

# POLICY BULLETIN 82

## ASYLUM SEEKERS WITH CARE NEEDS

### TABLE OF CONTENTS

1. SCOPE OF DOCUMENT	2
2. APPLICATION OF THIS INSTRUCTION IN RESPECT OF CHILDREN AND THOSE WITH CHILDREN	2
3. SUMMARY	2
4. GENERAL PRINCIPLES	4
5. SINGLE ADULTS- EXAMPLES	5
6. LOCAL AUTHORITY ASSESSMENTS	7
7. ORDINARILY RESIDENT	8
8. CLEAR AND URGENT CASES	8
9. FAMILIES WHOSE CHILDREN HAVE A CARE NEED	11
10. FAMILIES WITH AN ADULT DEPENDANT WHO HAS A CARE NEED (NO DEPENDENT CHILD/REN IN HOUSEHOLD)	13
11. FAMILIES WITH AN ADULT WHO HAS A CARE NEED (DEPENDENT CHILDREN IN HOUSEHOLD)	15
12. CARE PROVISION FOR ASYLUM SEEKERS DISCHARGED FROM HOSPITAL	16
13. AFTER-CARE SERVICES FOR ASYLUM SEEKERS DETAINED UNDER SECTION 3 OF THE MENTAL HEALTH ACT 1983	17
ANNEX A	18
ANNEX B	21
ANNEX C	22

## **1. Scope of document**

- 1.1. This document provides guidance for Asylum Support caseworkers, the voluntary sector and local authorities on the handling of applications for support from asylum seekers who may have a need for additional support/care due to age, illness or disability. This guidance does not apply in Northern Ireland.

## **2. Application of this instruction in respect of children and those with children**

- 2.1. Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the UK Border Agency to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. It does not impose any new functions, or override existing functions.

Officers must not apply the actions set out in this instruction either to children or to those with children without having due regard to Section 55. The UK Border Agency instruction 'Arrangements to Safeguard and Promote Children's Welfare in the United Kingdom Border Agency' sets out the key principles to take into account in all Agency activities.

Our statutory duty to children includes the need to demonstrate:

- Fair treatment which meets the same standard a British child would receive;
- The child's interests being made a primary, although not the only consideration;
- No discrimination of any kind;
- Asylum applications are dealt with in a timely fashion;
- Identification of those that might be at risk from harm.

## **3. Summary**

- 3.1. Section 116 of the Immigration and Asylum Act 1999 ("the 1999 Act") amended section 21 of the National Assistance Act 1948 <sup>1</sup> ("the 1948 Act") and section 120 of the 1999 Act amended section 12 of the Social Work (Scotland) Act 1968 so as to prevent local authorities from being able to provide accommodation (which includes subsistence support) and welfare support under those provisions, to asylum seekers where their need for care and attention has arisen solely because of being destitute or because of the physical effects or anticipated physical effects of being destitute.
- 3.2. The effect of these amendments is that local authorities continue to have a duty to provide accommodation (and therefore welfare support) to adult asylum seekers under section 21 of the 1948 Act, where they have a need for care and

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<sup>1</sup> References in this policy bulletin to the National Assistance Act 1948 (as amended) or the 1948 Act should be taken to also mean the Social Work (Scotland) Act 1968 (as amended) unless otherwise stated. The principles in this policy bulletin apply equally in Scotland as in England and Wales.

attention which has not arisen solely because of destitution or because of the physical effects or anticipated physical effects of being destitute. Asylum seekers in this position are referred to in this document as having a care need.

- 3.3. On 17th October 2002, the House of Lords dismissed Westminster City Council's appeal and found that local authorities were liable under section 21(1)(a) of the 1948 Act to support an adult asylum seeker whose need for care and attention had not arisen solely because of destitution. This judgment confirmed the position that the UK Border Agency is unable to provide support under section 95 of the Immigration and Asylum Act 1999 to asylum seekers in that position. The judgment did not place a new duty on local authorities, it merely clarified and confirmed their obligations under the provisions of the National Assistance Act 1948 (or in Scotland, the Social Work (Scotland) Act 1968)
- 3.4. **Clear and urgent cases:** Asylum seekers who appear to the Immigration Service or the Asylum Screening Unit (ASU) (this will depend on how the asylum seeker first comes to the attention of the Home Office) to have a clear care need and an urgent need for services (see paragraph 8.1 below) should be referred directly to the local authority with social service responsibilities for the area in which they present. These cases are likely to be where the person has an illness giving rise to obvious care needs<sup>2</sup> or is severely disabled and has no accommodation available to them. In these cases the local authority have a duty to provide basic accommodation and support (see also Department of Health Circular LAC(93)10). A local authority may provide community care services, including residential accommodation, pending a Community Care Assessment (CCA) where, in its opinion, the condition of the person is such that he or she requires such services under the 1948 Act as a matter of urgency.
- 3.5. **Community Care Assessments (CCAs) to be carried out in the dispersal area:** All other cases should be referred to the Induction Centre or the voluntary sector organisation who is managing emergency accommodation on behalf of the UK Border Agency (whichever is applicable in the area), subject to current policy for access to such temporary support. Health screening will take place at the Induction Centre as part of the induction process. The expectation is that these cases will apply for a CCA in their dispersal area. Local authorities have a duty to conduct a CCA upon application.
- 3.6. A flow chart of the process is set out at Annex A.
- 3.7. **Child dependant:** Where an asylum seeker has a dependent child who has a care need, the UK Border Agency will provide accommodation and support adequate for the needs of the child, and the local authority must assess whether

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<sup>2</sup> If an asylum seeker is in urgent need of medical care, it will of course be necessary in the first instance to refer the individual to the nearest hospital.

any additional care support is necessary and provide that care support under the Children Act 1989<sup>3</sup>.

3.8 **Adult dependant:** Where an asylum seeker has an adult dependant<sup>4</sup> who has a care need, the local authority should consider whether it should also support the asylum seeker under the 1948 Act. Where an asylum seeker has a care need and has an adult dependant, the local authority should also consider whether it should support the adult dependant under the 1948 Act (see section 10 below).

3.9 **Parent:** Where an asylum seeker with a care need has dependent children (under the age of 18), the local authority should provide accommodation and support to the parent. However, the local authority should also arrange accommodation and support which is adequate to provide for the whole family. The UK Border Agency will then make an agreed financial contribution to represent the children's share of the accommodation and their subsistence support (see section 11 below).

3.10 The following guidance is also available:

- Department of Health: Local Authority Circular: LAC(2002) 13: Fair Access to Care Services: Guidance on eligibility criteria for adult social care: published on 28 May 2002
- Department of Health: Fair Access to Care Services: Practice Guidance: Implementation Questions and Answers: published 6 March 2003.
- Department of Health: Local Authority Circular: LAC(93)7 : Ordinary Residence: published March 1993.
- Department of Health: Local Authority Circular: LAC(93)10 : Approvals and Directions under section 21(1) of the National Assistance Act 1948: published March 1993.

## 4. General Principles

4.1. Section 21(1)(a) of the National Assistance Act 1948 provides:

*"A person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) applies may not be provided with residential accommodation under subsection (1)(a) if his need for care and attention has arisen solely-*

*(a) because he is destitute; or*

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<sup>3</sup> All references to the Children Act 1989 also mean the Children (Scotland) Act 1995 - this is the equivalent provision that applies in Scotland.

<sup>4</sup> "Dependant" is defined in regulation 2 of the Asylum Support Regulations 2000

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

- 4.2. Broadly, this means that local authorities must provide accommodation which includes subsistence support, and welfare support where an asylum seeker is in need of care and attention because their age, an illness or a disability affects their ability to live independently, provided this need has not arisen solely due to destitution or the anticipated effects of destitution. Those who need additional help with things like washing, cooking, eating, cleaning, shopping and other tasks that other people are able to do for themselves or anything related to their ability to live independently, where this is caused by age, illness or disability should normally be provided with accommodation under section 21 regardless of whether these care needs fall within or outside councils' eligibility criteria (see also Fair Access to Care Services: Practice Guidance, DoH, 6 March 03, Q5.2). However, the UK Border Agency would be able to support an asylum seeker if they had an illness, condition or disability which interfered with their independence if they have a friend or relative who is willing and is able to provide this additional help at the dispersal location (see also section 10 below).

## **5. Single adults- examples**

The following are examples of cases where an adult should be provided with section 21 accommodation. These examples are for general guidance only - each case will need to be determined by the local authority on its individual facts following a Community Care Assessment (see paragraph 6.1 below)

### **Example 1:**

A single adult asylum seeker with a congenital abnormality of the right leg which requires him to use crutches. As a result he has difficulty walking and undertaking basic tasks (such as bathing, cleaning, cooking, shopping etc.). The person also has a history of mental illness.

### **Example 2:**

A single adult asylum seeker who has a debilitating cancer (for instance spinal cancer) which incapacitates the sufferer leaving the person unable to perform basic independent tasks such as washing, bathing, self-medication, cooking, shopping etc.

### **Example 3:**

A single adult asylum seeker who is a double amputee and a wheelchair user and requires assistance with most aspects of personal care because he is unable to

wash, cook etc. (It should be noted that it does not always follow that a person in a wheelchair will qualify to be supported by the local authority under section 21 of the 1948 Act).

**Example 4:**

A single adult asylum seeker who had polio as a child. This has left him with wasting of the lower limbs and he has consequent mobility problems which leave him incapable of performing some basic independent tasks such as washing or cooking and has difficulty collecting his Asylum Support payments.

## **6. Local Authority Assessments**

- 6.1. Local authorities have a duty to conduct a Community Care Assessment (CCA), upon application, under section 47 of the National Health Service and Community Care Act 1990 ("the 1990 Act) where it appears to them that any person for whom they may provide or arrange for the provision of community care services may be in need of any such service or where the person is disabled. It is essential that local authorities conduct an assessment within a reasonable timeframe. Once the local authority has determined that an asylum seeker has a care need the local authority has a duty to provide that person with accommodation (which includes related support).
- 6.2. Clear and urgent cases (see section 8 below) will be referred by the Immigration Service or the Asylum Screening Unit to the local authority in which they present. If the local authority consider that the person has a clear care need, the local authority will need to consider whether they should provide emergency accommodation pending a CCA. The local authority can provide support pending a CCA where the condition of the person is such that in the opinion of the local authority he or she requires services under the 1948 Act as a matter of urgency (see section 47(5) of the 1990 Act). All other cases will be admitted to an Induction Centre or emergency accommodation in accordance with current policy and the expectation is that the asylum seeker will be dispersed within a short period of time (the UK Border Agency aims to disperse within two weeks). Accordingly, all other asylum seekers will be dispersed as usual and should they consider they are in need of community care services, they may ask their receiving local authority social services department for a CCA. If the local authority determines that a dispersed asylum seeker has a care need, the local authority must provide accommodation and support under section 21 to the asylum seeker. The asylum seeker and the local authority must inform the UK Border Agency when this occurs so that arrangements can be made to stop providing support.
- 6.3. In exceptional circumstances a local authority may need to conduct a CCA for a person staying in the UK Border Agency emergency accommodation or an Induction Centre.
- 6.4. If a person has applied for a CCA while staying in emergency accommodation or an Induction Centre, provided the local authority has not already determined whether it has a duty to provide accommodation under section 21, the expectation is that the person will be dispersed since the person will be able to apply for a CCA in their dispersal area. The fact that a person has applied for a CCA should not by itself be accepted as a reasonable excuse for failing to travel, though Asylum Support case-workers will need to be aware that exceptional circumstances may give the person a reasonable excuse.
- 6.5. If an asylum seeker or their representative has concerns regarding the outcome of a particular CCA then they should contact the local authority which conducted the assessment for information about its complaints procedure.
- 6.6. If an asylum seeker supported under the 1948 Act by a local authority ceases to have a care need, then the local authority should advise the applicant to apply

for Asylum support in the usual way and, ideally, include with his application a copy of the local authority's most recent CCA.

## **7. Ordinarily resident**

- 7.1. Under section 21 of the 1948 Act each local authority has a power, and so far as directed by the Secretary of State (Scottish Ministers) a duty, to provide residential accommodation (and certain other welfare services) for people who are ordinarily resident in the authority's area and other persons who are in urgent need thereof. Section 12 of the Social Work (Scotland) Act 1968 applies so far as directed by Scottish Ministers.
- 7.2. A person who has been dispersed to a local authority's area should be considered to be ordinarily resident in that area.
- 7.3. Guidance for English and Welsh local authorities on determining who is ordinarily resident can be found in the Department of Health's Local Authority Circular LAC(93)7 of March 1993. Similar Guidance was issued to Scottish local authorities in circular SWSG 1/96 of February 1996.

## **8. Clear and urgent cases**

- 8.1 When an asylum seeker first makes contact with the Home Office, the immigration officer or member of staff at an Asylum Screening Unit (ASU) must ensure that they refer clear and urgent cases to the local authority for accommodation and support rather than referring them to an Induction Centre or to a voluntary sector organisation that is managing emergency accommodation on behalf of the UK Border Agency. Immigration officers and staff at the ASU will make their decisions on only a very brief consideration of the circumstances that have been presented. A clear and urgent case is one where an asylum seeker's need for care and attention is immediately obvious (for example they are severely disabled, or frail due to old age), and they have an urgent need for services.
- 8.2 The Immigration Service or Asylum Screening Unit should advise clear and urgent cases to approach the local authority in the area in which they present for accommodation (and support). It may be necessary to contact the local authority on their behalf using local telephone numbers (including out of hours numbers).
- 8.3 However, the UK Border Agency has the responsibility to support families if their children have a care need. Therefore, if an asylum seeker has a dependent child who has a clear care need, for example, due to a severe disability or serious illness then it will be necessary for the immigration officer or the ASU to inform the local authority to ensure the appropriate level of care can be provided while the family is in emergency accommodation or an Induction Centre (see paragraph 9.7 below).
- 8.4 What constitutes a clear and urgent case will differ from case to case and as such each case should be assessed on its own merits. Staff may contact the

Asylum Support Policy Team on 0208-604 6853 to discuss cases about which they are not sure. The following might be examples of clear and urgent cases:

**Example 5:**

A single adult who is quadriplegic, and needs assistance with such basic personal tasks as eating, bathing, going to the toilet, dressing, and taking medication.

**Example 6:**

A single adult asylum seeker who has a learning difficulty or disability such as Down's syndrome or cerebral palsy which clearly prevents him/her from living an independent life, engaging in co-ordinated activities/movements and from being able to carry out basic life tasks.

**Example 7:**

A single adult asylum seeker who has injuries or physical disabilities of such a nature that it is obvious that this person will not be able to carry out daily personal tasks such as feeding, bathing and taking medication without constant supervision.

**Example 8:**

A single adult asylum seeker who has previously had a stroke which has left him with long lasting effects such as problems with mobility and communication. There are severe problems with speech and with swallowing.

## **9. Families whose children have a care need**

- 9.1. The Court of Appeal in the case of R(A) v NASS(1) and the London Borough of Waltham Forest (2), found that the duty to provide accommodation and support to meet the essential living needs of a destitute asylum seeking family with disabled children rests with the UK Border Agency (see paragraph 8.3 above on clear and urgent cases).
- 9.2. This means that the UK Border Agency must provide support which is adequate for the needs of the child. This might include, for example, providing the family with accessible accommodation. In determining whether or not the accommodation is adequate the UK Border Agency is entitled to have regard to how long the family is likely to remain in it. What is adequate or suitable in the short term may not be in the medium or longer term (but in this regard the duty is a continuing one).
- 9.3. In these cases, such families should be admitted to emergency accommodation and the UK Border Agency should consider the support application in the usual way, taking into account the circumstances of the family and taking into account whether the child is well enough to travel. Where support is to be provided will depend on the circumstances of the case and the desirability in general of providing accommodation in areas in which there is a ready supply of accommodation. As a general rule the UK Border Agency will provide standard accommodation in a dispersal area. The fact that a child dependant has a care need does not preclude dispersal, provided that it is reasonable for the family to travel and that appropriate facilities are available in the dispersal area to meet their needs.
- 9.4. While the UK Border Agency has a duty to provide support to a family with children, the local authority should, upon application, carry out an assessment using "*Framework for the assessment of children in need and their families*" (DH,2000) in order to determine if the child requires any additional care support under sections 17 or 28A of the Children Act 1989. Any additional support provided by the local authority will be additional to, and not replace, any support provided by the UK Border Agency.
- 9.5. the UK Border Agency will take into account the recommendations of any CCA and may, where necessary, seek to identify alternative adapted accommodation to meet the applicant's needs. In doing so the UK Border Agency would be entitled to provide accommodation in any other location where similar facilities were available to meet the family's needs. That said, each case will need to be considered on its own individual merits. A family may be prepared to accept as adequate their short-term property into the longer term in order to avoid relocation.
- 9.6. The duty placed upon the UK Border Agency is a continuing one and must be assessed over time, so what is adequate in the short term may not be in the medium or long term. In the case of R(A) v NASS(1) and the London Borough of Waltham Forest (2), it was held that circumstances may change, so that what was previously accepted as adequate is no longer so, but it would take an extreme change to bring about a duty to provide other accommodation

immediately. In such circumstances, the UK Border Agency would however be entitled to offer accommodation in another area, where similar facilities were available to meet the applicant's needs.

- 9.7. If an asylum seeker has a dependent child who has a clear care need, for example, due to a serious illness or severe disability then it will be necessary for the immigration officer or the ASU to inform the local authority to ensure the appropriate level of care can be provided while the family is in emergency accommodation or an Induction Centre (see paragraph 8.3 below). The local authority must provide services immediately. The expectation is that such families will be dispersed and that any care arrangements will be transferred to the receiving authority.

**Example 9: Husband and wife with one disabled child.**

The family is admitted to Asylum Support emergency accommodation. The UK Border Agency considers their support application in the usual way, taking into account the disabled child's needs and a letter from a GP which states that the child is fit enough to travel. The UK Border Agency decide to provide standard accommodation in a dispersal area.

The family are met on arrival by the accommodation provider who assists them to contact the local authority for an assessment. Asylum Support Outreach is informed in advance so that it too can assist the family to obtain additional care from the local authority.

The local authority conducts an assessment and concludes that a local authority carer should visit the family twice a week, which it immediately provides.

**Example 10: Husband and wife with two teenage disabled/ill children.**

The family is admitted to Asylum Support emergency accommodation. The UK Border Agency considers the application in the usual way taking into account the circumstances of the family. The UK Border Agency decide to disperse the family, and provide standard accommodation in a dispersal area.

On arrival in the dispersal area the family is met by the provider who assists them to contact the local authority for an assessment. The local authority assessment indicates that, while no additional care support need be provided by the local authority, the family should ideally be provided with accessible accommodation and accessible toilets.

Providing adapted accommodation may involve a transfer to another area or may involve adapting existing accommodation, and this will need to be explained to the family who may decide that their current dispersal accommodation is adequate. The UK Border Agency will need to take account of the impact on the family of providing

standard accommodation for a temporary period. In addition the UK Border Agency will need to take into account the temporary nature of the status of the family.

In this case, alternative, more suitable accommodation is identified in another dispersal area. However, the family choose to accept their current accommodation as adequate as they wish to maintain the same doctor / school etc.

#### **10. Families with an adult dependant who has a care need (no dependent child/ren in household)**

- 9.1 In some cases, where an asylum seeker family contains an adult dependant who may be ill or who has a disability, the other family members will be able to look after the adult dependant and provide for their care and obtain medication and health care from their GP. In such circumstances, the family should be admitted to emergency accommodation (subject to the usual criteria) and the UK Border Agency should consider the support application in the usual way, taking into account the circumstances of each applicant and taking into account whether they are fit enough to travel. In most cases the UK Border Agency will disperse and the infirm adult dependant will be able to obtain a care assessment in the dispersal area.
- 9.2 If the local authority determines, following a CCA, that an adult dependant has a care need then the local authority should provide a support and care package for the adult and, in some cases other close family members e.g. their spouse.
- 9.3 Although local authorities have no statutory obligation to provide services to any person other than the person in need of those services they must consider whether supporting the other adult dependant(s) would be necessary for the welfare of the adult with the care need (see section 21(2) of the 1948 Act). In addition, when considering whether to provide services to the other (adult) family members – for example the provision of accommodation for the whole family - the local authority must also take into account whether failure to accommodate the other family members would be a breach of the European Convention on Human Rights and in particular Article 8, the right to respect for private and family life. If the local authority decides that it will not support the adult dependant, the UK Border Agency will be able to support the other adult and will liaise with the local authority to consider whether it is appropriate and possible to identify a location where he/she can be provided with accommodation within close proximity to the dependant with the care need. Support may be provided in a dispersal area.

#### **Example 11:**

A female adult asylum seeker with an elderly, severely disabled and ill husband. The husband needs help with dressing, washing and feeding and the wife is clearly unable to provide all the day to day care.

In such circumstances the couple should be referred to the local authority. The

assessment determines that care is indeed required, in addition to accommodation and support, so the local authority provides this under the 1948 Act. The local authority decides to support the wife because it is necessary for her husband's welfare.

**Example 12:**

Husband and wife are asylum seekers with a disabled 20 year old son who has exceptionally been included in the asylum claim as a dependant. The husband and wife say that they can look after their son but that they may need long term help for a few hours a week.

The family should normally be admitted to Asylum Support emergency accommodation and considered for dispersal as normal. In this case the family are dispersed and the son obtains a care assessment from the local authority in the dispersal area. In this case the local authority assesses that there are no care needs to be provided for and the UK Border Agency continues to provide accommodation and support as before.

**Example 13:**

An aunt cares for her adult niece who has severe learning difficulties. The niece is unable to manage daily tasks, for example handling money, and requires 24 hour supervision. The aunt meets many of her niece's care needs but is unable to provide all the care required.

The family should normally be admitted to Asylum Support emergency accommodation and considered for dispersal as normal. In this case, the family is dispersed and the niece obtains a care assessment from the local authority in the dispersal area. The local authority assesses that the niece should attend a day care facility and accepts that it should support both women under the 1948 Act.

## **11. Families with an adult who has a care need (dependent children in household)**

- 10.1 The Court of Appeal in the case of R(O) v London Borough of Haringey (1) and NASS (2) found that although taken together the family was destitute and thus the Secretary of State has a duty to support the children, the mother had a care need and thus the provision of accommodation for her by the local authority had to be taken into account by the UK Border Agency when deciding what accommodation and living expenses it had to provide for the children.
- 10.2 In practice, this means that the local authority will arrange accommodation for the whole family but that the UK Border Agency will provide a financial contribution to reflect the children's share of the accommodation costs and to provide for their living expenses. This only applies where the adult was eligible to apply to the UK Border Agency but does not qualify for Asylum support because he/she qualifies for support under the 1948 Act. This principle does not apply to older cases where the adult asylum seeker is eligible to apply for support under the Asylum Support (Interim Provisions) Regulations 1999.
- 10.3 Unless the parent's needs are such that the case is "clear and urgent", the family will enter EA or an induction centre and be dispersed as normal. The parent may then approach the local authority in the dispersal area for a community care assessment if s/he considers s/he is in need of care. If the local authority decides to provide support to the adult under the 1948 Act, it will arrange adequate accommodation for the family and agree with the UK Border Agency its share of the costs attributable to the children.
- 10.4 NASS will discuss with the local authority the costs attributable to the children and once agreement has been reached the local authority will invoice the UK Border Agency direct. An Asylum support (NASS1) application form must be completed and submitted to the UK Border Agency for consideration. The UK Border Agency will pay the full subsistence rate for a child of that age and a contribution towards accommodation costs (including a contribution towards utilities and Council Tax if applicable). Any extra accommodation costs which arise as a result of the adult's care needs will not be met by the UK Border Agency. For example, accommodation suitable for a wheelchair user may be more expensive than other accommodation in the same area. As a general rule, the UK Border Agency will base its calculations on the reference rent for a suitably sized property in the area +20% (or a proportion of the actual rent cost if less). This amount is divided by the number of people (adult and children) in the family to give a rent per head and the local authority will be paid this figure for each child.
- 10.5 For utility and Council Tax costs (where applicable) the UK Border Agency will contribute a proportion of costs. For example if the family group consists of an adult and two children, the UK Border Agency will contribute two thirds of the utility and Council Tax costs.

#### Example 14:

Single parent has two children, aged 4 and 5. The local authority decides that the parent qualifies for accommodation under the 1948 Act and arranges accommodation and support for the family.

##### Accommodation

The reference rent for a two bedroom flat in the area is £200 a week to which 20% is added to give a figure of £240. The UK Border Agency will pay two thirds of this figure. The UK Border Agency contribution towards accommodation in this case would be £160 per week (two thirds of £240=£160).

##### Utilities

The utility costs are £18 per week. The UK Border Agency will contribute £12 (two thirds of £18= £12).

##### Council Tax

Council Tax for the family's accommodation is £15 per week. The UK Border Agency will contribute £10 (two thirds of £15=£10).

##### Subsistence support

In addition the children will receive asylum support for essential living needs of £77.00 per week.

(The figures in this example are for illustration only. Rates for essential living needs may change.)

## 12. Care provision for asylum seekers discharged from hospital

- 11.1 Asylum seekers who have been in hospital may be in need of continued care and attention after their discharge. The NHS and local authorities with responsibilities for social services must work together to meet the needs of people with continuing health and social care needs. In exercising their duties Primary Care Trusts and social services departments must ensure that an appropriate joint assessment is undertaken where they believe that a patient who is being discharged may be in need of such services. Where this assessment determines that such services are required, the care package will include accommodation and related support.
- 11.2 An asylum seeker who is in need of continuing care provision, provided either entirely by the NHS or by the NHS and local authorities in partnership, will not be eligible for Asylum support for as long as they remain in need of additional care and attention.

### **13. After-care services for asylum seekers detained under section 3 of the Mental Health Act 1983**

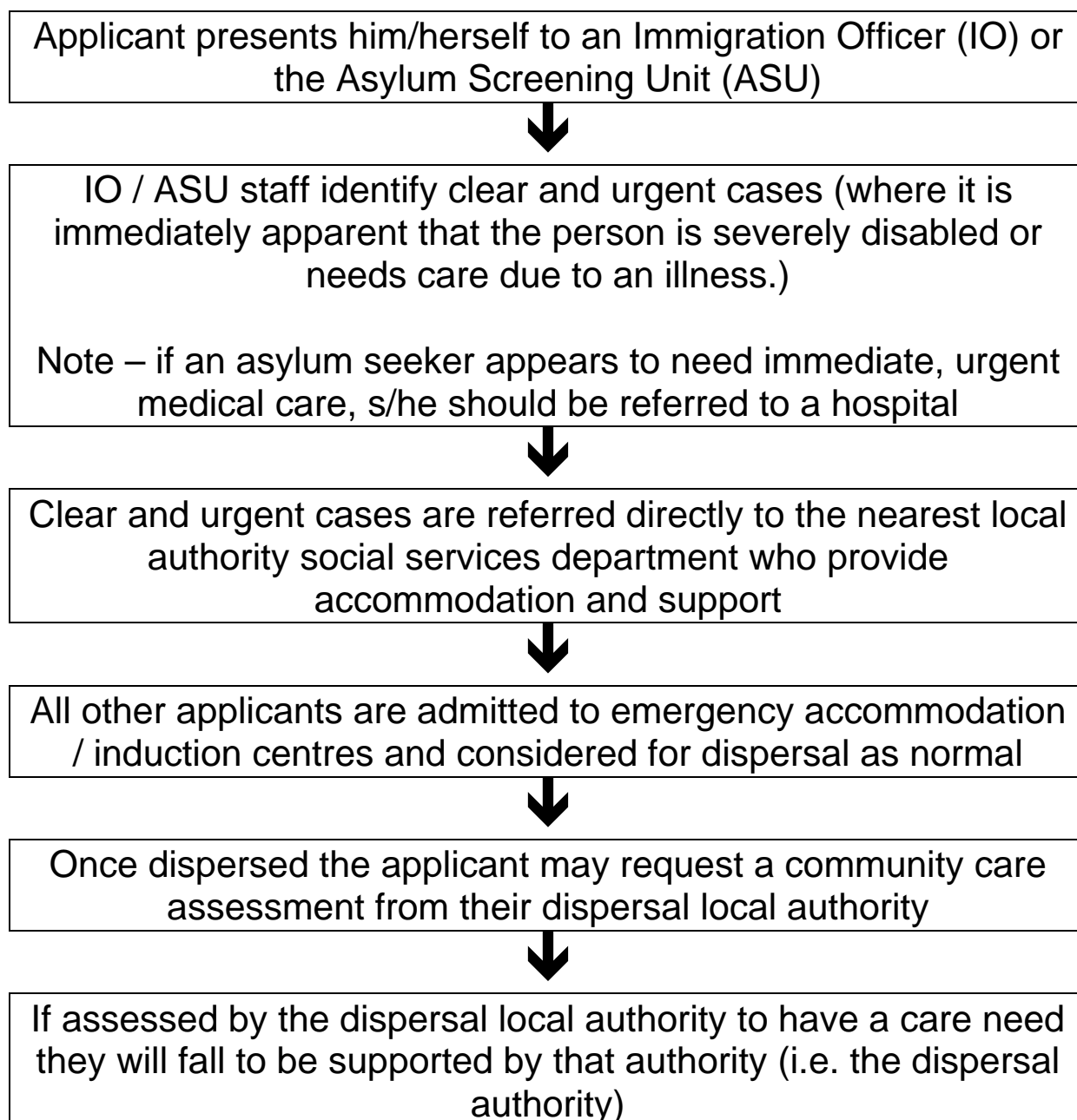
- 12.1 Asylum seekers who have been detained in hospital under section 3 of the Mental Health Act 1983 ("the 1983 Act") may be eligible for after-care services provided under section 117 of the 1983 Act. Section 117 of the 1983 Act provides that:

*"It shall be the duty of the Health Authority and of the local social services authority to provide, in co-operation with the relevant voluntary agencies, after-care services for any person to whom this section applies until such time as the Health Authority and the local social services authority are satisfied that the person concerned is no longer in need of such services; but they shall not be so satisfied in the case of a patient who is subject to after-care under supervision at any time while he remains so subject."*

Section 117 applies to a person who has been detained under section 3 or admitted / transferred to hospital under sections 37, 45A, 47 or 48 of the 1983 Act.

- 12.2 Precisely what after-care services can be supplied under this section is not defined in the legislation. However, the House of Lords judgment in *R v Manchester City Council ex parte Stennett* (2002) confirmed that after-care services provided under this section could include "caring residential accommodation". The duty owed under this section is free standing. Therefore where an asylum seeker has been detained under section 3 (or sections 37, 45A, 47 or 48) of the 1983 Act and is in need of after-care services, any residential accommodation required may only be provided under section 117 and not section 21 of the 1948 Act or section 95 of the Immigration and Asylum Act 1999.

Process map illustrating the procedure for handling applicants with care needs



## Summary of the process

1. **First contact with the Home Office:** The Immigration Service or the Asylum Screening Unit will refer those who, while applying for asylum (port or in country), appear to be clear and urgent cases, directly and immediately to the nearest local authority social services department. That local authority should provide accommodation and support pending a full Community Care Assessment.
2. **Induction Centres / Voluntary sector emergency accommodation:** All other cases will be considered for access to emergency accommodation ("EA") / an Induction Centre (IC) (subject to current policy).

As part of the Induction Centre screening process the asylum seeker or asylum seeker family are offered health screening which includes an assessment of primary care needs. The asylum seeker will be given a record of the health assessment to take with them on dispersal.

3. **Asylum Support casework:** The UK Border Agency will consider applications in the usual way, taking into account the circumstances of the applicant(s). The expectation is that applicants will be dispersed. The UK Border Agency must have regard to the desirability, in general, of providing accommodation in areas in which there is a ready supply of accommodation.

Applicants who are dispersed will be able to request a community care assessment from the receiving local authority in the dispersal area where appropriate.

4. **Asylum Support dispersal:** Accommodation providers are notified of dispersals to the area as they occur and under the terms of their contract with the UK Border Agency they are required to facilitate access to local health services and support services. In addition, at the time of dispersal, the UK Border Agency notifies the relevant Local Health Authority that dispersed clients are arriving into their area and the address to which they are being dispersed.

On arrival in the dispersal area, applicants are met by the accommodation provider or one of their representatives. The provider should ensure that all their service-users are fully briefed on access to local health and support services. Any service-user who suggests they may be in need of additional care and attention will be advised how to contact the local authority social services department nearest to the dispersal accommodation.

5. **Asylum Support Outreach:** Following the implementation of the Asylum Support Regionalisation programme, Asylum Support Outreach officers are also committed to visiting all newly dispersed asylum seekers in their Asylum Support dispersal accommodation within five working days of receipt of confirmation from the accommodation provider that they have arrived. One of the things that Outreach officers will be confirming is that newly dispersed asylum seekers are aware that their accommodation provider is responsible for providing them with information to enable them to gain access to local

health services. This information can also be provided, if necessary, by the Outreach officers.

6. Care needs may not be initially apparent and may only come to light after the asylum seeker has been dispersed (e.g. a person with mental health illness). Alternatively, an asylum seeker may develop a condition after dispersal. Once identified, the provider should advise any service-user with a need for additional care and attention how to contact the local authority social services department nearest to the dispersal accommodation so that the authority can conduct a CCA if necessary and decide whether the person has a care need.

**Section 21 of the National Assistance Act 1948**

**Relevant extracts from the National Assistance Act**

**SECTION 21 OF THE NATIONAL ASSISTANCE ACT 1948 (as amended)**

21.-(1) Subject to and in accordance with the provision of this Part of this Act, a local authority may with approval of the Secretary of State, and to such extent as he may direct shall, make arrangements for providing - -

(a) residential accommodation for persons aged 18 or over who by reason of age, illness, disability or any other circumstances are in need of care and attention which is not otherwise available to them;

and

(aa) residential accommodation for expectant and nursing mothers who are in need of care and attention which is not otherwise available to them;

(1A) A person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) applies may not be provided with residential accommodation under subsection (1)(a) if his need for care and attention has arisen solely-

(a) because he is destitute; or

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

N.B. Section 21(1)(aa) is a power not a duty.

This Annex is for information only. Local authorities must always refer to the original legislation and directions and approvals made by the Secretary of State.

## **Instruction to UK Immigration Service and the Asylum Screening Unit**

### **Referral of clear and urgent cases to local authorities**

A “clear and urgent case” is where the asylum seeker’s need for care and attention is clearly and obviously apparent, for example due to severe disability\* or frailty due to old age, and they have an urgent need for services.

The vast majority of destitute asylum seekers will be supported by the UK Border Agency and should be referred either to an Induction Centre or to emergency accommodation in accordance with existing procedures for access to such temporary support.

However, destitute asylum seekers who are identified by the Immigration Service or the Asylum Screening Unit as a clear and urgent case must be referred to the nearest local authority with social service responsibilities who will arrange for accommodation, support and appropriate care to be provided. Such persons are likely to have such a severe condition that staff will need to contact the social services department so that they can arrange to collect the person.

However, the UK Border Agency has responsibility to support families if their children have a care need. Therefore, if an asylum seeker has a dependent child who has a clear need due, for example, to a severe disability or serious illness then it will be necessary to liaise with the local authority to ensure the appropriate level of care can be provided while the family is in emergency accommodation or an Induction Centre (see Asylum Support Policy Bulletin 82 section 8 for further information).

What constitutes a clear and urgent case will differ from instance to instance and as such each case should be assessed on its own merits. Staff may contact the Asylum Support Policy Team on 0208-604 6853 to discuss cases where they are not sure. The following are examples of clear and urgent cases:

#### **Example A:**

A single adult who is quadriplegic and needs assistance with such basic personal tasks as eating, bathing, going to the toilet, dressing and taking medication has a clear care need.

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\* If an asylum seeker is in urgent need of medical care, it will of course be necessary in the first instance to refer the individual to the nearest hospital

**Example B:**

A single adult asylum seeker who has a learning disability such as Down's syndrome or cerebral palsy which clearly prevents him/her from living an independent life, engaging in co-ordinated activities/movements and from being able to carry out basic life tasks including collecting their Asylum Support payments.

**Example C:**

A single adult asylum seeker who has injuries or physical disabilities of such a nature that it is obvious that this person will not be able to carry out daily personal tasks such as feeding, bathing and taking medication without constant supervision.

**Example D:**

A single adult asylum seeker who has previously had a stroke which has left him with long lasting effects such as problems with mobility and communication. There are severe problems with speech and with swallowing.

# Document Control

## Change Record

Version	Authors	Date	Change Reference
2.0	M.M	27/03/09	Update branding only
3.0	SM	18/09/09	Children's Duty paragraph inserted