They will continue to receive support during a 'grace period' of 90 days from the date their asylum claim is finally determined until support is terminated, in which time they will be expected to make arrangements to leave the UK or demonstrate that they have a 'genuine obstacle to leaving the UK', and therefore qualify for Home Office support for refused asylum seekers – see (ii) below. (Home Office [guidance](#), paragraphs 25-26)

The Home Office provides information about how it intends to secure the return of refused asylum seeking families, which includes further engagement with local authorities to establish how this can be effectively done. (Home Office [guidance](#), paragraphs 38-45)

Refused asylum seekers may receive support from the Home Office in the following instances.

(i) Home Office support when further submissions/ JR action is pending – section 95 Immigration and Asylum Act 1999

A family will be classed as ‘asylum seekers’, and will therefore be eligible for section 95 Home Office support when they:

- make further submissions relating to their asylum claim to the Home Office that have not been determined within a prescribed period (five days or two days where the person is vulnerable),
- make further submissions that have been accepted as a fresh asylum application, or
- have been granted permission to apply for a judicial review in relation to their asylum claim. (Home Office [guidance](#), paragraph 19)

The prohibition on local authorities providing section 17 Children Act assistance to asylum seeking families, who could receive support under section 95, will continue to apply. (Section 122 Immigration and Asylum Act 1999.)

The Home Office can provide temporary support to destitute asylum seekers when they are considering section 95 support applications under section 98 Immigration and Asylum Act 1999 but this will only be able to someone who meets the definition of ‘asylum seeker’ – see above - so will not be available to someone who has made further submissions unless the prescribed period has passed. It may therefore fall to the local authority to provide support until the family become ‘asylum seekers’ and can therefore receive section 95 support from the Home Office.

(ii) Home Office support when there is a ‘genuine obstacle to leaving the UK’ – section 95A Immigration and Asylum Act 1999

A refused asylum seeking family may receive accommodation and financial support from the Home Office under section 95A when they:

- are destitute,
- have been refused asylum, and
- there is a *‘genuine obstacle to leaving the UK.’*

([Immigration Bill](#) Schedule 10, paragraph 9)

Examples of what constitutes a ‘genuine obstacle to leaving the UK’ may be when:

*‘Medical evidence shows that a person is unfit to travel (including cases where this is because they are in the late stages of pregnancy); or
A person lacks the necessary travel document to leave the UK but is taking all reasonable steps to obtain this.’* (Home Office [guidance](#), paragraph 34)

Refused asylum seekers will only be able to apply for section 95A support when they are within the 90 day grace period, unless there are reasons outside of the person’s control, as specified in regulations, that prevented this. Examples of such reasons are given as:

‘..because they were not promptly notified of the negative outcome of their asylum appeal or they were hospitalised or otherwise too unwell to make an application for section 95A support during the grace period.’ (Home Office [guidance](#), paragraph 30)

There will be no right of appeal to challenge the refusal of section 95A support.

If a refused asylum seeking family does not qualify for section 95 or section 95A support from the Home Office then they may be entitled to support from the local authority. The Immigration Bill makes reforms to local authority support, which are intended to limit the impact of withdrawing asylum support for refused families when the family can return to their country of origin. (Home Office [guidance](#), paragraphs 46-49)

Immigration Bill: changes to local authority support for families

Destitute migrant families, where the parents have the following immigration status, will no longer be eligible for accommodation and/or financial assistance under section 17 Children Act 1989:

- No immigration status, i.e. no current immigration permission, for example, visa overstayers or refused asylum seekers
- Zambrano carers (Parent is primary carer of a British Citizen child)

Instead of providing accommodation and/or financial support under the Children Act 1989, the Immigration Bill sets out a new statutory scheme under paragraph 10A of Schedule 3 Nationality Immigration and Asylum Act 2002 that will enable local authorities to provide accommodation and financial support to these families when specific circumstances apply.

A family, where the parent has no status, or who is a Zambrano carer, will qualify for local authority accommodation and/or financial assistance when they are:

- destitute (according to the definition that is currently set out in section 95 of the Immigration and Asylum Act 1999), and
- have a dependant child, and
- are not receiving, have applied for, or potentially be eligible for Home Office support for refused asylum seekers (see above), and
- one of the following applies:
 - A. they have made a non-asylum application* to the Home Office which has not yet been determined, or
 - B. they are in time to lodge a non-asylum in-country appeal*, or
 - C. they have a non-asylum appeal* pending,
 - D. they are appeal rights exhausted and have not failed to cooperate with arrangements to enable them to leave the UK, or
 - E. the provision of support is necessary to safeguard and promote the welfare of a dependant child. ([Immigration Bill](#) Schedule 11, paragraph 10)

* Regulations will specify what type of application must have been made and when this provision will not apply because the Home Office is satisfied that the application is vexatious or wholly without merit. Article 8 human rights applications will be included. (Home Office [guidance](#), paragraph 52)

Provisions A-C place the position established in case law, with regards to the local authority being obligated to provide support whilst a family have a procedural right to pursue a human rights claim, on a statutory footing. (*Birmingham City Council v Clue* [2010] [EWCA Civ 460](#) & *KA, R (on the application of) v Essex County Council* [2013] [EWHC 43](#))

With regards to category E, the Home Office states:

*'This provision will enable local authorities to take any action which they consider necessary to prevent destitution pending the resolution of a family's immigration status or their departure from the UK. The regulations will be able to specify factors which a local authority may or must, or must not, take into account in making this decision. This will enable us to provide a clear framework for local authority decisions about support in these cases, e.g. to underline, consistent with case-law (*Kimani v Lambeth Borough Council* [2004] 1 WLR 272), that where migrants without immigration status could avoid the risk of destitution in the UK by returning to their country of origin, any support needs they may have on their return to that country are a matter for the relevant authorities there.'*

(Home Office [guidance](#), paragraph 52)

Local authorities will be able to provide support to prevent destitution pending an assessment of a family's eligibility under the scheme; regulations will be made specifying when this will be possible. ([Immigration Bill](#) Schedule 11, paragraph 10)

Support that can be provided under the new paragraph 10A scheme will be limited to accommodation and subsistence in kind, cash or vouchers, with detail set out in regulations.

However support under section 17 Children Act 1989 will still be available to a family when there are identified needs other than accommodation and financial assistance, or the child requires adapted accommodation. The Home Office states:

'The availability of accommodation and subsistence support to the family under the regulations made under the new paragraph 10A of Schedule 3 to the 2002 Act will mean that a child of the family will not be 'a child in need' under section 17 of the Children Act 1989 solely on grounds of destitution. But section 17 of the 1989 Act will continue to apply and the local authority will continue to provide under section 17 for any other needs of a child or their family, beyond destitution, which they consider it is necessary to meet in order to safeguard and promote the child's welfare, e.g. social worker support to help address a mental health issue or substance abuse problem of the child or a parent. Nothing will change in terms of a local authority's duties in that respect and, in such a case, the local authority will continue to draw on the range of services which may be provided under section 17.'

'This may include the provision under section 17 of adapted accommodation more appropriate to a child's particular needs than the accommodation provided (to prevent destitution) under the regulations made under the new paragraph 10A of Schedule 3 to the 2002 Act (or under section 95 or 95A of the 1999 Act, though the Home Office is generally able to provide accommodation for asylum seekers and failed asylum seekers which is appropriate to any special needs of a child or adult in the family).'

(Home Office [guidance](#), paragraphs 56-57)

What will not change?

There will be no change to local authority duties with regards to safeguarding, the provision of schooling and ability to address any special educational needs.

Families will continue to be able to receive accommodation and subsistence under section 17 of the Children Act 1989 when the parent(s) has/have:

- Limited leave to remain with NRPF.
- Refugee status granted by another EEA state, subject to a human rights assessment.
- EEA nationality or are the dependant of an EEA national, subject to a human rights assessment.
- British Citizenship (for example, intentionally homeless cases or returning to the UK and not able to pass the habitual residence test to access benefits)

Families that are being supported under section 17 of the Children Act 1989 before the new scheme is implemented will continue to receive assistance under this legislation.

What will be different under the proposed scheme?

The Home Office intends that the changes will simplify the assessment process for local authorities when determining whether they are required to support destitute families with no immigration status. The changes mean that in providing accommodation and financial support to families with NRPF, local authorities will be operating two parallel schemes under the following legislation:

- **Section 17 Children Act 1989** - two levels of assistance will be provided:
 - Accommodation and financial assistance, plus any additional welfare support, to the families listed above - see 'what will not change'.
 - Welfare support only - to children that require this when they are being accommodated/ financially supported under paragraph 10A
- **Paragraph 10A of Schedule 3 Nationality, Immigration and Asylum Act 2002** – this will apply to the majority of NRPF cases taken on after the provisions are implemented.

(i) Support for families with no immigration status

Paragraph 10A of Schedule 3 sets out specific responsibilities for local authorities to provide accommodation and financial support to destitute families who have no immigration permission when they have a pending human rights application or appeal. This will apply to visa overstayers and others who have not regularised their immigration status, as well as refused asylum seekers. When such a family has no further procedural right to pursue their claim and there is no legal barrier preventing return to country of origin, there will be very limited circumstances in which support can be provided. A human rights assessment will no longer be required to refuse or withdraw support in such instances, simplifying this process. However, without further detail of the regulations, which will set out the considerations a local authority needs to make to establish whether support is necessary to safeguard the welfare of a child, it is unclear what the local authority will need to consider, how complex or straightforward such an assessment will be, and how this will differ from a child in need assessment carried out under section 17 Children Act 1989.

The Home Office intends paragraph 10A to limit the impact of withdrawing asylum support for refused families. However, there will be instances when it will fall to the local authority to provide support to refused asylum seeking families.

Refused asylum seeking families will only fall to be supported by the Home Office when they:

- make further submissions relating to their asylum claim that have not been determined within a prescribed period,
- make further submissions that are accepted as a fresh asylum claim,
- have been granted permission to apply for a judicial review in relation to their asylum claim, or
- they can demonstrate they have a 'genuine obstacle to leaving the UK' during the 90 days following the final determination of their asylum application.

Refused asylum seekers who cannot apply for support from the Home Office may approach the local authority requesting assistance, and the local authority will need to consider whether any of the provisions of paragraph 10A of Schedule 3 Nationality Immigration and Asylum Act 2002 apply. These are outlined in the table below.

Circumstances of refused asylum seeker	Paragraph 10A Schedule 3 Nationality Immigration and Asylum Act 2002 provisions that the local authority will need to consider
They have a 'genuine obstacle to leaving the UK' that arises <i>after</i> their section 95 Home Office support has ended	D - if 'taking all reasonable steps' to obtain travel documentation <i>E - support is necessary to safeguard and promote the welfare of a dependant child</i>
They have made further submissions for a fresh asylum claim and the 'prescribed period' has not passed	<i>E - support is necessary to safeguard and promote the welfare of a dependant child</i>
They are undertaking Judicial Review action with regards to their asylum claim but have not yet been granted permission	<i>E - support is necessary to safeguard and promote the welfare of a dependant child</i>
They submit a non-asylum application/appeal	A – C – provisions relating to pending applications/appeals
None of the above apply	<i>E - support is necessary to safeguard and promote the welfare of a dependant child</i>

The measures of the Immigration Bill will therefore create a new client group of refused asylum seekers who are ineligible for further support from the Home Office; local authorities will need to assess such families on presentation and provide support when the eligibility criteria of paragraph 10A are satisfied.

The provision of local authority support will continue to depend on Home Office decision making, when applications have been made, and on court waiting times for cases in the appeals system. However, as the Bill abolishes the in-country right of appeal for non-asylum human rights applications, the local authority will need to consider whether provision E applies - *support is necessary to safeguard and promote the welfare of a dependant child* – when judicial review action is being undertaken.

Local authorities may also need provide support under provision E whilst the Home Office decides applications for section 95 asylum support, for example, when further submissions have been made or initial judicial review action is undertaken.

If local authorities determine that the criteria of paragraph 10A are not satisfied and refuse or withdraw support, they are still faced with managing the challenge that currently exists when a family does not leave the UK. The effectiveness of Home Office engagement with such families, in terms of encouraging take up of voluntary return programmes and progressing enforcement action, will be a key factor in addressing this issue.

(ii) Zambrano carers

For the first time there will be an explicit statutory responsibility for local authorities to accommodate and financially support Zambrano carers. Zambrano carers who have not submitted an application for leave to remain under the Immigration Rules will fall to be supported when provision E applies - *support is necessary to safeguard and promote the welfare of a dependant child*.

It therefore appears that the current position, where local authorities effectively step in and provide additional income and accommodation in the absence of the ‘top-up’ benefits that parents on a low income would usually receive, will not significantly change.

What happens next?

Parliamentary consideration of the Immigration Bill is expected to conclude in March/April 2016. If the Bill is passed to include the local authority reforms, then regulations and statutory guidance setting out further detail will need to be made. Regulations will be subject to parliamentary approval.

The Immigration Minister has confirmed that the Home Office will be working with the Department for Education to form regulations and statutory guidance, and will continue to consult with the Local Government Association, Association of Directors of Children’s Services and NRPF Network. (Letter from Immigration Minister to LGA, 1 February 2016)

The Government has confirmed that a New Burdens Assessment will be undertaken to assess the cost impact of the entire Immigration Bill on local authorities. (Home Office [guidance](#), paragraph 46). Our understanding is that most of the changes to local authority support are likely to be considered to be an existing burden, and the argument that this is a new burden will be difficult to make unless local authorities use [NRPF Connect](#) to provide data that demonstrates otherwise.

Local authority practitioners are encouraged to provide comment to the NRPF Network on the provisions of the Bill to help to inform discussions with central government on the scheme and any further legislation. Our priorities are: ensuring that local authorities will be

able to enact safeguarding responsibilities towards destitute migrant children, and that any new assessment process is less burdensome and complex than that which is currently in place. To provide feedback please contact: nrpf@islington.gov.uk.

What do local authorities need to do now?

Local authorities are advised to:

- Join [NRPf Connect](#) to share information with the Home Office on NRPf families in order to progress cases and evidence costs incurred by the local authority. See if your local authority is already a [member](#).
 - Join the [NRPf Network](#) to stay up to date with further legal and policy developments.
-

Further information

UK Parliament, [Immigration Bill 2015-16](#) – Immigration Bill as currently drafted

UK Parliament, [Immigration Bill 2015-16](#) - all documents and progress through Parliament

Home Office guidance, [Immigration Bill: part 5 - support for certain categories of migrants](#)

Home Office, [Reforming Support for migrants without immigration status](#), January 2016

NRPf Network [website](#)– guidance and news updates

© Islington Council, 8 March 2016.