

NRPF network

No Recourse to Public Funds Network

Practice Guidance for Local Authorities (England)

Assessing and Supporting Adults who have
No Recourse to Public Funds (NRPF)

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1. Introduction

This guidance is to provide a reference for local authorities in **England**, as of **1 April 2015**, when Part 1 of the Care Act 2014 came into force, in order to assist with assessing whether the local authority has a duty to support destitute adults, who have no recourse to public funds (NRPF), by providing accommodation in order to meet their needs for care and support.

This guidance outlines local authority duties and powers, specifically in relation to adults with NRPF, and does not cover the general duties that apply to all adults requesting care and support, for example, safeguarding. In light of the fact that this is new legislation, and that the Department of Health's *Care and Support Statutory Guidance* makes no mention of adults with NRPF, we have made suggestions of how authorities might meet their obligations under the Care Act towards adults with NRPF. It is not an exhaustive statement of the relevant law, nor is it a substitute for legal advice. Every attempt will be made to keep this guidance up to date but please do refer to [our website](#) for latest news and case law developments <<http://www.nrpfnetwork.org.uk>>.

Since the Care Act 2014 came into force, the provision of accommodation is no longer subject to a separate test, so adults with NRPF can now access care and support in the same way that every other adult would, and are subject to the same eligibility criteria.

The main legislative changes that specifically affect adults with NRPF have been set out in Annex A, to aid understanding of what has changed following the implementation of Part 1 of the Care Act 2014. Local authorities in England may use the previous version of this guidance for reference only.

Different legislation and considerations apply to assisting children and families with NRPF, which are outlined in our guidance: [Assessing and Supporting Children and Families with No Recourse to Public Funds](#).

1.1 Key legislation and statutory guidance

- The Care Act 2014
- Regulations made under the Care Act:
 - The Care and Support (Disputes between Local Authorities) Regulations 2014
 - The Care and Support (Ordinary Residence) (Specified Accommodation) Regulations 2014
 - The Care and Support (Assessment) Regulations 2014
 - The Care and Support (Eligibility Criteria) Regulations 2014
 - The Care and Support and Aftercare (Choice of Accommodation) Regulations 2014
- The Department of Health, [Care and Support Statutory Guidance](#) (23 October 2014) <<https://www.gov.uk/government/publications/care-act-2014-statutory-guidance-for-implementation>>
- Mental Health Act 1983
- The Department of Health, [Code of Practice: Mental Health Act 1983](#) (15 January 2015)(draft) <<https://www.gov.uk/government/publications/code-of-practice-mental-health-act-1983>>

Key immigration legislation:

- Immigration Act 1971
- Immigration and Asylum Act 1999
- Nationality, Immigration and Asylum Act 2002
- Asylum and Immigration (Treatment of Claimants, etc) Act 2004
- Immigration, Asylum and Nationality Act 2006
- The Immigration Act 2014
- Immigration (European Economic Area) Regulations 2006

Human rights legislation:

- European Convention on Human Rights (ECHR)
- Human Rights Act 1998

1.2 Who has NRPF?

No recourse to public funds (NRPF) applies to migrants who are 'subject to immigration control' and as a result of this have no entitlement to certain welfare benefits, local authority housing and homelessness assistance (see section **1.3 What are 'public funds'?**).

The definition of 'subject to immigration control' is set out in section 115 (9) Immigration and Asylum Act 1999, and includes non-EEA nationals who:

- require leave to enter or remain in the UK but do not have it;
- have leave to enter or remain in the UK which is subject to a condition that they do not have recourse to public funds; or
- have leave to enter or remain in the UK given as a result of a maintenance undertaking (for example, adult dependant relatives of people with settled status).

If an adult has immigration permission with NRPF, the statement 'no public funds' will be written on their immigration documentation (see section **2.2 Checking immigration status**). If there is no such statement then it should be assumed that they do have access to public funds.

Additionally, there are other groups of migrants that may request subsistence and/or accommodation from the local authority under community care provisions because they are unable to access welfare benefits and local authority housing, and therefore require NRPF services:

- European Economic Area (EEA) nationals are not subject to immigration control but may not be able to access certain welfare benefits and homelessness assistance if they fail the right to reside and/or habitual residence tests, which are applied when determining eligibility for these services (see section **6 EEA nationals and welfare benefits**).
- Asylum seekers and refused asylum seekers with care needs, regardless of whether they are eligible to receive section 4 or section 95 asylum support (see section **7 Asylum seekers and Home Office support**).

1.3 What are ‘public funds’?

Section 115 Immigration and Asylum Act 1999 excludes “a person subject to immigration control” from being entitled to receive the following welfare benefits:

Attendance allowance	Housing benefit
Carer’s allowance	Income-based jobseeker’s allowance
Child benefit	Income-related employment & support allowance
Child tax credit	Income support
Council tax benefit	Personal independence payment
Council tax reduction	Severe disablement allowance
Disability living allowance	Social fund payment
Domestic rate relief (Northern Ireland)	State pension credit
Discretionary welfare payment made by a local authority	Universal credit
	Working tax credit

Section 117 Immigration and Asylum Act 1999 excludes “a person subject to immigration control” from being entitled to access an allocation of local authority housing and local authority homelessness assistance.

Nationals of a country with a reciprocal arrangement with the UK may be able to claim certain benefits that are public funds under section 115 Immigration Asylum Act 1999 despite having the NRPf condition. See the [Home Office’s Modernised Guidance](https://www.gov.uk/government/publications/public-funds) for more information about this <<https://www.gov.uk/government/publications/public-funds>>.

The following services are not classed as public funds under section 115 Immigration Asylum Act 1999, and therefore adults subject to immigration control may be able to access the following, if they satisfy any relevant eligibility criteria (for which immigration status may be relevant):

- Social services care and support
- NHS treatment
- Student grants and loans
- Legal aid
- Certain work-related benefits including:
 - Contribution based Jobseeker’s Allowance
 - Incapacity Benefit
 - Retirement pension
 - Widow’s benefit
 - Bereavement benefit,
 - Maternity allowance, Guardian’s allowance, Statutory maternity pay

Migrants, who are lawfully present in the UK and have the NRPf condition attached to their immigration permission, should not be discriminated against by way of withholding social services support just because they have NRPf. If the care and support applied for is subject to a means test then this needs to be applied as it would be to any other person who is accessing care and support.

1.4 Local authority requirements and key steps

All adults with NRPF who present to an authority requesting support with accommodation and subsistence should receive a humane and customer-focused response.

Local authorities must ensure that any person carrying out an assessment under the Care Act 2014 has *“the skills, knowledge and competence to carry out the assessment in question and is appropriately trained”* (section 5 of the Care and Support (Assessment) Regulations 2014).

Local authorities should adhere to this and also provide a consistent response to adults with NRPF requesting care and support. Some authorities have established a specialist team to deal with NRPF, and others have appointed an officer who has oversight of this area of work. Local authorities lacking a specialist worker must ensure that staff dealing with NRPF cases are adequately supported and where knowledge is lacking, *“must consult a person who has expertise in relation to the condition or other circumstances of the individual whose needs are being assessed in any case where it considers that the needs of the individual concerned require it to do so”* (section 5 of the Care and Support (Assessment) Regulations 2014).

It will also be necessary to have policies in place that address NRPF service provision, which address how discretionary powers are exercised towards particular groups, for example, pregnant women without children. Any previous policies will need updating in line with the new legislation.

It is good practice to inform the adult how and why data about them may be shared with other parties, and this should be confirmed in written agreements signed by the adult. Permission from the adult will be required in order to share or obtain information from legal representatives and voluntary sector agencies. [NRPF Connect](#) is an example of good practice with regards to secure data sharing between local authorities and the Home Office that is in accordance with the Data Protection Act 1999.

This guidance is divided in accordance with the two fundamental steps that a local authority should undertake in assessing whether they have a duty to provide care and support to an individual:

Pre-assessment screening – establishing the facts of the case prior to assessment:

- Territorial responsibility (see section **2.1**)
- Checking immigration status (see section **2.2**)
- Schedule 3 Nationality Immigration and Asylum Act 2002 (see section **2.3**)
- Meeting urgent needs for care and support (see section **2.4**)

Assessing eligibility for care and support:

- Assessing eligibility for care and support under the Care Act 2014 (see section **3**)
- Assessing adults who are owed duties under section 117 Mental Health Act 1983 (see section **4**)
- Assessing adults to whom Schedule 3 Nationality Immigration and Asylum Act 2002 restrictions apply (see section **5**)

2. Pre-assessment screening

In establishing the facts of the case when an adult with NRPF requests assistance, the local authority should:

- 1) establish whether it is responsible for assisting the person, that is, whether the person is ordinarily resident within the area (see section 2.1);
- 2) carry out an immigration check to establish any eligibility for public funds under immigration legislation (see section 2.2);
- 3) check whether the authority is excluded from supporting the person under Schedule 3 Nationality, Immigration and Asylum Act 2002 (see section 2.3); and
- 4) establish whether it needs to meet urgent needs for care and support, including the provision of accommodation (see section 2.4).

2.1 Territorial responsibility

Section 18(1) of the Care Act 2014 requires a local authority to meet eligible needs for care and support if *'the adult is ordinarily resident in the authority's area or is present in its area but of no settled residence.'* A person is ordinarily resident in the area where they have voluntarily taken up residence for a settled purpose. This is usually where they are currently living, regardless of how long they have resided there. (See section 2.1.1 **Establishing ordinary residence**).

Consideration of a person's place of ordinary residence therefore needs to be included as part of the needs assessment, as this will be necessary to determine whether there is a duty to meet eligible needs. (See section 3.5 **Meeting needs for care and support**).

A person's place of ordinary residence may be clear at the outset, however in instances where it can not immediately be established, or where the adult is presenting with urgent needs, then the local authority to which the adult has presented will need to consider exercising its power to meet urgent needs, as directed in section 19.11 of the [Statutory Guidance](#):

'The determination of ordinary residence must not delay the process of meeting needs. In cases where ordinary residence is not certain, the local authority should meet the individual's needs first, and then resolve the question of residence subsequently. This is particularly the case where there may be a dispute between two or more local authorities.'

(See section 3.4 **Meeting urgent needs for care and support**).

If two or more local authorities fall into dispute about where a person is ordinarily resident, and cannot resolve this locally, section 40 of the Care Act allows the adult to request a determination by the Secretary of State for Health. This must be made within three months of the original decision being made. Further information is set out in the Care and Support (Disputes between Local Authorities) Regulations 2014.

The Care Act also makes provision for responsibility regarding the continuity of care when an adult moves between authorities of their own accord, as set out in sections 37 and 38.

For more information see chapter 19 of the [Statutory Guidance](#), and also Annex H6, which deals with British Citizens returning from abroad.

2.1.1 Establishing ordinary residence

The Care Act 2014, like the legislation that preceded it, does not define ‘ordinary residence,’ the definition of which has been the subject of much litigation.

The courts have considered that ordinary residence should be given its ‘ordinary and natural’ meaning. The leading case is *Shah v London Borough of Barnet* (1983), which found that a person will meet the ‘ordinary residence’ criteria so long as their place of residence has been voluntarily accepted by him/her as their home for settled purpose, whether for short or long duration. This approach was confirmed by the House of Lords in the case of *Mohamed v Hammersmith and Fulham LBC* (2002), when considering ‘normal residence’ found in paragraph 533 that: “So long as the place where he eats and sleeps is voluntarily accepted by him, the reason why he is there rather than somewhere else does not prevent that place from being his normal residence.”

For those who lack capacity to form a decision about where they live, ordinary residence was considered in the case of *R v Waltham Forest London Borough Council, ex p. Vale* (1985). This determined that the claimant, who had severe learning disabilities, was ordinarily resident in her parent’s home, even though that was a temporary place of residence, because, lacking capacity, she was assumed to have been unable to voluntarily choose where she lived, which is a requirement of the *Shah* test. This test therefore applied when it could be shown that an adult is not capable of forming their own decision as to where to live.

The Supreme Court has considered ordinary residence for a young man with learning and physical disabilities, who lacked capacity to decide on his place of residence and had lived in foster care from the age of two, then on turning 18, was placed in accommodation under section 21 National Assistance Act 1948, in the case of *R (on the application of Cornwall Council) (Respondent) v Secretary of State for Health (Appellant); R (on the application of Cornwall Council) (Respondent) v Somerset County Council (Appellant)* (2015). In this case the Supreme Court determined that the local authority initially responsible for meeting the young man’s needs as a child should be responsible for his care after the age of 18.

In ordinary residence determination OR 9 2010 (published on 20 January 2011), the Secretary of State considered that a person’s immigration status was not relevant to the consideration of ordinary residence for these purposes. Therefore someone who does not have valid immigration permission may be considered to be ordinarily resident.

There are some situations expressly covered by the Care Act 2014 with regards to when a person will be deemed to be ordinarily resident in a particular area.

2.1.2 Adults with no settled residence or who have urgent needs

Adults with NRPF will often be of no settled residence and therefore not have a place of ordinary residence. They may also and/or present as being in urgent need of accommodation.

Sections 18 and 20 of the Care Act make clear that a local authority has a duty to meet the eligible needs of an adult physically present in its area who has no settled residence, and who

therefore should be treated the same as a person ordinarily resident in the area. As directed in chapter 19.11 of the [Statutory Guidance](#), local authorities must not delay the process of meeting needs in cases where ordinary residence is not certain.

The relevant provisions are as follows:

- Section 18(1) requires a local authority to meet eligible needs for care and support if “*the adult ... is present in its area but of no settled residence.*”
- Section 19(1) provides local authorities with a power to meet an adult’s needs for care and support if they do not have eligible needs (and therefore there is no duty to meet their needs for care and support) and the adult is “*is present in its area but of no settled residence.*”
- Section 19(3) provides local authorities with a power to meet an adult’s needs for care and support which appear to it to be urgent (regardless of whether the adult is ordinarily resident in its area) before a needs assessment or determination of whether the eligibility criteria are carried out.

2.1.3 Hospital in-patients

A patient in an NHS hospital will be deemed to be ordinarily resident in the area in which they were ordinarily resident before admission to hospital. If a person is of no settled residence the local authority in whose area the hospital is in must undertake an assessment and meet needs if required.

Section 39(5) of the Care Act 2014 requires local authorities to treat an adult who is being provided with NHS accommodation as ordinarily resident —

*‘(a) in the area in which the adult was ordinarily resident immediately before the accommodation was provided, or
(b) if the adult was of no settled residence immediately before the accommodation was provided, in the area in which the adult was present at that time’.*

2.1.3 Placing an adult in another authority’s area

When a local authority places an adult in accommodation located within another authority’s area, the adult will remain ordinarily resident in the placing authority’s area, and that authority therefore retains responsibility while the person continues to require this.

This principle is set out under section 39(1) the Care Act 2014, at least in relation to when an adult’s needs for care and support are being met by the provision of accommodation in a:

- Care home,
- Shared lives scheme (accommodation provided by a shared lives carer), or
- Supported living accommodation (premises specifically designed or adapted to enable an adult to live as independently as possible or accommodation in which personal care is available).

These accommodation types are defined in the Care and Support (Ordinary Residence) (Specified Accommodation) Regulations 2014.

Section 39(1) requires an adult living in such accommodation as being ordinarily resident—

- (a) in the area in which the adult was ordinarily resident immediately before the adult began to live in accommodation of a type specified in the regulations, or*
- (b) if the adult was of no settled residence immediately before the adult began to live in accommodation of a type so specified, in the area in which the adult was present at that time.*

This provision does not appear to apply to those who are provided with non-supported accommodation (e.g. a private tenancy or bed and breakfast) in order to meet their needs for care and support, which is commonly what is provided to adults with NRPF. Although this appears to leave scope for arguments over responsibility, local authorities need to bear in mind the following points:

- A person cannot be deemed to be ordinarily resident in an area where they have not taken up residence voluntarily.
- Sections 6 and 7 of the Care Act require co-operation between relevant partners, which includes other local authorities in the area, in the exercise of their respective functions relating to adults with needs for care and support. Local authorities may only refuse to cooperate with a request from another local authority when this would be incompatible with its own duties or would otherwise have an adverse effect on the exercise of its functions.

It is therefore difficult to envisage how a local authority placing an adult with NRPF in accommodation outside of their area would be able to successfully argue that the responsibility of providing care and support (including accommodation) lies with the local authority of the area in which the adult is placed.

Schedule 1 of the Care Act 2014 sets out the provisions for cross-border placements, i.e., meeting an adult's needs for care and support by providing accommodation in Wales, Scotland or Northern Ireland. In each instance, the adult will remain ordinarily resident in the placing local authority's area.

2.1.4 An adult in accommodation provided under section 117 Mental Health Act 1983

When an adult, who is being provided with accommodation as part of their aftercare under section 117 Mental Health Act 1983, requires care and support under Part 1 of the Care Act, then section 39(4) specifies that the adult must be treated as ordinarily resident in the area of the local authority in England or Wales which has the duty to provide the adult with section 117 aftercare.

For the first time, the Care Act sets out ordinary residence requirements which set out responsibility for providing aftercare under section 117 (see section **4.1 Ordinary residence**).

2.1.5 Adults in prison and on release

The Care Act clarifies the position regarding the provision of care and support to people in prison, approved premises or other bail accommodation. Section 76 of the Care Act 2014 requires local authorities to be responsible for the assessment of all adults who are in custody in their area and who appear to be in need of care and support, regardless of which area the individual came from or where they will be released to. If an individual is transferred to another custodial establishment in a different local authority area this responsibility will transfer to the local authority covering the new area.

The [Statutory Guidance](#) recognises that on release from prison, it will not always be straightforward to determine where a person's place of ordinary residence is, with the starting presumption being that they are ordinarily resident in the area of ordinary residence prior to their detention. However, if the person's place of ordinary residence is unclear and/ or they express an intention to settle in a new area, the local authority to which they plan to move should take responsibility for carrying out the needs assessment.

For more information about providing care and support to prisoners, see chapter 17 of the [Statutory Guidance](#).

Local authorities with prisons in their area are advised to establish how many inmates are foreign national prisoners and to ensure that immigration status is considered in any joint planning that takes place regarding release.

2.1.6 Carers

Section 20(1) of the Care Act 2014 states that the local authority responsible for providing assistance to carers will be the one where the adult being cared for is ordinarily resident (or is present in its area but of no settled residence). (See section **9 Carers**).

2.2 Checking immigration status

It is necessary to check the nationality and immigration status of adults requesting assistance in order to be able to apply the correct considerations and assessments. In particular it must be established whether a person is excluded from support or assistance due to Schedule 3 of the Nationality Immigration and Asylum Act 2002 (see section **2.3 Schedule 3 Nationality Immigration and Asylum Act 2002: exclusions from support**), and whether they have any claims pending with the Home Office (see section **5.2.1 Legal barriers to return**).

In all cases, the adult must be asked to provide evidence of their nationality and, if relevant, evidence of their immigration status in the UK.

For EEA nationals (see section **6 EEA nationals and welfare benefits**), evidence of nationality could be in the form of a passport or national identity card.

For nationals from outside of the EEA, local authorities will need to request evidence of their immigration status in the UK. The main groups of non-EEA migrants are:

- asylum seekers with pending asylum claims,
- migrants with leave to enter or remain for a limited period,
- migrants with indefinite leave to enter or remain (also referred to as settlement),

- non-EEA family members of EEA nationals,
- migrants with no immigration permission, for example, illegal entrants, overstayers and refused asylum seekers who have exhausted all appeal rights.

Evidence of immigration status can be provided in the form of documents issued by the Home Office in the UK or overseas Entry Clearance Posts. Various documents are issued depending on the type of immigration permission given and date it is granted. Some examples of documents are:

- Immigration status document
- Visa/ residence permit in passport
- Stamp in passport
- Biometric residence permit (BRP)
- Asylum registration card (ARC)
- Home Office issued convention travel document or certificate of travel
- EEA registration certificate/ family permit/ residence card/ permanent residence card/ worker registration document
- Home Office letter specifying what type of immigration permission has been granted

A [public register of documentation](http://prado.consilium.europa.eu/EN/categories/showAllCategories_GBR.html) issued by EU countries and some others is maintained by the Council of the European Union

<http://prado.consilium.europa.eu/EN/categories/showAllCategories_GBR.html>. Note that it is not complete, so some UK immigration documents may not appear on the register.

There will be instances when an adult will be unable to provide original documentation, for example, if they have submitted their passport and/or BRP to the Home Office with a pending application, or if the Home Office has retained documentation following a refusal of an application. An adult should be able to explain why they are unable to provide documentation in such instances and evidence of a pending application can be requested. This could be an acknowledgement letter from the Home Office that confirms the date the application was made, and/or a copy of the application and proof of postage.

If the adult has a legal representative then they may be able to provide a letter to confirm their client's current status and progress of any pending applications. Be aware that Home Office systems may not show that an application has been made, and in such instances, evidence that an adult has made an application must be accepted as sufficient.

Note that if a migrant applies for further leave to remain before their current immigration permission has expired, they will continue to have valid leave under section 3C Immigration Act 1971 until the application is determined, or, should an appeal be pursued, until all appeal rights are exhausted. Such migrants will be lawfully present in the UK until such a point is reached. If leave is extended under section 3C then the conditions that were attached to the previous grant of leave will continue to apply. For example, a migrant with leave to remain as the spouse of a student will continue to have no recourse to public funds but will retain any permission to work throughout the period of 3C leave. The period of 3C leave will end when:

- new leave to remain is granted, in which case the conditions attached to that immigration permission will apply; or

- all appeal rights are exhausted and/or the time permitted to bring a further appeal has passed when no appeal has been lodged. At this point the migrant will become an overstayer. As appeal time limits vary depending on the stage that the case is at in the appeal process you may need to seek advice from the migrant's legal representative or the Home Office to establish whether the adult is lawfully present.

Limited leave to remain in the UK is generally granted with the NRPF condition, although this does not apply to refugees, people with humanitarian protection and people with discretionary leave. If an adult has been granted limited leave to remain under certain family migration rules, or outside the rules on the basis of human rights grounds, then in exceptional circumstances, Home Office policy allows recourse to be granted. In January 2014, the Home Office introduced a procedure for requesting a review of the NRPF condition when a person's circumstances change and they become destitute after leave to remain with NRPF has been granted, or if they were destitute at the time that the decision was made, but no evidence was submitted to the Home Office to confirm this. Full details of the procedure including links to the Home Office form can be found on [our website](#).

It is highly advisable to seek advice from a regulated immigration adviser before requesting the change in condition, as in some circumstances a new immigration application may be more appropriate. Guidance on how to find a regulated immigration adviser can be found on [our website](#).

2.2.1 How to obtain an immigration status check from the Home Office

The method by which you can check an adult's immigration status with the Home Office depends on whether the local authority uses the [NRPF Connect](#) database. Local authorities and the Home Office have implemented NRPF Connect as a mechanism through which information about NRPF cases can be securely exchanged. Local authorities using NRPF Connect request immigration status information and receive a Home Office response via the database, which is provided within the timescales set out in the [Service Level Agreement](#).

Even if a local authority is not using NRPF Connect it is still possible for a statutory body to obtain immigration status checks from the Home Office on a case by case basis, by contacting the Home Office's Intervention and Sanctions Directorate (ISD) by email:

- EvidenceandEnquiry@homeoffice.gsi.gov.uk

A form will need to be completed detailing why the information is required.

2.3 Schedule 3 Nationality, Immigration and Asylum Act 2002: exclusions from support

The primary reason for checking nationality and immigration status is because local authorities are required to establish whether an adult falls into one of the classes of person ineligible for support and assistance under Part 1 of the Care Act 2014.

This provision is set out under Schedule 3 of the Nationality Immigration Asylum Act 2002, which states that the five classes of person ineligible for support are:

- 1) Persons granted refugee status by another EEA State and their dependants
- 2) EEA nationals and their dependants (but not UK nationals or children)
- 3) Failed asylum seekers who fail to comply with removal directions, and their dependents;
- 4) Persons unlawfully present in the UK. This includes:
 - people who have overstayed their visas,
 - illegal entrants,
 - refused asylum seekers who made their application for asylum in-country i.e. at the Home Office, usually Croydon, rather than at the port of entry (at an airport, seaport or train-port when they first arrive in the UK before passing through immigration control).
- 5) Failed asylum seekers with dependant children who have been certified by the Secretary of State as having failed to take steps to leave the UK voluntarily

Schedule 3, paragraph 1, sets out the legislation under which such migrants are excluded from receiving assistance. Those relevant to adults with care needs are set out below.

Region	Excluded legislation
England	'Support or assistance' under Part 1 of the Care Act 2014
Wales	Part 4 of the Social Services and Well-being (Wales) Act 2014
Scotland	Section 12 and 13A Social Work (Scotland) Act 1968 (c. 49) (social welfare services)
Northern Ireland	Article 7 or 15 The Health and Personal Social Services (Northern Ireland) Order 1972

Where an adult with NRPF is caught by the restrictions to support, paragraph 3, Schedule 3 Nationality Immigration Asylum Act 2002 requires the local authority to provide care and support if this is necessary for the purpose of avoiding a breach of the adult's human rights, and, in the case of EEA nationals and their family members, if it is necessary to prevent a breach of the adult's rights under the European Community Treaties.

In practice this means that local authorities must undertake a human rights assessment to consider whether, or to what extent, the circumstances are such that the bar on providing support or assistance under Part 1 of the Care Act 2014 should be lifted in order to avoid a breach of human rights or Community treaty rights. This will involve consideration as to whether the adult is freely able to return to their country of origin without there being any breach of their human rights. (See section **5 Assessing adults to whom Schedule 3 Nationality Immigration and Asylum Act 2002 restrictions apply**).

In an email to the NRPF Network dated 29 July 2015, the Home Office and Department of Health have confirmed that:

- Schedule 3 prevents excluded groups from receiving 'support or assistance' under the Care Act 2014.
- Local authorities may undertake needs assessments for adults requiring care and support (under section 9) and carers (under section 10).
- Local authorities may meet urgent needs for care and support whilst undertaking the relevant assessments (section 19(3)).

- There is no prohibition on a local authority undertaking its general duties with regards to providing information and advice (section 4) or prevention (section 2).

Providing 'support or assistance' under sections 18 (duty to meet eligible needs) or 20 (duties towards carers) of the Care Act 2014 will therefore be excluded. With regards to other provisions of the Care Act 2014, in the absence of clarity within the legislation, local authorities will need to be mindful that the points above reflect the government's intention behind the legislation. It is now clear that there is no prohibition on local authorities undertaking a needs assessment before or alongside a human rights assessment for an adult and/or their carer who falls under one of the excluded categories.

If the adult presents in urgent need of accommodation, then in order to prevent homelessness, whilst these assessments are being undertaken, it is advisable that the local authority considers meeting such a need for care and support. (See section **2.4 Meeting urgent needs for care and support**).

2.3.1 Duty to inform the Home Office

Schedule 3 paragraph 14 Nationality Immigration Asylum Act requires a local authority to inform the Home Office of:

- any person they suspect or know to be unlawfully present in the UK, and
- a refused asylum seeker who has not complied with removal directions.

This duty should be explained to adults upon presentation to the local authority.

2.4 Meeting urgent needs for care and support

Where an adult presents to the local authority as destitute and homeless, the authority can exercise its power to meet an urgent need for care and support under section 19(3) of the Care Act 2014:

- (3) A local authority may meet an adult's needs for care and support which appear to it to be urgent (regardless of whether the adult is ordinarily resident in its area) without having yet—*
- (a) carried out a needs assessment or a financial assessment, or*
 - (b) made a determination under section 13(1).*

Section 8(1) of the Care Act 2014 sets out examples of how a local authority may meet needs:

- (1) The following are examples of what may be provided to meet needs under sections 18 to 20—*
- (a) accommodation in a care home or in premises of some other type;*
 - (b) care and support at home or in the community;*
 - (c) counselling and other types of social work;*
 - (d) goods and facilities;*
 - (e) information, advice and advocacy.*

Accommodation can therefore be provided in order to meet an urgent need for care and support.

In exercising the power to meet urgent needs the local authority cannot fetter its discretion by strictly applying a blanket policy, and must investigate each service user's individual circumstances when establishing destitution, and therefore the urgency of the need for support. The assessment of destitution is only relevant to whether accommodation needs to be provided at this stage; the local authority will still be under a duty to carry out a needs assessment regardless of the level of the adult's financial resources. (See section **3.2 Duty to assess**).

Local authorities can use this power when an adult presents with urgent needs even if their place of ordinary residence cannot be easily established. (See section **2.1.2 Adults with no settled residence or who have urgent needs**).

If an adult presenting as destitute falls to be excluded from support and assistance under Part 1 of the Care Act 2014 due to Schedule 3 Nationality Immigration and Asylum Act 2002, then the local authority must consider using this power to meet urgent needs. (See section **2.3 Schedule 3 Nationality Immigration and Asylum Act 2002: exclusions from support**).

Local authorities must have regard to the case of *Limbuella v Secretary of State* (2004), in which the High Court determined that a decision which compels a person to sleep rough, or be without shelter, and without funds usually amounts to inhuman treatment and therefore engages Article 3 of the European Convention on Human Rights (ECHR) (See section **5.3.1 Article 3 ECHR**). Refusing to provide accommodation to an adult, when this is needed to prevent homelessness whilst the relevant assessments are being undertaken, will result in the adult being forced into destitution and the local authority would be responsible for breaching Article 3 ECHR.

2.4.1 Establishing destitution

Destitution is defined in section 95 Immigration Asylum Act 1999 in relation to the provision of asylum support:

"a person is destitute if— .

(a)he does not have adequate accommodation or any means of obtaining it (whether or not his other essential living needs are met); or .

(b)he has adequate accommodation or the means of obtaining it, but cannot meet his other essential living needs".

The High Court recently considered what does or may constitute an essential living need in the case *Refugee Action v SSHD* (2014). For more details of this judgment see our [May 2014 News Bulletin](#).

In order to establish destitution the adult needs to evidence that they have no other means of support available in order to provide for their accommodation and/or meet their essential living needs. Local authorities will therefore need to explore whether support could be provided by friends or family, the voluntary or community sector, savings, a sponsor, eligibility for welfare benefits (see section **1.2 Who has NRPF?**), or selling anything of value. Any agencies referring an adult to a local authority can support their client by advising on appropriate evidence and assisting them to obtain this.

3. Assessing eligibility for care and support under the Care Act 2014

The Department of Health's Care and Support Statutory Guidance (October 2014) opens with the statement:

'The core purpose of adult care and support is to help people to achieve the outcomes that matter to them in their life'.

Part 1 of the Care Act sets out the responsibilities and duties of local authorities towards adults requiring care and support, which include: the provision of information and advice, prevention, meeting needs for care and support, partnerships and cooperation and safeguarding.

The Care Act also sets out the processes that local authorities must follow in exercising these duties: assessment and eligibility, care and support planning and review.

Underpinning all of the processes and responsibilities that are set out in the Care Act is the wellbeing principle.

The Care Act 2014 therefore creates a shift from the previous position of delivering social care services to people who met eligibility criteria, which might vary across the country, to requiring local authorities to ensure that provision of care and support, prevention, or information and advice, focuses on the needs and goals of the person concerned.

Adults with NRPf will access care and support in the same way as any other person. This guidance will focus on what local authorities need to be mindful of when dealing with NRPf cases under this new framework, but practitioners will need to be aware of the full requirements of the Care Act 2014, regulations made under the Act, and the [Statutory Guidance](#).

3.1 Wellbeing principle

Section 1 of the Care Act 2014 sets out the wellbeing duty, and in section 1(2) defines this as the individual's wellbeing in relation to:

- (a) personal dignity (including treatment of the individual with respect);*
- (b) physical and mental health and emotional well-being;*
- (c) protection from abuse and neglect;*
- (d) control by the individual over day-to-day life (including over care and support, or support, provided to the individual and the way in which it is provided);*
- (e) participation in work, education, training or recreation;*
- (f) social and economic well-being;*
- (g) domestic, family and personal relationships;*

(h) suitability of living accommodation;

(i) the individual's contribution to society.

Chapter 1.5 of the Statutory Guidance states:

“Local authorities must promote wellbeing when carrying out any of their care and support functions in respect of a person. This may sometimes be referred to as “the wellbeing principle” because it is a guiding principle that puts wellbeing at the heart of care and support.

The wellbeing principle applies in all cases where a local authority is carrying out a care and support function, or making a decision, in relation to a person...It applies equally to adults with care and support needs and their carers”.

Wellbeing therefore must to be considered throughout the entire care and support process, including:

- Undertaking a needs assessment (see section **3.3 Needs assessment**)
- Determining whether the adult has eligible needs (see section **3.4 Care and support eligibility criteria**)
- Determining how eligible needs will be met (see section **3.5 Meeting needs for care and support**)
- Determining whether the local authority will use its power to meet non-eligible needs (see section **3.6 Power to meet needs that do not satisfy the eligibility criteria**)

Failure to have proper regard to the wellbeing principle when making any of these decisions is likely to render the decision unlawful. In each decision the local authority must explain how it has had regard for each of the aspects of wellbeing set out in section 1(2).

For adults with NRPF particular focus on their social and economic wellbeing and suitability of living accommodation will be necessary, with consideration as to how each of these impact on the adult's physical and mental health and emotional well-being, in order to comply with the wellbeing principle. See chapter 1 of the [Statutory Guidance](#) for more information.

3.2 Duty to assess

Section 9(1) of the Care Act sets out the local authority's duty to undertake a needs assessment for an adult in need of care and support:

(1) Where it appears to a local authority that an adult may have needs for care and support, the authority must assess—

- (a) whether the adult does have needs for care and support, and*
- (b) if the adult does, what those needs are*

Section 9(3) of the Care Act 2014 enshrines some basic principles, previously established in case law, within statutory legislation:

(3) The duty to carry out a needs assessment applies regardless of the authority's view of—

- (a) the level of the adult's needs for care and support, or*
- (b) the level of the adult's financial resources.*

Where there is evidence of a possible health and/or social care need, the local authority will be required to undertake an assessment, even if it is suspected that the adult may not have needs which meet the eligibility criteria.

3.3 Needs assessment

Section 9 of the Care Act and the Care and Support (Assessment) Regulations 2014 set out further requirements for the needs assessment, and must be read in conjunction with chapter 6 of the Statutory Guidance.

The needs assessment must identify:

- care and support needs
- the impact of the adult's needs for care and support on all aspects of wellbeing (see section **3.1 Wellbeing principle**)
- the outcomes that the adult is wanting to achieve
- how, and to what extent, the provision of care and support could contribute to the achievement of those outcomes

The adult, any carer that the adult has, and any person whom the adult asks the authority to involve, or, where the adult lacks capacity to ask the authority to do that, any person who appears to the authority to be interested in the adult's welfare, must be involved in the needs assessment. When the adult requires an independent advocate, the advocate must be appointed prior to the needs assessment, otherwise the assessment is likely to be unlawful – *SG v London Borough of Haringey* (2015).

Local authorities must establish how adults with NRPF will be identified when they present and which member(s) of staff will be responsible for dealing with them, in order to ensure that they are taken on by a member of staff who has the skills, knowledge and competence to carry out the assessment in question. This is a requirement set out in section 5(1) of the Care and Support (Assessment) Regulations 2014:

(1) A local authority must ensure that any person (other than in the case of a supported self-assessment, the individual to whom it relates) carrying out an assessment—

- (a) has the skills, knowledge and competence to carry out the assessment in question; and*
- (b) is appropriately trained.*

Section 5(2) also requires the local authority to “consult a person who has expertise in relation to the condition or other circumstances of the individual whose needs are being assessed in any case where it considers that the needs of the individual concerned require it to do so” before or during an assessment.

The needs assessment must always be appropriate and proportionate. It can be carried out in various ways, with the process being adapted to best fit with the person's needs, wishes and goals. However, it must follow core statutory obligations, some of which have been outlined here. It is very important that these requirements are adhered to as a non-compliant assessment will be unlawful.

Chapter 6.98 of the [Statutory Guidance](#) requires local authorities to provide the adult with a copy of their needs assessment.

3.4 Care and support eligibility criteria

Section 13(1) requires a local authority to determine whether any needs that have been identified in the needs assessment meet the eligibility criteria.

The minimum eligibility criteria is set out in the Care and Support (Eligibility Criteria) Regulations 2014, and contains a three-stage test, as follows:

(1) An adult's needs meet the eligibility criteria if—

(a) the adult's needs arise from or are related to a physical or mental impairment or illness;

(b) as a result of the adult's needs the adult is unable to achieve two or more of the outcomes specified in paragraph (2); and

(c) as a consequence there is, or is likely to be, a significant impact on the adult's well-being.

(2) The specified outcomes are—

(a) managing and maintaining nutrition;

(b) maintaining personal hygiene;

(c) managing toilet needs;

(d) being appropriately clothed;

(e) being able to make use of the adult's home safely;

(f) maintaining a habitable home environment;

(g) developing and maintaining family or other personal relationships;

(h) accessing and engaging in work, training, education or volunteering;

(i) making use of necessary facilities or services in the local community including public transport, and recreational facilities or services; and

(j) carrying out any caring responsibilities the adult has for a child.

(3) For the purposes of this regulation an adult is to be regarded as being unable to achieve an outcome if the adult—

(a) is unable to achieve it without assistance;

(b) is able to achieve it without assistance but doing so causes the adult significant pain, distress or anxiety;

(c) is able to achieve it without assistance but doing so endangers or is likely to endanger the health or safety of the adult, or of others; or

(d) is able to achieve it without assistance but takes significantly longer than would normally be expected.

(4) Where the level of an adult's needs fluctuates, in determining whether the adult's needs meet the eligibility criteria, the local authority must take into account the adult's circumstances over such period as it considers necessary to establish accurately the adult's level of need.

It will therefore be possible for adults with NRPF to have eligible needs that are not tied to their ability to perform personal care activities, as the eligibility criteria encompasses specified outcomes that are not related to basic care activities, for example, the maintenance of personal relationships and use of facilities in the community. However, to be eligible, such needs must arise from a physical or mental impairment or illness, and not specifically from the effects of the adult's immigration status or destitution.

When considering the eligibility criteria for adults with NRPF requiring accommodation, it will be essential to ensure that suitability of accommodation is considered when assessing whether the adult's inability to achieve a particular outcome has a significant impact on their wellbeing. The conclusions drawn on this point will be relevant to how the local authority determines it will meet eligible needs, and failure to consider this properly could render a decision unlawful.

3.5 Meeting needs for care and support

Section 18(1) of the Care Act 2014 sets out the local authority's duty to meet an adult's needs for care and support which meet the eligibility criteria. The use of the term, 'meeting needs,' is highly relevant as it requires local authorities to assist more broadly than by just providing a particular service.

Section 8(1) of the Care Act 2014 sets out examples of how needs may be met:

(a) accommodation in a care home or in premises of some other type;

(b) care and support at home or in the community;

(c) counselling and other types of social work;

(d) goods and facilities;

(e) information, advice and advocacy.

The Statutory Guidance states:

'The local authority must take into consideration the individual's preferences. The authority should consider the person's goals in approaching the authority for support, and the level or nature of support desired'. (Chapter 10.21)

The adult's views, wishes and judgment must be taken into account and decisions must be made having regard to all circumstances. Local authorities will need to establish whether a preference forms part of an adult's needs.

The local authority must record how it will meet needs in a care and support plan, of which more information can be found in chapter 10 of the Statutory Guidance.

The local authority is not permitted to meet needs by providing or arranging any health service or facility which is required to be provided by the NHS (section 22 of the Care Act).

For adults with NRPF, who are destitute due to being unable to access public funds, then the local authority will need to consider whether meeting eligible will also include the provision of financial support and accommodation.

If an adult with NRPF is 'subject to immigration control' and their needs have arisen solely due to destitution then the local authority will not have a duty to meet their needs for care and support (see section **3.7 Exception for adults subject to immigration control: needs arising solely due to destitution**).

3.5.1 Providing accommodation and financial assistance to meet needs for care and support

The local authority will need to consider whether an adult with NRPF, who is assessed as having eligible needs, and requires accommodation, must be provided with accommodation in order to meet their needs.

Accommodation cannot be provided by the local authority when the adult is eligible for assistance under the Housing Act 1996 (section 23 of the Care Act). This is unlikely to affect adults with NRPF who are not eligible for local authority housing or homelessness assistance.

The matter of when accommodation can be provided to meet care and support needs was considered in *SG v London Borough of Haringey* (2015). SG was an asylum seeker with severe mental health disorders including complex PTSD, insomnia, depression and anxiety.

In this case the local authority provided care and support under the Care Act 2014 but did not consider whether accommodation was required to meet SG's needs. The decision to refuse to provide accommodation was therefore found to be unlawful and the local authority was ordered to re-do the care and support plan.

In considering the issue of when accommodation may be provided to meet needs under the Care Act, the Judge confirmed that:

- the services provided by the council must be accommodation-related for accommodation to be potentially a duty;
- in most cases the matter is best left to the good judgment and common sense of the local authority;
- 'accommodation-related care and attention' means care and attention of a sort which is normally provided in the home or will be "effectively useless" if the claimant has no home.

Although the Judge defers to the expertise of social workers in establishing whether it would be effectively useless to provide services other than in a home environment, at paragraph 71 he considers which of SG's circumstances may lead to accommodation being required:

'The claimant states that she:

(a) is provided assistance from her care coordinator on a regular basis, designed to improve her resilience;

(b) is provided assistance by her care coordinator in learning by rote certain journeys to and from her home;

(c) is accompanied to appointments when she does not know the journey;

(d) is visited at home by her care coordinator and her home environment is checked;

(e) is given nutritional and shopping advice by her care coordinator;

(f) is assisted by a local shopkeeper with using money in the shop;

(g) is given counselling as well as practical advice and other support by Freedom from Torture;

(h) receives some assistance with general matters, including arranging and attending appointments, booking translators, learning English by her care coordinator and volunteers;

(i) is assisted with domestic and practical tasks in the home by other women who live there and her care coordinator;

(j) is taken to a day centre by other women in the house'.

The Judge accepted that only (d) and (i), are truly accommodation-related forms of care and support, but it remained at the discretion of the local authority to decide whether it is appropriate to meet needs through the provision of accommodation.

Section 8(1) allows any type of accommodation to be provided, which could include a private tenancy or bed and breakfast. If such accommodation is located in another local authority's area then responsibility is retained by the placing authority (see section **2.1.4 Placing an adult in another authority's area**).

The type of accommodation that is provided to meet needs will have an impact on how much additional financial support or subsistence is also provided, for example, most essential living needs will be met for an adult accommodated in a care home.

Local authorities will need to be mindful of the broad scope they have to meet needs under the Care Act 2014 when reviewing subsistence policies. For destitute adults with NRPF, local authorities will need to ensure that their policies allow for financial support to be provided above any standard rates of subsistence intended to cover essential living needs, when additional payments are needed in order to fulfil their duty to meet eligible needs for care and support. This would also be in line with the Courts decisions regarding subsistence policies relating to meeting the needs of children and families under section 17 Children Act 1989. See our f for case law summaries.

3.6 Power to meet needs that do not satisfy the eligibility criteria

Section 19(1) of the Care Act 2014 sets out a general power allowing local authorities to meet needs that do not satisfy the eligibility criteria and therefore there is no duty under section 18 to meet needs:

- (1) A local authority, having carried out a needs assessment and (if required to do so) a financial assessment, may meet an adult's needs for care and support if—*
- (a) the adult is ordinarily resident in the authority's area or is present in its area but of no settled residence, and*
 - (b) the authority is satisfied that it is not required to meet the adult's needs under section 18.*

Chapter 10.29 of the [Statutory Guidance](#) requires local authorities to provide the adult with a written explanation for taking the decision not to use its powers to meet other needs, which must also include information and advice on how the person can reduce or delay their needs in future (unless this has already been provided in the eligibility determination). The Guidance requires this advice to be “*personal and specific advice based on the person's needs assessment and not a generalised reference to prevention services or signpost to a general web-site*”. Local authorities should therefore ensure that their information for adults with NRPF is appropriate to their needs, which could include immigration advice, local destitution charities and signposting to the [NRPF Network website](#).

3.6.1 Pregnant women

Local authorities previously had a power to provide residential accommodation for ‘expectant and nursing mothers in need of care and attention’ in the absence of any other needs that are not associated with pregnancy or nursing a baby. The Care Act does not contain an explicit provision relating to expectant and nursing mothers.

If a mother nursing a child presents as destitute, then a child in need assessment must be undertaken under section 17 Children Act 1989. For more information see our guidance: See our guidance: [Assessing and Supporting Children and Families with No Recourse to Public Funds](#).

Expectant mothers with no children who present as destitute may therefore be provided with accommodation under section 19(1) of the Care Act. Note that the power in section 19(3) may also be used to prevent homelessness before a needs assessment has been carried out (see section **3.3 Needs assessment**).

Local authorities should therefore update or establish policies outlining whether they will use the power for this purpose, and if so, how a pregnant woman's needs will be met.

Previously, the courts allowed local authorities to consider the availability of asylum support from the Home Office for expectant mothers because the local authority exercised a power rather than performed a duty when assisting expectant and nursing mothers. It seems likely that the local authority can therefore take into account the availability of asylum support when exercising this power. (See section **7 Asylum seekers and Home Office support**)

The UK is a signatory to the UN Convention on the Elimination of All Forms of Discrimination

against Women (CEDAW), which requires that pregnant women are given access to appropriate services in connection with pregnancy, including access to nutrition.

3.7 Exception for adults subject to immigration control: needs arising solely from destitution

Section 21 sets out an exception for persons subject to immigration control:

(1) A local authority may not meet the needs for care and support of an adult to whom section 115 of the Immigration and Asylum Act 1999 (“the 1999 Act”) (exclusion from benefits) applies and whose needs for care and support have arisen solely—

(a) because the adult is destitute, or

(b) because of the physical effects, or anticipated physical effects, of being destitute.

Section 21(5) also excludes migrants subject to immigration control from receiving preventative assistance under section 2(1) of the Care Act when their needs for care and support have arisen, or may in the future arise, solely because they are destitute or due to the physical effects, or anticipated physical effects, of being destitute.

The exclusion only applies to migrants affected by section 115 of the Immigration and Asylum Act 1999, i.e. those who:

- require leave to enter or remain in the UK but do not have it;
- have leave to enter or remain in the UK which is subject to a condition that they do not have recourse to public funds; or
- have leave to enter or remain in the UK given as a result of a maintenance undertaking (for example, adult dependant relatives of people with settled status).

This exclusion does not therefore apply to EEA nationals and their family members.

The Care Act goes on to reference the relevant sections of the Immigration and Asylum Act 1999 that apply to asylum support provided by the Home Office, in order to define destitution, and set out how a local authority must establish destitution for the purpose of this exclusion. These are not detailed here because the effect of the exclusion is likely to be very limited. For needs to be eligible, they must “*arise from or are related to a physical or mental impairment or illness.*” Therefore, unless the illness can be directly attributed to destitution, the exclusion is unlikely to have much significance. (See section **3.4 Care and support eligibility criteria**).

Local authorities certainly need to consider this when assessing needs of migrants who are subject to immigration control and should document why the exclusion does or does not apply within the eligibility determination.

4. Assessing adults who are owed duties under section 117 Mental Health Act 1983

Section 117 Mental Health Act 1983 imposes the duty on the local NHS Clinical Commissioning Group (CCG) and local authority social services department, in co-operation with voluntary agencies, to provide, or arrange for the provision of, aftercare services to certain patients who have been compulsorily detained under the Mental Health Act. The Care Act will amend the Mental Health Act on 1 April 2015 to make the following changes in respect to the provision of aftercare:

- Ordinary residence (see section 4.1)
- Definition of aftercare (see section 4.2)
- Choice of accommodation
- Direct payments option

Section 117 requires aftercare services to be provided to patients who have who have been detained in hospital when they cease to be detained and leave hospital. Section 117 applies to patients who were detained under the following sections of the Mental Health Act:

- Section 3 (detained in hospital for treatment)
- A hospital order made under sections 37 or 45A (ordered to go to hospital by a court)
- Sections 47 or 48 (transferred from prison to hospital)

Aftercare services are provided once the patient has left hospital, whether this is immediately or sometime after they have been discharged under the above provisions of the Mental Health Act.

Aftercare services must be provided free of charge and are not subject to any immigration exclusions, so nationality and immigration status are not factors that affect whether a person receives aftercare under section 117.

Section 75(7) of the Care Act allows a local authority to discharge its section 117 duty by making direct payments. For more information see sections 31 to 33 and Schedule 4 of the Care Act.

For further guidance about aftercare responsibilities, please see the Department of Health's [Mental Health Act 1983: Code of Practice](#). This guidance is due to come into force on 1 April 2015 but at the time of writing is pending Parliamentary approval.

4.1 Ordinary residence

The concept of ordinary residence will apply to section 117 for the first time in order to resolve disputes between local authorities about which authority is responsible for the provision of aftercare.

Section 75(3) of the Care Act stipulates that the local authority responsible for providing aftercare will be that in which the patient was ordinarily resident (if in England or Wales) immediately before they were detained/hospitalised.

Chapter 19.39 of the Care and Support Statutory Guidance states:

The duty on local authorities to commission or provide mental health aftercare rests with the local authority for the area in which the person concerned was ordinarily resident immediately before they were detained under the 1983 Act, even if the person becomes resident in another area where they are detained, or on leaving hospital. The responsible local authority may change, if the person is ordinarily resident in another area immediately before a subsequent period of detention.

If it is not possible to establish the patient's place of ordinary residence then responsibility for aftercare services will lie with the local authority into which the patient is discharged. This brings responsibility for the provision of section 117 aftercare in line with the position regarding responsibility for providing care and support under the Care Act. (See section **2.1 Territorial responsibility**).

For information about how accommodation provided under section 117 affects ordinary residence for the purpose of providing care and support under Part 1 of the Care Act (see section **2.1.5 An adult in accommodation provided under section 117 Mental Health Act 1983**).

A person in receipt of aftercare prior to 1 April 2015 will not be affected by this change and should continue to receive such services whilst they require them (section 75(12) of the Care Act).

The Care Act allows for disputes about ordinary residence relating to the provision of section 117 aftercare that occur between English authorities, Welsh authorities or English and Welsh authorities to be heard by the Department of Health. For more information see section 40 of the Care Act and the Care and Support (Disputes between Local Authorities) Regulations 2014.

4.2 Definition of aftercare

Section 75(5) of the Care Act defines 'aftercare' for the first time in statutory legislation and inserts section 117(6) into the Mental Health Act:

In this section, "after-care services", in relation to a person, means services which have both of the following purposes—

- (a) meeting a need arising from or related to the person's mental disorder; and*
- (b) reducing the risk of a deterioration of the person's mental condition (and, accordingly, reducing the risk of the person requiring admission to a hospital again for treatment for mental disorder).*

This clarifies that aftercare services must meet a need **arising from or related to** the person's mental disorder with the purpose of reducing the risk of deterioration in the condition and therefore reduce the risk of readmission to hospital for treatment for the disorder.

4.3 Providing accommodation under section 117

CCGs and local authorities are given broad discretion as to what services they provide, and chapter 33.4 of the Department of Health's *Mental Health Act 1983: Code of Practice* (draft) provides examples of what services aftercare can encompass:

CCGs and local authorities should interpret the definition of after-care services broadly. For example, after-care can encompass healthcare, social care and employment services, supported accommodation and services to meet the person's wider social, cultural and spiritual needs, if these services meet a need that arises directly from or is related to the particular patient's mental disorder, and help to reduce the risk of a deterioration in the patient's mental condition.

Aftercare can include the provision of accommodation, if that is required for the purpose of meeting a need arising directly from or related to the patient's mental disorder and will help to reduce the risk of their mental condition deteriorating. This therefore retains the position held in previous case law, in that ordinary accommodation (e.g. a private tenancy) cannot be provided, but the need now no longer must arise from the disorder that led to the patient being detained under the Mental Health Act. Instead the need must "*arise directly from or be related to the mental disorder*" with a view to preventing readmission to hospital.

An individual's accommodation preference can be met when the circumstances set out in the Care and Support and Aftercare (Choice of Accommodation) Regulations 2014 are satisfied. More information on this can be found in Annex A of the Department of Health's Care and Support Statutory Guidance.

For a patient with NRPF who requires accommodation, but their needs mean that this cannot be provided under section 117, they must be assessed under the Care Act. If a patient needs accommodation, or other care and support, outside of what can be covered by section 117 aftercare, then a needs assessment must be carried out under section 9 of the Care Act. (See section **3.3 Needs assessment**).

If the patient falls under any of the excluded groups set out in Schedule 3 Nationality Immigration and Asylum Act 2002 then a human rights assessment will also be required to establish whether such assistance can be provided (see section **2.3 Schedule 3 Nationality Immigration and Asylum Act 2002: exclusions from support**).

4.4 Discharging an adult with NRPF from aftercare services

The duty to provide aftercare services exists until both the CCG and the local authority are satisfied that the patient is no longer in need of such services. Therefore the decision to end services must be approved jointly.

When preparing to discharge an individual from section 117 support, regard should be given to the individual's immigration status and entitlement to public funds. (See section **1.2 Who has NRPF?**).

If the person requires care and support (which can include the provision of accommodation) and has not already been referred to Adult Social Care for a needs assessment under section 9 of the Care Act, this should be done, although if Schedule 3 Nationality Immigration and Asylum

Act 2002 applies, the local authority will also be required to undertake a human rights assessment in order to establish whether support or assistance can be provided. The local authority can exercise its power under section 19 of the Care Act to meet urgent needs whilst these assessments are undertaken. (See section **2.4 Meeting urgent needs for care and support**).

5. Assessing adults to whom Schedule 3 Nationality Immigration and Asylum Act 2002 restrictions apply

5.1 Human rights assessment

Schedule 3 Nationality Immigration Asylum Act 2002 prevents local authorities from providing support or assistance under Part 1 of the Care Act 2014 to certain migrants, (see section **2.3 Schedule 3 Nationality, Immigration and Asylum Act 2002: exclusions from support**).

However, paragraph 3 of Schedule 3 Nationality Immigration Asylum Act 2002 allows a local authority to provide care and support under Part 1 of the Care Act if such support:

“..is necessary for the purpose of avoiding a breach of a person’s Convention rights or Community Treaty rights”.

The Court of Appeal, in the case of *Kimani v LB Lambeth* (2003), found that (at paragraph 49):

“A State owes no duty under the Convention to provide support to foreign nationals who are permitted to enter their territory but who are in a position freely to return home.”

In such cases, local authorities can consider providing the adult with assistance to return to their country of origin (see section **5.6 Return to country of origin**).

The local authority must therefore undertake a human rights assessment to establish whether, or to what extent, the circumstances are such that the bar on providing support or assistance under Part 1 of the Care Act 2014 should be lifted in order to avoid a breach of human rights or Community treaty rights. This will involve consideration as to whether the adult is freely able to return to their country of origin without there being any breach of their human rights.

If a carer falls to be excluded under Schedule 3 (whether or not the adult with needs for care and support is also excluded), then the local authority will need to undertake a human rights assessment to establish whether support or assistance under Part 1 of the Care Act is necessary in order to prevent a breach of the carer’s human rights or rights under European Community treaties (for EEA nationals and their family members).

The human rights assessment may be undertaken in conjunction with or after the needs assessment has been concluded.

The human rights assessment must determine:

- Whether the adult can freely return to their country of origin. (See section **5.2**).
- Whether return to country of origin would cause a breach of the adult’s human rights under the European Convention on Human Rights (ECHR). (See section **5.3**).
- Whether return to country of origin would cause a breach of the adult’s rights under European Community treaties (applicable to EEA nationals and family members of EEA nationals). (See section **5.4**).

All these considerations must be drawn together in order to form a clear conclusion and document the decision making process. We have developed a template [Human Rights Assessment](#) that local authorities can use in assessing adults with NRPF under the Human Rights Act, although questions need to be tailored to an adult's specific circumstances.

5.2 Determining whether the adult can return to their country of origin

Any legal or practical barriers to return to the country of origin need to be identified in order to establish whether return is reasonably practical.

If support is refused or withdrawn when there is a barrier to return then this may result in the adult experiencing enforced destitution, which would be a breach of Article 3 ECHR by causing the adult to experience inhuman and degrading treatment (see section **5.3.1 Article 3 ECHR**). In the case of *Limbuela v Secretary of State* (2004), the court found that a decision which compels a person to sleep rough or without shelter and without funds usually amounts to inhuman treatment and therefore engages Article 3 ECHR.

If there are no legal or practical barriers to return, then the local authority does not have a duty to support an adult who is freely able to return to their country of origin, as was found in *Kimani v LB Lambeth* (2003). The courts have determined that the denial of support in such instances does not constitute a breach of human rights: see *AW v Croydon LBC*; *A, D and Y v Hackney LBC and another* (2006).

5.2.1 Legal barriers to return

An outstanding application made to the Home Office raising asylum, Article 3 and/or Article 8 grounds would constitute a legal barrier to return.

The Court of Appeal case of *Clue v Birmingham City Council* (2010) held that where an adult has a pending application for leave to remain on human rights grounds, the local authority cannot refuse assistance (in this case under section 17 Children Act 1989, which is also subject to Schedule 3 exclusions) if this would require the adult to leave the UK (and therefore forfeit their immigration application). The High Court case of *KA v Essex County Council* (2013) took this principle further, finding that a family who had been refused leave to remain, but not yet issued with a decision to make removal directions, would be compelled to leave the UK if support under section 17 Children Act is refused. Home Office appeals and removals processes significantly changed on 6 April 2015, so it will be necessary for the local authority to correctly establish whether the adult has a procedural entitlement to further their human rights application, and therefore a legal barrier in place. The NRPF Network will be providing further guidance on this in due course.

Where adults, who are excluded from support due to Schedule 3, claim that a failure of the local authority to provide support and assistance under Part 1 of the Care Act 2014 will result in a breach of Article 3 or Article 8 ECHR, local authorities should request evidence that an application for asylum or leave to remain in the UK has been made to the Home Office that alleges their removal from the UK would result in a breach of the respective Articles of the ECHR. This would then be a barrier to return to the country of origin.

A local authority cannot effectively step into the shoes of the Home Office to determine the validity of a person's human rights claim, as the courts confirmed in the cases of *Binomugisha v*

Southwark LBC (2006) and *AW & Ors, v London Borough of Croydon & Ors* (2007). In *Clue*, the Court also found that the local authority must not consider the merits of the immigration application but could only refuse services in “*obviously hopeless or abusive cases*.” However, lawfully concluding that the claim or representations is obviously hopeless or abusive will only be possible in the rarest of cases. Even if the current claim or representations appear to repeat grounds previously cited which were not accepted by the Home Office, it is possible that there will be a relevant change to the adult’s circumstances, to the situation in the country of origin, or legislative developments that mean the Home Office have new factors to consider in a fresh application. Therefore in only the clearest of cases will the local authority be able to conclude that there would be no breach of human rights for the adult to return to their country of origin before the Home Office has determined the claim, and it is highly advisable for a local authority to refer the case to their legal department before making such a decision.

It is important to be aware that it is a criminal offence to provide immigration advice that is specific to an adult’s matter unless a person is a member of the appropriate regulatory bodies for solicitors and barristers or an immigration adviser regulated by the [Office of the Immigration Services Commissioner \(OISC\)](https://www.gov.uk/government/organisations/office-of-the-immigration-services-commissioner) <<https://www.gov.uk/government/organisations/office-of-the-immigration-services-commissioner>>. Therefore it is not appropriate to advise an adult about the specifics of their case, or to make a judgement on whether they have grounds for a specific type of application, and the merits of such an application.

5.2.2 Practical barriers to return

Practical barriers could include:

- Inability to obtain identity or travel documentation
- Inability to travel due to ill health or a medical condition

Some barriers may be temporary, and it might be appropriate to provide support to the adult on a short term basis and assistance to overcome this barrier, for example, by helping them to obtain travel documentation.

Even if a medical practitioner provides confirmation that an adult can travel, their medical needs would need further consideration in order to establish whether despite this need, they are able to return without their human rights being breached (see section **5.3.1 Article 3 ECHR**).

5.3 Determining whether return to country of origin would cause a breach of human rights

The relevant articles of the European Convention on Human Rights (ECHR), which have been incorporated into the Human Rights Act 1998 and need to be considered are likely to be:

- Article 3 (prohibition on torture or inhuman or degrading treatment or punishment)
- Article 8 (right of respect for private and family life)
- Article 6 (right to a fair trial), where the person is involved in court proceedings in the UK

5.3.1 Article 3 ECHR

Article 3: *“No one shall be subjected to torture or to inhuman or degrading treatment or punishment”.*

Article 3 is an absolute right, which means it is never defensible to breach this right.

Inhuman treatment may be less severe than torture but causes serious physical and/or mental pain or suffering. Degrading treatment occurs where a person reasonably feels fear, anguish or inferiority that is humiliating and debasing.

An application to remain in the UK on the grounds that a person is at risk of torture, inhuman or degrading treatment in their country of origin is usually made by claiming asylum, or a fresh claim for asylum. However, applications can also be made to remain in the UK if a person asserts that they would be at risk of inhuman or degrading treatment as a result of a medical condition, which cannot be effectively treated in their country of origin. In such instances, an application form would need to be submitted to the Home Office.

The threshold for engaging Article 3 on medical grounds is extremely high. A breach of Article 3 will often be argued on the basis that a person cannot return to their country of origin because they will be deprived of the type or level of medical treatment that they are receiving in the UK. This issue has been considered by the Courts in relation to several immigration cases. The leading case is *N v Secretary of State for the Home Department* (2005), in which the House of Lords held that the Secretary of State’s decision to return a Ugandan woman with HIV and AIDS did not breach her Article 3 rights, even though she could live for decades on treatment in the UK but would most likely die within a matter of months if returned to Uganda. Baroness Hale stated at paragraphs 69 and 70:

“The test in this sort of case, is whether the applicant’s illness has reached such a critical stage (i.e. he is dying) that it would be inhuman treatment to deprive him of the care which he is currently receiving and send him home to an early death unless there is care available there to enable him to meet that fate with dignity...”

“There may, of course, be other exceptional cases, with other extreme facts, where the humanitarian considerations are equally compelling”.

The Court of Appeal in the case of *GS (India) v Secretary of State for the Home Department* (2015) recently considered whether return to country of origin would be a breach of Article 3 for six appellants, five of whom (from India, Ghana and Jamaica) suffered from terminal renal failure or end stage chronic kidney disease and received essential life preserving dialysis in the UK. Without dialysis, their life expectancy would be reduced to two to three weeks. The sixth appellant, from Democratic Republic of Congo, was at an advanced stage of HIV infection, received antiretroviral therapy and other medication, which if withdrawn would lead to his life expectancy reduced to months or a year or two at most. Despite the appellants with kidney disease having no transplant, and no, or no real prospect of continued dialysis in their home country, the Court of Appeal found that removing them to their respective countries would not result in a breach of Article 3. The Court determined that Article 3 would only be engaged in the most exceptional circumstances, i.e., deathbed cases, interpreting the exception outlined in *N v SSHD* very narrowly.

However, in a social care case, *De Almeida v Royal Borough of Kensington and Chelsea* (2012), the High Court found that there would be a breach of Article 3 ECHR if the Portuguese

national in question, who was terminally ill with AIDS and also suffered from depression and skin cancer, was refused services under section 21 National Assistance Act 1948 and returned to Portugal. It was found that Mr De Almeida was a very exceptional case, as referenced in *N*: he was at the end of his life, and, despite Portugal having a health and welfare system, returning him to Portugal would have led to an undignified and distressing death, with him facing delay and difficulty in obtaining accommodation and benefits, whilst being away from his existing support network of friends and healthcare professionals.

Note that it may be also argued that there is a breach of Article 8 in medical cases (see section **5.3.2 Article 8 ECHR**).

Key matters to consider in assessing whether Article 3 is engaged are:

- Will the adult be destitute in their country of origin?
- Does the adult have support networks in their country of origin?
- Will they be able to obtain accommodation (either on their own or with family/friends)?
- Are they able to work in their country of origin?
- Are there any Social Services systems or social housing systems in their country of origin?
- Where there are health issues, are there any health services, treatments and/or medication available in the country of origin?
- Has the adult's health condition reached a critical stage?
- Are the adult's circumstances exceptional?

These issues need to be compared to the adult's circumstances in the UK. It will also be necessary to refer to relevant country information (see section **12.5 Country information sources**) and any Home Office or court decisions in relation to the adult's immigration case.

5.3.2 Article 8 ECHR

Article 8: *"(1) Everyone has the right to respect for his private and family life, his home and his correspondence.*

(2) There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others".

Note that family life can include relationships between an unmarried couple, an adopted child and the adoptive parent, a foster parent and fostered child, and other family members.

Private life is the right of a person to live their own life with such personal privacy as is reasonable in a democratic society, taking into account the rights and freedoms of others. Therefore any interference with a person's body or the way that the person lives their life is likely to affect their right to respect for their private life under Article 8.

Article 8 is not an absolute right, but is a qualified right, so a certain level of infringement of this right can be permitted so long as there is a lawful basis and legitimate public end, for example, in order to maintain immigration control.

The tribunals of the Immigration and Asylum Chamber must follow the steps set out in the House of Lords case of *Razgar v SSHD* (2004), at paragraph 17, in order to establish whether

refusal of an immigration application would breach a person's rights under Article 8. This approach can be followed by local authority decision makers.

If a local authority refuses or withdraws support then it is generally accepted that this would be necessary in order to protect the economic well-being of the country, which is a legitimate public end. However, in order to reach such a conclusion, in applying the steps of Razgar, the local authority must consider:

- Would the refusal/withdrawal of support amount to interference by the local authority with the exercise of the adult's right to respect for their private or family life?
- If so, will such interference have consequences of such gravity as potentially to engage the operation of article 8?
- Is such interference proportionate to the legitimate public end sought to be achieved?

Article 8 in respect of the right to family life may be engaged by single adults with family support networks in the UK, and consideration needs to be given as to whether Article 8 in respect to private life is engaged for all adult adults.

Length of residence in the UK is likely to be a relevant factor, but also consideration as to whether the adult can reasonably be expected to establish a meaningful level of existence in their country of origin, examples would include: whether they can work: what services exist and their ability to access these; any support that is available from family members etc. Relevant considerations must be made based on the facts of each individual case.

If the adult has a medical condition, then as well as considering Article 3 ECHR (see section **5.3.1 Article 3 ECHR**), local authorities must also consider whether there would be any breach of Article 8. In the case of *MM (Zimbabwe) v Secretary of State for the Home Department* [2012] EWCA Civ 279 (13 March 2012), the Court of Appeal provided guidance in a deportation case regarding a Zimbabwean national, who was receiving medication for a serious psychotic illness, about when Article 8 may be engaged in medical cases at paragraph 23:

"The only cases I can foresee where the absence of adequate medical treatment in the country to which a person is to be deported will be relevant to Article 8, is where it is an additional factor to be weighed in the balance, with other factors which by themselves engage Article 8. Suppose, in this case, the appellant had established firm family ties in this country, then the availability of continuing medical treatment here, coupled with his dependence on the family here for support, together establish 'private life' under Article 8. That conclusion would not involve a comparison between medical facilities here and those in Zimbabwe. Such a finding would not offend the principle expressed above that the United Kingdom is under no Convention obligation to provide medical treatment here when it is not available in the country to which the appellant is to be deported".

Article 8 may therefore be engaged due to an adult's family or private life when medical grounds are raised. The High Court found in *De Almeida v LB Kensington and Chelsea* (2012) that Mr De Almeida's return to Portugal would be a breach of his private life but such interference was not justified by the state due to the relatively small cost saving to be gained from returning him. In this instance the issue in question was the preservation of the economic wellbeing of the UK, rather than the maintenance of immigration control. There are therefore circumstances where there may be a breach of Article 8 in cases where adults requesting care and support from the local authority are receiving medical treatment in the UK.

5.3.3 Article 6 ECHR

Article 6: “(1) ..everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law..”.

In cases where the adult is a defendant in criminal proceedings or a party in civil proceedings, it may be relevant to consider whether return to country of origin would infringe the adult’s right to a fair and public hearing under Article 6 ECHR, for example, a parent, who requires care and support under the Care Act , whose children are subject to care proceedings.

In the case of *PB v Haringey*, the court held that the decision that a mother in care proceedings could return to her country of origin was unlawful because it would result in a breach of her Article 8 rights. This was because she would not be able to participate in the proceedings, including assessments which would have an effect on the Court’s determination of the case. As the Court considered that Article 8 would be breached, it did not go on to consider whether Article 6 would also be breached in the circumstances.

5.4 Determining if return to country of origin would cause a breach of European Community treaty rights

Schedule 3 Nationality Immigration Asylum Act prohibits local authorities from providing support or assistance under Part 1 of the Care Act 2014 to EEA nationals, unless this is necessary to prevent a breach of their human rights or their rights under the Community Treaties.

A human rights assessment will therefore need to be completed and this will also need to consider whether offering assistance with return to the country of origin would be a breach of Community Treaty rights (see section **5.1 Human rights assessments**). The first step in determining whether support or assistance is necessary to prevent a breach of rights under the Community Treaties is to establish whether the EEA national is exercising treaty rights and is a ‘qualified person’, or is the family member of a qualified person (see **6.1 The right to reside for EEA nationals and their family members**). Full consideration of the adult’s history will be required, in order to find out whether they worked in the past or have acquired the permanent right of residence.

If an adult is exercising their treaty rights, local authorities will then need to consider whether provision of assistance under Part 1 of the Care Act 2014 is necessary to prevent a breach of those rights. Matters to consider include:

- Can the person support themselves through employment?
- Are they able to obtain benefits and/or are they eligible for local authority housing?
- Can the person seek work in the UK whilst based in their country of origin?

Local authorities can use their power under the Withholding and Withdrawal of Support (Travel Assistance and Temporary Accommodation) Regulations 2002 to purchase tickets to their country of origin for EEA nationals (see section **5.6.3 Local authority funded return**).

5.5 Concluding the Human Rights Assessment

A local authority must have regard for the findings made by the Home Office in a refusal of asylum or leave to remain, or by the courts in an appeal determination, particularly if the decision is recent. However, if the adult asserts that since that decision their circumstances

have changed, then the adult needs to be referred to a regulated immigration adviser for advice about their options. See [our website](#) for guidance about finding an immigration adviser.

If it is found that the provision of support or assistance under Part 1 of the Care Act is needed to prevent an unlawful breach of an adult's human rights, or is required to be provided due to the adult's inability to travel or there are other practical obstacles to their return then assistance must be provided if the eligibility criteria is satisfied. (See section **3 Assessing eligibility for care and support under the Care Act 2015**).

If it is found that support or assistance under Part 1 of the Care Act is not needed to prevent an unlawful breach of human rights, the local authority can attempt to resolve the case by either offering to fund tickets to the adult's country of origin, referring the person to Choices, which operates the Home Office's voluntary return programmes (see section **5.6.1 Home Office funded Assisted Voluntary Return (AVR)**) or making other appropriate referrals.

There may sometimes be a need for short term provision of support or assistance to allow such arrangements to be made.

If it is a viable option for the person to return to their country of origin, but they refuse to do so, any hardship or degradation suffered will be a result of their decision to stay in the country and not as a result of any breach of human rights by the local authority, as determined in *R Kimani v Lambeth* 2003 and *AW v Croydon LBC; A, D and Y v Hackney LBC and another* (2006).

Where return to the country of origin would prevent a breach, it would be lawful for a local authority to offer assistance in returning adults to their country of origin.

5.6 Return to country of origin

For adults with NRPF who are excluded from support under Schedule 3 Nationality Immigration and Asylum Act 2002, and to whom the local authority owes no duty to support because denying or withdrawing support would not result in any breach of human rights or European Community Treaty rights, then assistance with return to the adult's country of origin can be provided, either by referring to an agency that can assist with this or by the local authority directly.

5.6.1 Home Office funded assisted voluntary return

The government website provides some basic information about who may qualify for an assisted return, which will involve the Home Office arranging and funding the flight, a financial package and additional support as required. Adults will be eligible if they:

- are waiting for a decision on an asylum application
- have been refused asylum and have appealed, or are appealing, against the decision
- have been given temporary ('discretionary') leave to remain in the UK
- have entered the UK illegally and not claimed asylum, but are a victim of human trafficking or smuggling

An adult cannot apply for this if they:

- are currently being investigated by the police or detained by the Home Office

- have been given a prison sentence that's 12 months or longer
- have been convicted of an immigration offence and given a deportation order
- have already been given humanitarian protection, indefinite leave to remain or refugee status
- are a European Economic Area (EEA) or Swiss national

See: <https://www.gov.uk/return-home-voluntarily/who-can-get-help>.

Adults who do not fit into the eligibility categories above, such as those who do not have any immigration status, and are considered by the Home Office to be vulnerable, may also be eligible for an assisted return. However, there is no published guidance that defines who would be considered to be vulnerable. It is likely that adults with care and support needs in receipt of local authority assistance should be considered to be vulnerable, but practitioners may need to advocate on their behalf if a referral to the Home Office for an assisted return is made.

A financial reintegration package of up to £1500 may be available. The method by which is provided depends on whether the country of return is part of the European Reintegration Network, which currently includes: Afghanistan, Democratic Republic of Congo, Guinea, Iran, Iraq, Morocco, Nigeria, Pakistan, Russian Federation, Somalia and Sri Lanka.

The Home Office administers the assisted returns process and no independent and confidential advice is available to people who are considering return. The government [website](#) states: *'You can be forced to return to your home country if you withdraw your application or don't follow the application process'* <<https://www.gov.uk/return-home-voluntarily/assisted-voluntary-return>>.

Note that a person undertaking a voluntary departure will be subject to a re-entry ban of 2 or 5 years, depending on how long they were in the UK after being issued with a liability to removal notice or became appeals rights exhausted.

The Home Office has published a [form](#) to complete in order to apply for an assisted voluntary return, which must be sent to: assistedvoluntaryreturn@homeoffice.gsi.gov.uk. <<https://www.gov.uk/government/publications/assisted-voluntary-returns-application-form>>

The Home Office team can be contacted on: 0300 004 0202 Monday to Friday, 9am to 5:30pm

5.6.2 Home Office funded voluntary departure

Any person who is living in the UK illegally or has been refused permission to enter or stay in the UK can ask to make a voluntary departure, including EEA nationals who are not exercising a right to reside (see section **6.1 The right to reside for EEA nationals and their family members**).

The Home Office will organise and fund the flight, but will expect a person to arrange their own documentation if they do not already have this, unless the person has a vulnerability which means that they will be unable to do this, or will experience great difficulty in doing this. Note that vulnerable adults may qualify for an assisted voluntary return, although currently there is no published guidance as to which groups of people would be considered to be vulnerable ((see section **5.6.1 Home Office funded assisted voluntary return**)).

As with assisted returns, the Home Office does not provide independent and confidential advice to people who are considering taking up return. A person undertaking a voluntary departure will be subject to a re-entry ban of 2 or 5 years, depending on how long they were in the UK after being issued with a liability to removal notice or became appeals rights exhausted.

See: <https://www.gov.uk/return-home-voluntarily/voluntary-departure>

To make a referral for a voluntary departure, the Home Office can be contacted at: voluntarydeparture@homeoffice.gsi.gov.uk or by telephone: 0300 004 0202 Monday to Friday, 9am to 5:30pm.

5.6.3 Local authority funded return

A local authority may purchase tickets to country of origin for adults who have no lawful immigration permission to reside in the UK by exercising its powers under section 2 of the Local Government Act 2000.

This provides local authorities with the power to undertake anything that is likely to achieve the promotion or improvement of the economic, social or environmental well-being of their area, unless they are prohibited from doing so by other legislation. Therefore, if providing travel to enable an adult to return to their country of origin would be an effective response to avoid a breach of a person's human rights, a local authority may use this power to do so.

For EEA nationals or a person who has been recognised as a refugee by another EEA state, the Withholding and Withdrawal of Support (Travel Assistance and Temporary Accommodation) Regulations 2002 provide local authorities with the power to purchase travel tickets to enable an adult to return to their country of origin. These Regulations allow the local authority to provide time-bound interim accommodation pending the return to country of origin, but give no power to provide cash payments to the adult.

Alternatively, national embassies may also be able to purchase travel tickets for EEA nationals, or assist with obtaining travel documentation.

The courts have held that any hardship that follows when an adult refuses to return to their country of origin will not be caused by a failing on the part of the authority, when it is demonstrated that a local authority has no legal duty to provide assistance under the National Assistance Act 1948. It can be assumed that this principle would apply to care and support provided under Part 1 of the Care Act. (See section **5.2 Determining whether the adult can return to their country of origin**).

6. EEA nationals and welfare benefits

6.1 The right to reside for EEA nationals and their family members

The European Economic Area (EEA) is comprised of all European Union (EU) countries, which are:

Austria	Estonia	Italy	Portugal
Belgium	Finland	Latvia	Romania
Bulgaria	France	Lithuania	Slovenia
Croatia	Germany	Luxembourg	Spain
Cyprus	Greece	Malta	Slovakia
Czech Republic	Hungary	Netherlands	Sweden
Denmark	Ireland	Poland	UK

Iceland, Norway and Lichtenstein are not in the EU but are members of the EEA and enjoy the same free movement rights as EEA nationals. Swiss nationals also enjoy similar free movement rights as a result of bilateral treaties.

EEA nationals do not require leave to enter or to remain in the UK; their right to enter and reside in the UK is governed by European law, commonly referred to as the 'Community Treaties'. The 'Community Treaty rights' that EEA nationals enjoy in other Member States are, broadly, rights to economic free movement. These rights are transposed into domestic law by the Immigration (European Economic Area) Regulations 2006.

EEA nationals, who come within the definition of a 'qualified person' under the Immigration (European Economic Area) Regulations 2006, are considered to be exercising their treaty rights in the UK. A 'qualified person' may be:

- a jobseeker
- a worker (including former workers in certain circumstances)
- self-employed
- self-sufficient
- a student

To be recognised as a qualified person, an EEA national must satisfy the specific requirements set out in the Immigration (EEA) Regulations 2006. Key points to note are that:

- Jobseeker status may only be retained for longer than 6 months if there is 'compelling evidence' that the EEA national is continuing to seek work and has a 'genuine chance' of being engaged in employment.
- An EEA national may retain their status as a worker even if they are not currently in employment. Regulation 6(2) states that an EEA national will continue to be a worker if they are:
 - temporarily unable to work as a result of illness or accident;

- involuntarily unemployed *and* registered as a jobseeker with the relevant employment office *and* can provide evidence that they are seeking employment and have a genuine chance of being engaged. An EEA national will only retain worker status on this basis for longer than six months if they have worked for at least one year and there is 'compelling evidence' that they are continuing to seek work and has a 'genuine chance' of being engaged in employment;
 - involuntarily unemployed and has embarked on vocational training; or
 - voluntarily ceased working and embarked on vocational training that is related to his previous employment.
- Students and self-sufficient EEA nationals need to have 'sufficient resources not to become a burden on the social assistance system of the UK' during their period of residence.

When new countries accede to the EU, the UK government can limit access to the labour market for nationals of these countries for a set period. In the past, restrictions were placed on nationals of the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia, between 1 May 2004 and 30 April 2011, and on nationals of Bulgaria and Romania between 1 January 2007 and 31 December 2013.

Currently, restrictions to the labour market only apply to Croatian nationals, following the accession of Croatia to the EU on 1 July 2013. Croatian nationals who wish to work in the UK are required to apply for worker registration, unless exempt.

EEA nationals may acquire the right of permanent residence after five years continuous residence in the UK as a qualified person under the Immigration (European Economic Area) Regulations 2006, or if they meet the criteria as a worker or self-employed person who has ceased activity because of a permanent incapacity to work.

Certain family members of EEA nationals, whether they are EEA nationals themselves or non-EEA nationals, will have the right to reside in the UK if the EEA national is a 'qualified person', and may also acquire permanent residence.

Family members include:

- Spouse or civil partner
- Child under 21
- Dependent child age 21 and above
- Dependant relatives in the ascending line i.e. parents or grandparents

The Immigration (European Economic Area) Regulations 2006 also provide for other family members of EEA nationals, who do not fall under this definition, such as a partner who is in a durable relationship with the EEA national, and other dependant relatives, to exercise the right to reside on the basis of being an extended family member of an EEA national.

6.2 Benefit eligibility for EEA nationals

Although EEA nationals are entitled to claim benefits and local authority housing, they may be prevented from accessing these due to the specific eligibility requirements for a particular public fund. The eligibility requirements usually involve an EEA national satisfying the 'right to reside' and 'habitual residence test', and means that the EEA national needs to be exercising a treaty right in the UK (see section **6.1 The right to reside for EEA nationals and their family members**), but in a specific capacity. For example EEA nationals who are exercising their right to reside as 'jobseekers' are not eligible to receive housing benefit, whereas an EEA national 'worker' would be.

An EEA national who becomes unemployed may be able to obtain benefits based on their national insurance contributions, such as JSA (contributory based), however their ability to access income-based benefits such as income based JSA and housing benefit will depend on whether they continue to be considered to be exercising their right to reside as a 'worker'.

It will therefore be important to establish length of residence and full work history in the UK to determine whether an EEA national or family member of an EEA national may have the right to reside in the UK and therefore access to benefits.

As the rules surrounding eligibility for EEA nationals are complex, and recently have been subject to several changes, we recommend that all EEA nationals presenting to a local authority for assistance are referred to their local CAB or equivalent welfare rights advice agency in order to establish their entitlement to benefits and/or to check that any refusals of benefits are correct.

For more information on the Habitual Residency Test, see the Citizens Advice Bureau's (CAB) [Advice Guide](http://www.adviceguide.org.uk/) < <http://www.adviceguide.org.uk/>>.

6.3 Irish nationals

Irish citizens are EEA nationals but are not required to exercise a right to reside under the EEA regulations in order to be able to live in the UK. The Republic of Ireland forms part of the Common Travel Area, along with the Channel Islands and Isle of Man. The Common Travel Area Agreement allows for nationals of the Common Travel Area to travel and live freely within that area.

6.4 Benefit eligibility for UK and Irish nationals returning from abroad

UK and Irish nationals who are resident in the Common Travel Area (i.e. the UK, Republic of Ireland, Channel Islands and Isle of Man) will automatically have a right to reside and will be habitually resident for the purpose of eligibility for certain benefits.

However, if a UK or Irish national has been living outside of the Common Travel Area and is returning to live in the UK then they may be subject to the habitual residence test depending on how long their absence has been, the reason for their absence and what ties have been maintained with the UK.

Note that since 1 January 2014, anyone claiming Income Based Jobseeker's Allowance needs to have been living in the Common Travel Area for three months prior to the date of the claim. Therefore UK and Irish nationals returning to live in the UK will be prohibited from accessing this benefit for at least three months, and then would have to satisfy the habitual residence test.

Therefore it is important to establish whether a newly arrived UK or Irish national has been resident in another part of the Common Travel Area immediately prior to coming to the UK, as if so, it is likely that they will be eligible for welfare benefits and/or local authority housing or homelessness assistance.

7. Asylum seekers and Home Office support

Destitute asylum seekers with pending applications or an appeal should normally qualify for support provided by the Home Office under section 95 Immigration and Asylum Act 1999. The Home Office will provide accommodation and/or weekly cash support.

In certain circumstances, refused asylum seekers may qualify for support provided by the Home Office under Section 4 Immigration and Asylum Act 1999, if they are destitute and one of the following applies:

- they are taking all reasonable steps to leave the UK,
- they are unable to leave the UK due to physical impediment,
- there is no safe route of return,
- the courts have granted leave to appeal in an application for judicial review in relation to their asylum claim, or
- support is necessary to avoid a breach of their human rights.

If eligible, the Home Office will provide accommodation and financial support in the form of a pre-payment card which can be used to purchase food and toiletries in certain shops. Financial support cannot be requested independently of accommodation.

The case of *SG v London Borough of Haringey* (2015), confirms that the principle established in *NASS v Westminster* (2002) continues to apply when assessing eligibility for care and support under the Care Act 2014:

- The local authority must undertake a needs assessment of an asylum seeker or refused asylum seeker presenting with care needs, and provide care and support when they have eligible needs. The local authority must not take into account the availability of accommodation from the Home Office, so if accommodation is required to meet the adult's needs for care and support, the local authority would be responsible for providing this.
- Asylum seekers or refused asylum seekers without presenting community care or mental health needs, or following assessment are found not to have eligible needs, can be referred for asylum support from the Home Office.

However, when it comes to the local authority exercising the power under section 19 of the Care Act, then it seems likely that the local authority can take into account the availability of asylum support. Previously, the courts allowed a local authority to consider the availability of asylum support from the Home Office for a pregnant woman because the local authority exercised a power rather than performed a duty when assisting expectant and nursing mothers.

For more information or to make an application for asylum support see: <http://asylumhelpuk.org/>

8. Adults fleeing domestic violence

An adult with care needs who presents due to fleeing domestic violence would need to be assessed for care and support in the same way as any other adult. (See section **3 Assessing eligibility for care and support under the Care Act 2014**).

If an adult fleeing domestic violence has leave to enter or remain as the spouse/ partner of a settled person, there is a special concession that it is important to be aware of, which will enable them to gain access to public funds. However no such concession exists for spouses/ partners of migrants who have limited leave, such as students or sponsored workers, or for those with no immigration status, who experience domestic violence.

8.1 Domestic Violence Destitution Concession

If an adult has been in the UK with limited leave to remain as the spouse, civil partner, unmarried or same-sex partner of a settled person (i.e. a British Citizen or migrant with indefinite leave to remain), and their relationship breaks down due to domestic violence, there is a provision that allows them to apply for indefinite leave to remain (ILR) under the domestic violence immigration rule. Limited leave as a spouse has the condition of no recourse to public funds, so a migrant who intends to make an application for ILR can initially apply to the Home Office for a three month period of leave to remain that confers recourse to public funds, known as the Domestic Violence Destitution Concession. More guidance about this application is available in our [Factsheet: Domestic Violence Destitution Concession](#).

It is highly advisable that the local authority refers an adult for appropriate legal advice before they make any applications, as the Domestic Violence Destitution Concession should only be applied for if a migrant is able and intends to make an ILR application under the domestic violence rule, and there may be other options open to them that are more appropriate. See [our website](#) for guidance on how to find a regulated legal representative.

Local authority staff may be asked to provide evidence in support of any aspect of the application and with the permission of the adult concerned may do so.

9. Carers

The Care Act significantly strengthens the rights and recognition of carers, bringing them in line with those relating to adults requiring care and support. An adult with NRPF may be acting as a carer for an adult, who may also have NRPF.

The key requirements of local authorities with regards to carers are as follows:

- The wellbeing principle also applies to carers – section 1. (See section **3.1 Wellbeing principle**).
- A carer's assessment must be undertaken when there is an appearance of need, whether currently or in the future, and regardless of the level of need or the carer's financial resources – sections 10(1) and 10(4).
- The adult requiring care and support and their carer may have a combined needs assessment – chapter 6.74 of the [Statutory Guidance](#).
- The Care and Support (Eligibility Criteria) Regulations 2014 set out a new national eligibility criteria for carers.
- The local authority must meet a carer's eligible needs for support, as set out in a care and support plan, and also has the power to meet needs that are not deemed to be eligible – sections 20(1) and 20(6).
- Carer's needs may be met by the provision of care and support to the adult requiring care, even if the adult does not have eligible needs – section 20(7).
- Local authorities are not permitted to provide care and support to an adult, who is subject to immigration control, in order to meet a carer's needs for support when the adult's needs for care and support have arisen solely due to destitution or the physical effects of destitution – section 21(4). (See section **3.7 Exception for adults subject to immigration control: needs arising solely from destitution**).
- Ordinary residence requirements apply. (See section **2.1.7 Carers**).
- Anyone undertaking a carer's assessment must be suitably trained and competent to carry out such an assessment, so carers with NRPF must be dealt with by staff with appropriate knowledge and skills - section 5 of the Care and Support (Assessment) Regulations 2014.

Support or assistance under part 1 of the Care Act is subject to the exclusions to support that are set out in Schedule 3 of the Nationality Immigration and Asylum Act 2002, which includes duties and powers relating to carers needs for support. (See section **2.3 Schedule 3 Nationality, Immigration and Asylum Act 2002: exclusions from support**).

This means that a human rights assessment would need to be carried to establish whether a carer's needs for support can be met when the exclusion applies. The immigration status of carers requesting support must therefore be clarified at the initial point of contact, as it would be for an adult requiring care and support. (See section **2.2 Checking immigration status**).

Previously, the immigration status of carers did not affect a carer's eligibility to receive support

from the local authority. This is, therefore, a new client group in terms of NRPF service provision, and the impact of what providing support to carers with NRPF will be to local authorities is unclear, even if this is limited to the administrative burden of undertaking human rights assessments for those that fall under the immigration exclusions.

For more information on responsibilities towards Carers under the Care Act see the [Statutory Guidance](#).

10. Refusing or withdrawing support

There are two circumstances in which care and support under the Care Act could be refused to adults with NRPF:

- when a human rights assessment concludes that the provision of support or assistance under Part 1 of the Care Act 2014 is not necessary to prevent a breach of human rights or European Community Treaty rights for those who are subject to the exclusions under Schedule 3 Nationality Immigration and Asylum Act 2002, (see section **2.3 Schedule 3 Nationality, Immigration and Asylum Act 2002: exclusions from support**), or
- when the adult does not have eligible needs and the local authority has decided not to use its power to meet non-eligible needs. (See section **3 Assessing eligibility for care and support under the Care Act 2014**).

The Care Act requires all assessment decisions to be recorded in writing and the outcome clearly communicated to the adult, so it may be necessary to use an interpreter. We would recommend that the same is done when support will be refused or withdrawn following a human rights assessment. The assessment outcome should clearly state why the adult is not eligible, or no longer eligible for support. Any adverse findings must be put to the adult so that they may have a chance to respond. Any new information provided by the adult after the decision, or any alternative explanations must be considered by the local authority.

If adult has been receiving support and this is to be withdrawn, reasonable notice must be given to allow the adult to make alternative arrangements. What constitutes reasonable notice will depend on the adult's circumstances. Usually 21 days would constitute reasonable notice.

9.1 Complying with the Care Act following a grant of leave to remain

When leave to remain has been granted which confers recourse to public funds then referrals to mainstream housing and welfare benefits will need to be made. Delays in accessing mainstream benefits and housing often result in the local authority continuing to provide accommodation and subsistence support under social care legislation for several weeks after their immigration matter has been resolved.

Section 23 of the Care Act does not allow the local authority to provide accommodation under section 18 of the Care Act when it could otherwise be provided under the Housing Act 1996, so this transfer of responsibility must occur as soon as possible after the adult becomes eligible for mainstream housing.

Additionally, section 6(4) of the Care Act requires local authorities to ensure that the departments exercising functions relating to adults with needs for care and support and the housing department co-operate, in order to promote the wellbeing of adults with needs for care and support. This means that the staff responsible for an adult with NRPF, who is being provided with ordinary accommodation under the Care Act, will need to work collaboratively with the housing department to ensure that the transition to accommodation under the Housing Act 1996 is undertaken without adversely affecting the adult's wellbeing. (See section **3.1 Wellbeing principle**).

10. Glossary

Home Office

The government department that is responsible for maintaining immigration control, with responsibility divided under the following areas:

- UK Visas and Immigration - considers applications for permission to enter or stay in the UK, as well as those for citizenship and asylum
- Border Force – manages border control
- Immigration Enforcement- undertakes enforcement action within the UK

Immigration control was formerly the responsibility of the UK Border Agency (UKBA).

Immigration Rules

The statutory instrument that sets out the categories under which applications for leave to enter or remain in the UK can be made, as well as the length of leave to be granted and the conditions that will apply. Each category has a number of requirements which must be satisfied in order for an application to be successful.

Leave to enter

Immigration permission that is applied for from outside of the UK in order to be able to enter the UK. Applications are made to Entry Clearance posts usually via visa application centres. The visa provided is often referred to as 'entry clearance'.

Leave to remain

Immigration permission that is applied for by a person within the UK. An application is usually made by completing a form and submitting this to the Home Office by post or in person.

Limited leave to enter or remain (LTE or LTR)

Limited leave to enter or remain in the UK for a specified period. The period and conditions that are attached to the leave will vary depending on the basis upon which the immigration permission was granted. Conditions may include restrictions on employment and access to public funds.

Indefinite leave to enter or remain (ILE or ILR)

ILE/R may also be referred to as 'permanent residence' or 'settled status' as there is no time limit on the persons stay in the UK, and they are not required to make any further immigration applications. There are no conditions attached to this type of leave (although see: **adult dependant relative**), so a person may undertake employment and access public funds.

Visa overstayer

A person who had leave to enter or remain in the UK for a limited period and has remained in the UK after their immigration permission expired without making an application to extend their permission before their previous leave expired. Someone who made an application to extend their immigration permission may become an overstayer if that application or subsequent appeal is unsuccessful and they remain in the UK after that decision has been made.

Illegal entrant

A person who has entered the UK without obtaining the correct permission and has usually entered clandestinely, without passing through immigration control. A person subject to a deportation order who returns to the UK before this is revoked will be an illegal entrant.

Visitor visa

Limited leave to enter the UK for a period of up to six months, with the conditions that the person cannot undertake employment or access public funds. A multiple entry visa for a longer period may be issued to a person who undertakes frequent visits to the UK, but each visit must not be for a longer period than six months.

Spouse visa

Leave to enter or remain in the UK as the spouse or civil partner of a person who has settled status (e.g. a British Citizen or person with **ILE/R**). **LTE** is usually granted for a period of 33 months, and **LTR** is usually granted for 30 months. The person is subject to a 'probationary period' of five years. This means that **ILR** cannot be applied for until a person has had leave to enter or remain in this capacity for a minimum period of five years.

Domestic Violence Rule (DVR)

If a person is in the UK with a **spouse visa**, or leave to enter or remain as the unmarried partner or same-sex partner of a person with settled status, and the relationship breaks down due to domestic violence during the probationary period of the spouse visa, then they may apply for **indefinite leave to remain** under this Immigration Rule.

Dependant relative

ILE/R in the UK as the dependant relative (who is 18 or over) of a person who has settled status (e.g. a British Citizen or person with **ILR**). Although settled status is granted, this leave is usually subject to a maintenance undertaking and the person is prohibited from accessing public funds for the first five years. However, after five years they will have full access to public funds. The **Immigration Rules** currently only allow this application to be made from outside of the UK.

DLR (Discretionary leave to remain)

Discretionary leave to remain used to be granted to:

- A person who has claimed asylum but does not qualify for **refugee** status or **humanitarian protection** but is recognised as having other grounds to remain
- A **UASC** who does not qualify for **refugee** status or **humanitarian protection**
- A person who made an application to the Home Office but does not meet the full requirements of a particular Immigration Rule, or is granted permission to stay due to non- asylum human rights grounds

A person with DLR is not prohibited from accessing employment and public funds. Note that DLR is no longer issued, and alternative grants of leave to remain, such as '**UASC leave**' and **limited leave to remain** are granted instead.

Asylum seeker

A person who has made a claim to the UK government for protection under the UN Refugee Convention 1951 or Article 3 of the European Convention on Human Rights due to having a fear of persecution in his or her country of origin. They may be waiting to receive a decision from the Home Office on their application or from the Court in relation to an appeal.

Refugee

A person who has been recognised as having a well-founded fear of persecution in their country of origin for reasons of race, religion, nationality, membership of a particular social group, or political opinion under the UN Refugee Convention 1951. In the UK someone recognised as a refugee will be granted leave to remain, and is often referred to as having 'refugee status'.

Limited leave to remain is granted for five years and then the refugee may apply for **indefinite leave to remain**. A refugee has full access to employment and public funds regardless of the duration of their immigration permission.

Humanitarian Protection (HP)

A person who has been recognised as having a well-founded fear of persecution in their country of origin, but not for any reason set out under the UN Refugee Convention 1951. **Limited leave to remain** is granted for five years and then the person may apply for **indefinite leave to remain**. A person with HP has full access to employment and public funds regardless of the duration of their immigration permission.

Unaccompanied asylum seeking child

A child who is under 18, has applied for asylum in their own right, and is separated from both parents or their previous/legal customary primary carer. If their asylum claim is unsuccessful and they are not recognised as a **refugee** or granted **humanitarian protection**, they will be granted '**UASC leave**' for limited periods until they are 17.5 years old.

Refused asylum seeker

A person who has made a claim for asylum but this (and any subsequent appeal) has been refused.

Appeal rights exhausted (ARE)

A person will become 'all appeal rights-exhausted' when their asylum claim and any subsequent appeals have been unsuccessful and they have no further right to appeal against this decision.

Port of entry asylum seeker

Someone who applies for asylum at an airport, seaport or train-port when they first arrive in the UK, before passing through immigration control.

In-country asylum seeker

A person who applies for asylum after passing through immigration control. This is usually done by applying in person at the Home Office Public Enquiry Office in Croydon.

11. Reference material

11.1 Legislation

All legislation can be accessed at: <http://www.legislation.gov.uk/>

(Note that the legislation is not published as it currently stands, as it is not fully consolidated, so it is also necessary to check for any amendments).

11.2 Case law

All cases can be found by searching on the British and Irish Legal Information Institute's website:

<http://www.bailii.org/>

Department of Health Ordinary residence determinations can be accessed at:

http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/en/Publication/sandstatistics/Publications/PublicationsPolicyAndGuidance/DH_113627

11.2.1 Full case citations

Ordinary residence

Shah v London Borough of Barnet (1983) 1 All ER 226

Mohamed v Hammersmith and Fulham LBC (2002) 1 A.C. 547

R v Waltham Forest London Borough Council, ex p. Vale (1985)

R (on the application of Cornwall Council) (Respondent) v Secretary of State for Health (Appellant); *R (on the application of Cornwall Council) (Respondent) v Somerset County Council (Appellant)* [2015] UKSC 46

Provision of accommodation under the Care Act 2014

SG v London Borough of Haringey [2015] EWHC 2579 (Admin)

Provision of accommodation under section 117 MHA

R (Afework) v London Borough of Camden [2013] EWHC 1637

Human Rights Assessments

Clue v Birmingham City Council [2010] EWCA Civ 460, [2011] 1 WLR 99

R (KA) v Essex County Council [2013] EWHC 43 (Admin)

R (on the application of N) v Coventry City Council [2008] EWHC 2786 (Admin)

Limbuela, R (on the application of) v Secretary of State for the Home Department [2004] EWHC 219 (Admin) (04 February 2004)

R (K) v London Borough of Lambeth [2003] EWCA Civ 1150 (31 July 2003)

AW & Ors, R (on the application of) v London Borough of Croydon & Ors [2007] EWCA Civ 266 (04 April 2007)

Binomugisha v Southwark LBC [2006] EWHC 2254 (Admin)

R (on the application of AW)(Claimant) v Croydon LBC (Defendant) : R (on the application of (1) A (2) D (3) Y) v Hackney LBC & Secretary of State for the Home Department [2005] EWHC 2950 (Admin)

N v Secretary of State for the Home Department [2005] UKHL 31

GS (India) & Ors v The Secretary of State for the Home Department [2015] EWCA Civ 40

De Almeida, R (on the application of) v Royal Borough of Kensington and Chelsea [2012] EWHC 1082 (Admin)

Razgar, R (on the Application of) v Secretary of State for the Home Department [2004] UKHL 27

MM (Zimbabwe) v Secretary of State for the Home Department [2012] EWCA Civ 279

MN & Anor v LB Hackney [2013] EWHC 1205 (Admin)

N and N v LB Newham & Anor [2013] EWHC 2475 (Admin)

Destitution

Refugee Action, R (On the Application Of) v The Secretary of State for the Home Department [2014] EWHC 1033 (Admin)

11.3 NRPF Network publications

[Assessing and supporting children and families with no recourse to public funds \(December 2011\)](#)

<http://www.nrpfnetwork.org.uk/guidance/Documents/children_families_nrpf_guidance.pdf>

[Human Rights Assessment Template](#)

<<http://www.nrpfnetwork.org.uk/guidance/Pages/default.aspx>>

[Factsheet: Domestic Violence Destitution Concession](#)

<<http://www.nrpfnetwork.org.uk/guidance/Documents/DDV%20Concession%20Factsheet.pdf>>

[Guidance note for local authorities after LASPO \(April 2013\)](#)

<http://www.nrpfnetwork.org.uk/policy/Pages/Policy-and-research-archive.aspx#legal_aid>

11.4 UK Government publications

[Home Office information about public funds for immigration purposes](#)

<<https://www.gov.uk/government/publications/public-funds--2/public-funds>>

[Home Office Modernised Guidance on Public Funds](#)

<<https://www.gov.uk/government/publications/public-funds>>

[Home Office UK visa and immigration requirements](#)

<<https://www.gov.uk/government/organisations/uk-visas-and-immigration>>

[Home Office information about EEA nationals](#)

<<https://www.gov.uk/government/publications/eea-and-swiss-nationals-free-movement-rights>>

11.5 Country information sources:

[Home Office Country of Origin Information Reports](#)

<<https://www.gov.uk/government/collections/country-information-and-guidance>>

[US State Department Human Rights reports](#) <<http://www.state.gov/j/drl/rls/hrrpt/>>

[Amnesty International Annual Human Rights Reports](#) <<http://www.amnesty.org/en>>

[World Health Organisation](#) (for medical services) <<http://www.who.int/en/>>

[International Labour Organisation](#) <<http://www.ilo.org/dyn/natlex/natlex>>

[IOM](#) (information about return for migrants) <<http://irrico.belgium.iom.int/>>

11.6 Other useful information

See the [NRPF Network website](#) <www.nrpfnetwork.org.uk>:

- [General NRPF information](#)
- [Recent news updates](#) and [past news bulletins](#)
- [Links to other specialist organisations](#) and [advice about how to find legal representation](#)

Annex A: What has changed?

The Care Act 2014 consolidates social care legislation and adds new powers and duties in respect of adults requiring care and support and carers. As of 1 April 2015, in England, previous legislation and guidance will no longer apply.

Provision	Previous legislation	New legislation	What has changed?	Page
Ordinary residence				
Duty to meet eligible needs of a person ordinarily resident in the LA's area	Section 24(1) National Assistance Act 1948	Section 18(1) Care Act 2014	No change.	9
Duty to meet eligible needs of a person present in the LA's area who has no settled residence	Section 24(3) National Assistance Act 1948	Section 18(1) Care Act 2014	Now statutory duty- previously a power. In practice is likely that such power would have been exercised for the NRPF client group.	9
Immigration exclusion				
Exclusion under Schedule 3	Schedule 3 NAA 2002 excludes sections 21 and 29 National Assistance Act	Schedule 3 NAA 2002 excludes Part 1 of the Care Act 2014	Scope of exclusions appear to be broader but some clarification has been provided by the government on this.	14
Assessment				
Duty to assess	Section 47(1) NHS and Community Care Act 1990	Section 9(1) Care Act 2014	No change.	19
Considerations- assess regardless of financial means and likelihood of being eligible	Case law - <i>R v Bristol CC ex p Penfold</i> (1998)	Section 9(3) Care Act 2014	Now a statutory duty - no change to practice.	19
Eligibility				
Eligibility criteria for care and support	Prioritising Needs (FACs) Guidance	Section 13 Care Act 2014 & The Care and Support (Eligibility Criteria) Regulations 2014	Significant change. New eligibility criteria for care and support.	21
Eligibility criteria for the provision of accommodation	Section 21 National Assistance Act 1948	Section 13 Care Act 2014 & The Care and Support (Eligibility Criteria) Regulations 2014	Significant change. No separate test to determine when accommodation can be provided - new eligibility criteria for care and support applies.	21

Provision of accommodation				
Provision of emergency accommodation/ meeting urgent needs pending an assessment	Section 47(5) NHS and Community Care Act 1990	Section 19 Care Act 2014	No change.	16
Providing accommodation to an adult with care needs	Section 21 (1)(a) National Assistance Act 1948	Section 18 Care Act 2014 & Section 8(1)(a) Care Act 2014	No longer a separate duty – now a general duty to meet eligible needs.	23
Providing accommodation to pregnant and nursing mothers	Section 21 (1)(aa) National Assistance Act 1948	Section 19 Care Act 2014 & Section 8(1)(a) Care Act 2014	No longer a specific provision for this group – now covered by a general power.	25
Prohibitions on local authorities				
Prohibition - assistance provided under NHS care	Section 21(8) National Assistance Act 1948	Section 22 Care Act 2014	No change.	22
Prohibition - housing under the Housing Act 1996	Section 21(1) National Assistance Act 1948	Section 23 Care Act 2014	No change – now explicit provision; previously 'not otherwise available' test.	23
Destitution exclusion for people subject to immigration control	Section 21 (1A) National Assistance Act 1948	Section 21 Care Act 2014	No change but now also excludes prevention as well as meeting needs.	26
Section 117 Mental Health Act 1983				
Provision of accommodation under section 117 Mental Health Act 1983	Case law – <i>Afework v LB Camden</i> (2013)	Section 75(5) Care Act 2014 inserts a definition of aftercare into section 117 Mental Health Act 1983	The Mental Health Act 1983 remains in force; definition of aftercare means that the circumstances when supported accommodation may be provided are broader.	29

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