

## **Overview of the changes to asylum support in the Immigration Act 2016: ASAP update, April 2021**

### **Context:**

ASAP produced the initial version of this briefing in 2017, as a result of the passing into law of the Immigration Act 2016. The 2016 Act proposed to enact the biggest changes to the asylum support system since its creation in 1999/2000. However, Regulations with the detail of the system were never published and most of the new support system for asylum seekers is still not in force, with the exception of the repeal of s4(1) and the introduction of Schedule 10 support for people on immigration bail.

[The Government's New Plan for Immigration](#) (launched in March 2021) proposes to bring in some of the changes within the 2016 asylum support provisions, but contains no detail, other than a reference to consult Local Authorities and stakeholders on this proposal. As such, there is some uncertainty around when (and possibly if) these provisions will be brought into effect as part of the Government's New Plan for Immigration. This briefing aims to remind organisations of the changes, to enable individuals to respond meaningfully to the consultation.

**Some of the changes described below are based on government documents produced in 2015 during the consultation process for the Immigration Act 2016. However, it is difficult to know whether the same intentions apply today. This document will be updated as the detail becomes clearer.**

**The changes to the asylum support system in the Immigration Act 2016 are subject to detailed regulations which are yet to be published. Once the regulations are published, they will be subject to a process of parliamentary approval (there is no definitive time-frame for this process). None of the changes to asylum support discussed below will come into force until Parliament approves the regulations that accompany the Immigration Act 2016. We understand that the Government will also consult Local Authorities and stakeholders on the regulations.**

If you need further information on the how the asylum support system currently functions, please have a look at the [factsheet and briefings](#) or [training](#) sections of ASAP's website.

### **1. Support for families with children**

Refused asylum seeker families who had a child under 18 before their asylum claim came to an end will no longer be entitled to stay on s95 support, as is currently the case. Their s95 support will stop 90 days after they become ARE. If they have a 'genuine obstacle' to leaving the UK they can apply for s95A support, but must do so within a 90 day grace period.

In England they will no longer be entitled to support from Local Authorities under the Children Act s17 solely because they are destitute, they will have to show additional care needs. In Wales, Scotland and Northern Ireland Local Authorities might have a duty under the existing social care provisions for children.

Instead, new powers are being created to allow Local Authorities to provide support to these families in certain prescribed circumstances – this is known as para 10A support. Families cannot be supported by Local Authorities if they are entitled to either s95 or s95A support.

To qualify for para 10A support a family will need to satisfy one of five conditions a) to e):

- a), b) or c) – they have an outstanding immigration application or appeal
- d) – they are ARE and have NOT failed to co-operate with Home Office attempts to remove them from the UK
- e) – provision of support is necessary to safeguard and promote the welfare of a child in their family

The Home Office want Local Authorities to apply case law which states that families can avoid destitution by returning to their home country. So although condition e) appears quite generous the premise will be that families should return home to avoid destitution and if they aren't attempting to do this they could be ineligible for support under e). The Home Office has stated that Local Authorities have no obligation to support those without any immigration status. However, Local Authorities may take a different view.

## **2. Support for asylum seekers**

The legal definition of an asylum seeker will be expanded. So, in addition to those with an asylum or Article 3 claim or appeal outstanding, the following two groups will become eligible for section 95 support:

- 1) refused asylum seekers who have made further submissions (also known as a 'fresh claim') – these must be submissions based on new evidence which ask for protection on asylum or Article 3 grounds;
- 2) refused asylum seekers who have been granted permission to proceed with a judicial review challenge against a refusal of further submissions.

Those in the first group will only become eligible for s95 support when their further submissions have been outstanding for a certain period. The Home Office has indicated that this could be 2 - 5 days. The intention is that a decision on the further submission can be made before the s95 decision so that both can be rejected simultaneously.

Currently, there is no right of appeal against a decision to end s95 support when an asylum seeker becomes appeal rights exhausted (ARE). Under the new regime, there will also be no right of appeal when s95 support is stopped because further submissions or a judicial review challenge has come to an end. The only s95 decisions that will be appealable will be decisions to deny support for reasons of destitution or breach of conditions.

## **3. Support for refused asylum seekers**

Section 4 support, for refused asylum seekers, will be completely abolished and replaced with a new form of support called section 95A support. The Home Office are presenting this as 'the new Section 4 support'. However, this is misleading since a large proportion of people who currently qualify for s4 support will not qualify for s95A support.

- **s95A support will be available to refused asylum seekers who are destitute and have a ‘genuine obstacle’ to leaving the UK.** What is meant by a genuine obstacle is yet to be defined but in 2017 this was expected to be limited to people with medical conditions that prevent them from travelling and people who are taking all reasonable steps to leave the UK.
- Unlike with s4, there will be **no right of appeal** against the refusal of an application for s95A support.
- The most radical and restrictive element of s95A support is that **it will only be possible to apply for it within a ‘grace period’** after becoming ARE. When the Government was planning to bring in these provisions in 2016, they stated that, for single people this would be 21 days, for those with children it would be 90 days. These grace periods will be confirmed in Regulations but, if the Government maintains the grace periods mentioned above, in practice, this means that most people who have a genuine obstacle to leaving the UK will be made destitute, since this obstacle is unlikely to occur and be evidenced within the grace period. As an example, of the 105 applications for support made in 2015 for ‘genuine obstacle’ reasons (i.e. medical or voluntary return), only 6 were made within the grace period.

#### 4. Transitional cases

If the provisions on asylum support come into force there will be a transition period. Those already on support will keep their support under the old law. However, we understand that any decision to discontinue support will not carry a right of appeal. The transitional provisions also suggest that for refused asylum seekers with children, the continued provision of support will be linked to them taking reasonable steps to leave the UK. These provisions will apply to families supported under s4 or s95.

#### 5. Additional points

The two new forms of support (s95 and s95A support) should be subject to the same set of rules and provided in the same way. The idea is that the few people who qualify for support under s95A will remain in their s95 accommodation so will see no change in their circumstances. This also means that:

- Everyone should be able to apply for subsistence only support
- Everyone will be able to apply for emergency accommodation

There are no changes to the support provisions for adults with care needs. Those that qualify will continue to be entitled to local authority support.

Asylum seeking children who are unaccompanied will continue to be supported by local authorities. In England only, support will stop at 18, although at that point they might be entitled to continued support from the local authority under para 10B. In Scotland, Wales and Northern Ireland support for care leavers stays the same for the moment. However, the Act gives the Government the power to extend the changes to Wales, Scotland and Northern Ireland.

## 6. Summary of changes

The table below gives an overview of the changes to Asylum Support brought in by the Immigration Act 2016, as understood by ASAP in March 2021. The required regulations have not been published; some of the changes described below are based on government documents produced during the consultation process in 2015. Where there is an area of uncertainty (because a particular detail needs to be confirmed in regulations) this has been indicated as ‘TBC in regulations’ in this document. Please see our [website](#) for further updates on any upcoming changes to asylum support. The paragraphs in blue indicate where a form of support is to be withdrawn and not amended or replaced.

Old Law	New Law
<b>Support for asylum seekers</b>	
Section 95 – support for asylum seekers	Eligibility criteria for s95 support expanded to include two new categories of refused asylum seeker: 1) those with outstanding ‘protection-based’ <sup>1</sup> further submissions 2) those with permission to proceed with a judicial review (JR) against the refusal of ‘protection-based’ further submissions  ‘Grace period’ <sup>2</sup> following refusal of asylum claim extended to 90 days for families with children (TBC in regulations).
Section 95 – support for refused asylum seeker families with children born before their appeal rights were exhausted <sup>3</sup>	Gone – In England, this is replaced by a new local authority administered support (‘para 10A support’). In Wales, Scotland and Northern Ireland local authorities might have a duty under the existing social care provisions for children.
Section 98 – accommodation for asylum seekers waiting for a decision on s95 application	Will also be available to the two new categories of refused asylum seeker described above.
Right of Appeal	No change
<b>Support for refused asylum seekers</b>	
Section 4	Repealed – replaced by s95A, which is much more limited
Section 4(2) – people taking all reasonable steps to leave the UK	Replaced with support under s95A, which is much more limited
Section 4(2) – people with a medical impediment to travel	Replaced with support under s95A, which is much more limited

<sup>1</sup> A protection-based claim is where an applicant applies to be recognised under the Refugee Convention or applies for Humanitarian Protection, see s82(2) of NIAA 2002

<sup>2</sup> The ‘grace period’ is currently defined in regulation 3 of the Asylum Support (Amendment) Regulations 2002

<sup>3</sup> s94(5) IAA 1999

Section 4(2) – people with permission to proceed with a JR against a refusal of ‘protection-based’ further submissions	Will get support under s95. There is uncertainty as to whether the Home Office will allow a grace period before ending support when the JR has failed (TBC in regulations).
Section 4(2) – people who have started the JR process but not yet got permission	Gone - no support, unless they have children and qualify under para 10A (TBC in regulations)
Section 4(2) – people with ‘protection-based’ further submissions outstanding	Will get support under s95 but will only become eligible 2 or 5 days after the further submissions were made (TBC in regulations). There is uncertainty as to whether the Home Office will allow a grace period before ending support when further submissions are rejected.
Section 4(2) – people with further submissions outstanding that are not ‘protection-based’, such claims under Article 8 ECHR	Gone – possibly schedule 10 or para 10A (TBC in regulations) if they have children
Section 4(2) – other breach of human rights (for example some people with severe medical problems)	Gone – possibly schedule 10 or para 10A (TBC in regulations) if they have children
Right of appeal	Gone – only way of challenging s95A decisions is JR
Section 98 support: not available under current law for people waiting for a decision on section 4 application	Section 98A support - accommodation whilst waiting for a decision on s95A application
<b>Support for people on immigration bail or temporary admission</b>	
Section 4(1)(a) (b) and (c) – support for people on temporary admission and bail	Already repealed and replaced with sch 10 support <sup>4</sup>

<sup>4</sup> Immigration Act 2016 Sch 10