



No Recourse to Public Funds Network

Immigration Bill 2015-16: local authority support for care leavers with no immigration status (England)

The Immigration Bill is currently being considered in Parliament and contains measures which reform local authority support for migrants with no recourse to public funds (NRPF). These changes will significantly impact on local authority duties towards former looked after children who have no immigration status after they become 18. This factsheet sets out these provisions of the Immigration Bill with reference to the Home Office guidance, [Reforming Support for migrants without immigration status](#), which has been produced to explain the Government's intentions behind the reforms.

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

The Immigration Bill also makes changes to [higher education funding](#) for care leavers and introduces reforms to local authority support for [families](#).

Current position for care leavers with no current immigration permission

Social services may provide accommodation and financial assistance to care leavers when, due to their immigration status, they have no access to welfare benefits, council housing or homelessness assistance at the time they reach 18, i.e., they have no recourse to public funds (NRPF). This duty arises from section 23C(4)(c) of the Children Act 1989, which forms part of the wider leaving care responsibilities that local authorities have towards children who have been looked after under section 20 of that Act for a period of at least 13 weeks since they were 14 ('former looked after children'). Such duties apply until the young person is 21 or older if they are undertaking a programme of education or training (up until they turn 25).

If a care leaver has no immigration permission when they are 18 or older, then they will be excluded from accommodation and financial assistance under Schedule 3 Nationality, Immigration and Asylum Act 2002, although support can be provided if the local authority determines this is necessary to prevent a breach of the care leaver's human rights or rights under EU treaties. This means that when a care leaver has no status, because they have never regularised their stay or they are 'appeal rights exhausted' following an unsuccessful asylum claim, a human rights assessment is required to establish whether support can

continue or whether the young person can return to their country of origin. If, following a human rights assessment, the local authority determines that there is no duty to provide accommodation and subsistence, the young person will still be entitled to a personal adviser and reviews of their pathway plan until they are 21. (*Binomugisha v LB Southwark* [2006] [EWHC 2254](#)). They are also not prevented from 'staying put' in a foster care placement.

Local authorities are currently prohibited from referring a young person, to whom leaving care duties are owed, to the Home Office for accommodation for asylum seekers or refused asylum seekers if the young person would otherwise be eligible for this when they turn 18. The local authority rather than the Home Office would therefore be responsible for providing support, if, for example, the young person has a pending first asylum application or has been refused and made a fresh asylum application. (*SO v Barking & Dagenham* [2010] [EWCA Civ 1101](#))

Table summarising support options for care leavers as proposed in the Immigration Bill

The Government considers that the Children Act 1989 is not the appropriate mechanism for providing support to adult care leavers when the courts have determined that the care leaver has no lawful basis to remain in the UK and can return to their country of origin. It is also considered that the availability of long-term support for those arriving in the UK as children encourages adults to falsely claim to be under 18, and children to undertake dangerous journeys in order to be able to claim asylum in the UK for the wrong reasons. (Home Office [guidance](#), paragraphs 66 & 73)

The Immigration Bill therefore amends Schedule 3 of the Nationality, Immigration and Asylum Act 2002 so that former looked after children, who have no immigration permission when they turn 18, will be excluded from receiving all forms of care leaving support under sections 23C, 23CA, 23CZA, 23D, 24A or 24B of the Children Act 1989 ('leaving care provisions'): accommodation, financial support, contact, a personal adviser, a pathway plan, funding for education or training and 'staying put' with foster carers. ([Immigration Bill](#) Schedule 11, paragraphs 2&6)

The local authority will therefore generally no longer have a duty as a corporate parent to safeguard the welfare of former looked after children who are visa overstayers, have never regularised their status, or are 'appeal rights exhausted' following an unsuccessful asylum claim when they are 18 or older. Instead, accommodation and financial support will be available to such destitute care leavers from either the Home Office or local authority when very specific circumstances apply. The legislation and type of support that will be available to care leavers is set out in the table below.

Immigration status of care leaver (and whether Schedule 3 Nationality, Immigration and Asylum Act 2002 exclusion applies)	Legislation	Type of support that may be provided if eligibility criteria met
Asylum seeker (not excluded): - Pending asylum application/appeal	Leaving care provisions of the Children Act 1989	Local authority: - accommodation - financial assistance - all leaving care

<ul style="list-style-type: none"> - Further submissions made that have not been determined within a prescribed period - Granted permission to apply for a judicial review in relation to their asylum claim 		support
<p>Refused asylum seeker (excluded):</p> <ul style="list-style-type: none"> - Genuine obstacle to leaving the UK established in 'grace period' 	<p>Section 95A Immigration and Asylum Act 1999</p> <p><i>See (i) below for more information.</i></p>	<p>Home Office:</p> <ul style="list-style-type: none"> - accommodation - financial assistance <p>or</p> <p>Local authority (funded by Home Office):</p> <ul style="list-style-type: none"> - accommodation <p>+</p> <p>Home Office:</p> <ul style="list-style-type: none"> - financial assistance
	<p>Schedule 3 Nationality, Immigration and Asylum Act paragraph 10B</p>	<p>Local authority:</p> <ul style="list-style-type: none"> - welfare support*
<p>Refused asylum seeker (excluded):</p> <ul style="list-style-type: none"> - Genuine obstacle to leaving the UK established after the 'grace period' has passed 	<p>Schedule 3 Nationality, Immigration and Asylum Act paragraph 10B</p> <ul style="list-style-type: none"> - Provision D- <i>the local authority is satisfied that support needs to be provided</i> <p><i>See (iii) below for more information.</i></p>	<p>Local authority:</p> <ul style="list-style-type: none"> - accommodation - financial assistance - welfare support*
<p>Valid leave to remain (not excluded):</p> <ul style="list-style-type: none"> - Limited leave to remain (LLTR) - Indefinite leave to remain (ILR) - Refugee status (whether LLTR or ILR) - Humanitarian Protection (whether LTTR or ILR) 	<p>Leaving care provisions of the Children Act 1989</p>	<p>Local authority:</p> <ul style="list-style-type: none"> - accommodation - financial assistance - all leaving care support
<p>No immigration permission</p> <ul style="list-style-type: none"> - First non-asylum application for leave to enter or remain pending (or subsequent appeal) <p>(not excluded)</p>	<p>Leaving care provisions of the Children Act 1989</p> <p><i>See (ii) below for more information.</i></p>	<p>Local authority:</p> <ul style="list-style-type: none"> - accommodation - financial assistance - all leaving care support

No immigration permission (excluded): - Non-asylum application or appeal pending	Schedule 3 Nationality, Immigration and Asylum Act paragraph 10B - Provisions A-C <i>See (iii) below for more information.</i>	Local authority: - accommodation - financial assistance - welfare support*
No immigration permission (excluded): - No application or appeal pending	Schedule 3 Nationality, Immigration and Asylum Act paragraph 10B - Provision D- <i>the local authority is satisfied that support needs to be provided</i> <i>See (iii) below for more information.</i>	Local authority: - accommodation - financial assistance - welfare support*
EEA national (excluded)	Leaving care provisions of the Children Act 1989 - subject to a human rights assessment	Local authority: - accommodation - financial assistance - all leaving care support
Refugee status from another EEA state (excluded)	Leaving care provisions of the Children Act 1989 - subject to a human rights assessment	Local authority: - accommodation - financial assistance - all leaving care support

*Normally a care leaver will only be entitled to receive accommodation and financial support under paragraph 10B of Schedule 3. However, regulations will be made that will allow the local authority to provide assistance to meet additional social care needs. The Home Office cites an example as being ‘..social worker support in coming to terms with the fact that their long-term future is not in the UK and they need to prepare to return to their country of origin.’ Such assistance will also be available to care leavers receiving support for refused asylum seekers provided or funded by the Home Office under section 95A. (Home Office [guidance](#), paragraph 72)

(i) Refused asylum seeker: section 95A Immigration and Asylum Act 1999 (Home Office)

Refused asylum seeking care leavers will be able to access Home Office support when the following circumstances are met. The refused asylum seeker:

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

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

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

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

Refused asylum seekers will only be able to apply for section 95A support when they are within the 'grace period' (the time from receiving the final determination of the asylum claim to the termination of support), unless there are reasons outside of the person's control, as specified in regulations, that prevented this. Examples of such reasons are given as:

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

As care leavers will have been supported by the local authority under section 20 of the Children Act as a child, and subsequently the leaving care provisions if their asylum application and any appeal is pending after they turn 18, they will not be subject to a 'grace period' if their claim is unsuccessful.

The Home Office has advised the NRPF Network that the regulations will address this and may set a time limit (90 days has been suggested) by which the care leaver must apply for section 95A support, which would run from the point the young person becomes appeal rights exhausted.

The letter from Lord Bates to Lord Rosser, dated 10 February 2016, states:

'Where an adult care leaver falls to be supported by the Home Office under section 95A of the 1999 Act because they are a failed asylum seeker who faces a genuine obstacle to departure, it will be possible for them to remain in local authority accommodation, funded by the Home Office, where this is appropriate in their individual circumstances. We will work closely with local authorities to establish and manage the practical steps required, including in those cases where transfer to Home Office accommodation is appropriate.'

Care leavers are therefore likely to be subject to a 'grace period' but, should they qualify for section 95A support during this time, it is currently unclear as to whether the local authority or Home Office will provide the accommodation. If provided by the Home Office, the care leaver is likely to be provided with accommodation in another area of the UK under the asylum dispersal scheme.

If a care leaver does not qualify for section 95A support from the Home Office, the local authority must consider whether there is any duty to provide support under paragraph 10B of Schedule 3 Nationality Immigration and Asylum Act 2002 – see (iii) below.

(ii) No immigration permission (first application): Children Act 1989 (Local authority)

Care leavers who have no immigration permission when they turn 18 will normally be excluded from support under the Children Act. However, there is an exception to this if a care leaver without immigration status has made their **first non-asylum application* for leave to enter or remain** and this is:

- pending with the Home Office, or

- they are in time to bring an appeal against the refusal of such an application, or
- they have an appeal pending.

The Home Office will specify in regulations what type of application must have been made for this to apply. We have been advised by the Home Office that this exception will apply if the young person has previously obtained leave to enter to gain entry to the UK and is making their first leave to remain application.

When this exception applies, the care leaver will be able to receive all forms of leaving care support available under the Children Act 1989. The aim of this provision is to ensure that looked after children who are victims of trafficking, and therefore may have been unable to previously make an application, will be able to continue to receive full support whilst their first immigration case is being determined. ([Immigration Bill](#) Schedule 11, paragraph 5 & Home Office [guidance](#), paragraph 74)

(iii) No immigration permission: paragraph 10B of Schedule 3 Nationality Immigration and Asylum Act 2002 (local authority)

Care leavers with no immigration permission, including visa overstayers and refused asylum seekers, who are not eligible for asylum support from the Home Office, may receive accommodation and financial assistance from the local authority when one of the following applies:

- A. the care leaver is destitute and has a pending non-asylum immigration application*, or
- B. the care leaver is destitute and is in time to bring a pending non-asylum in-country appeal*, or
- C. the care leaver is destitute and has a pending non-asylum in-country appeal*, or
- D. the care leaver is appeal rights exhausted and the local authority is '*satisfied that that support needs to be provided.*'

([Immigration Bill](#) Schedule 11, paragraph 10)

*Regulations will be made to set out what type of application must have been made, but will include Article 8 family or private life applications. (Home Office [guidance](#), paragraph 70)

Regulations will be made specifying what the local authority must and must not take into account when assessing whether category D applies; the Home Offices states:

'This will enable local authorities to take any action that they consider necessary to prevent destitution and meet any other social care needs pending the person's departure from the UK. It will enable the local authority to ensure that the support they have been providing does not end abruptly and there is a managed process of encouraging and enabling the person's departure from the UK. The regulations will be able to specify factors which a local authority may or must, or must not, take into account in making this decision. This will enable us to provide a clear framework for local authority decisions about support in these cases. It will also enable the pre-departure support to be based on need in the way the Joint Committee on Human Rights highlighted was important, including in appeal rights exhausted cases, in its June 2013 report on the human rights of unaccompanied migrant children and young people in the UK (paragraphs 209-210).'' (Home Office [guidance](#), paragraph 70)

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

Note that there is an exception for a young person without immigration status who is making their first application for leave to remain – see (ii) above.

What will not change?

There will be no changes to local authority responsibilities in supporting Unaccompanied Asylum Seeking Children (UASC) or other separated looked after migrant children, although provisions have been added to the Bill that set out the transfer of responsibility between local authorities for UASCs. ([Immigration Bill](#) sections 64 - 68)

The following care leavers will continue to be able to receive accommodation and financial support under the leaving care provisions of the Children Act 1989 when they turn 18 and until they are 21 or 25 (if pursuing a course of education or training):

- A young person who has indefinite leave to remain or limited leave to remain (including refugee status and humanitarian protection).
 - A young person who is receiving support and assistance under the care leaving provisions of the Children Act 1989 before the new scheme is implemented.
 - A young person who is still pursuing their first asylum application after they have turned 18.
 - A young person with refugee status granted by another EEA state, subject to a human rights assessment.
 - EEA nationals, subject to a human rights assessment (unless a British Citizen).
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What will change under the proposed scheme?

Local authorities will not, in the main, be responsible for providing support to care leavers who have no immigration status when they are 18 or older.

The new provisions exclude all forms of assistance under the Children Act 1989 for care leavers with no status, and only allow for limited support (accommodation and financial assistance) to be provided by the local authority in very specific circumstances under immigration legislation, although there will be scope for discretion to be used to meet any welfare concerns beyond destitution. Eligibility for support will be determined under a framework set out in regulations and local authorities will be able to refuse or withdraw support without the need to undertake a human rights assessment, simplifying this process. However, local authorities will be operating two parallel support streams for care leavers with NRPF and there is scope for a young person to fall in and out of support provided by the Home Office and local authority, which may be confusing for practitioners and disruptive for the young person.

If a care leaver is eligible for Home Office support for refused asylum seekers, then they will receive this under section 95A of the Immigration and Asylum Act 1999, whether this is provided by the Home Office (which is likely to involve dispersal) or local authority (under Home Office funding). This effectively reverses the current position, where, despite the availability of Home Office support, it remains the local authority's responsibility to support a care leaver under the leaving care provisions of the Children Act 1989 when they are a refused asylum seeker and the local authority has assessed that the Schedule 3 exclusion does not apply. However, this is likely to affect small numbers, as section 95A support can only be accessed during a limited time period once the young person becomes ARE.

What happens next?

The Bill is due to receive a third reading in the House of Lords on 12 April. It is unclear at this stage whether this will be voted on. Parliamentary consideration of the Immigration Bill is expected to conclude in late April 2016. If the Bill is passed to include the reforms as currently drafted, which now appears likely, regulations and statutory guidance setting out further detail will need to be made. Regulations will be subject to parliamentary approval.

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

The Government has confirmed that a New Burdens Assessment will be undertaken to assess the cost impact of the entire Immigration Bill on local authorities. (Home Office [guidance](#), paragraph 46)

Local authority practitioners are encouraged to provide comment to the NRPf Network on the provisions of the Bill to help to inform discussions with central government on the scheme and any further legislation. Our priorities are: ensuring that local authorities will be able to enact safeguarding responsibilities towards destitute migrant care leavers, and that any new assessment process is less burdensome and complex than that which is currently in place. To provide feedback please contact: nrpf@islington.gov.uk.

What do local authorities need to do now?

Local authorities are advised to:

- Ensure that all looked after migrant children with outstanding immigration matters are identified and appropriate steps taken to obtain legal advice/ resolve their case.
 - Join [NRPf Connect](#) to share information with the Home Office on former looked after children who have NRPf to whom care leaving duties are owed, in order to progress cases with the Home Office and evidence costs incurred by the local authority. See if your local authority is already a [member](#).
 - Join the [NRPf Network](#) to stay up to date with further legal and policy developments.
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Further information

UK Parliament, [Immigration Bill 2015-16](#) - Schedule 11 for local authority support reforms

Note that the Immigration Bill references quoted refer to the version of the Bill as amended in House of Lords committee, dated 11 February 2016, and are therefore subject to change as the Bill progresses through Parliament.

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

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

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

Home Office, [Voluntary Departure schemes](#)

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

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