

## Section 4 of the Immigration and Asylum Act 1999

### Q&A

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# Section 4 of the Immigration and Asylum Act 1999

## Q&A

### 1) Eligibility Criteria

#### 1. What is section 4 support?

All asylum seekers whose applications have been refused and whose appeal rights are exhausted are required to leave the UK. It is accepted that there will be some refused asylum seekers who are destitute and unable to leave the UK immediately due to circumstances beyond their control. In these circumstances the refused asylum seeker can request the provision of support under section 4 of the Immigration and Asylum Act 1999 (IAA 1999).

Families with dependants under the age of 18 when their claim is determined will continue to be eligible for section 95 support until the youngest child reaches 18 or they leave the UK (see section 94(5) of the IAA 1999). Further, where a minor dependant is born or becomes part of the household within the prescribed period (21 days if the decision is served in person; 23 days if served by post) following a negative outcome on the asylum application section 95 support will continue. If the only minor dependant becomes part of the household outside of the prescribed period, the family will not be eligible for section 95 support. Support may be provided to the family under section 4, provided the eligibility criteria are met.

Section 4 support is intended as a limited and temporary form of support for people who are expected to leave the UK.

#### 2. Who is eligible to apply for section 4 accommodation?

The criteria that a refused asylum seeker or the dependant of a refused asylum seeker must meet to be eligible to receive support under section 4 of the IAA 1999 are set out in regulation 3 of the Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005. The regulations set out the criteria for the grant of, and conditions for, continued support for refused asylum seekers and may be viewed on web link <http://www.opsi.gov.uk/si/si2005/20050930.htm>.

The Regulations state that the Secretary of State may provide accommodation under section 4 to a refused asylum seeker who appears to be destitute and satisfies one or more of the following conditions:

- **Regulation 3(2)(a)** the person is taking all reasonable steps to leave the UK, or to place themselves in a position in which he or she is able to leave the UK. (This includes, for example, complying with attempts to obtain a travel document to facilitate departure).
- **Regulation 3(2)(b)** the person is unable to leave the UK by reason of a physical impediment to travel or for some other medical reason.

- **Regulation 3(2)(c)** the person is unable to leave the UK because in the opinion of the Secretary of State there is currently no viable route of return available.
- **Regulation 3(2)(d)** the person has made an application in Scotland for judicial review of a decision in relation to his asylum claim, or, in England, Wales or Northern Ireland, has applied for such a judicial review and been granted permission to proceed.
- **Regulation 3(2)(e)** the provision of accommodation is necessary for the purpose of avoiding a breach of a person's Convention rights, within the meaning of the Human Rights Act 1998.

Section 4 support can also be provided to those on temporary admission or who are released on bail. The Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005 do not apply in such cases.

### **3. What does destitute mean?**

Destitute has the same meaning as in section 95(3) of the IAA 1999. A person is destitute if:

- he does not have adequate accommodation or any means of obtaining it (whether or not his other essential living needs are met); or
- he has adequate accommodation or the means of obtaining it, but cannot meet his other essential living needs.

### **4. What happens to refused asylum seekers not supported under section 4?**

The expectation is that they should return to their country of origin. If they sign up with the International Organization for Migration for voluntary return and/or take all reasonable steps to leave the UK, they may qualify for section 4 support until they return.

### **5. What happens if a refused asylum seeker does not choose to leave the UK voluntarily?**

While the Government considers voluntary returns are preferable to enforced returns, should a refused asylum seeker not leave the UK voluntarily, his or her removal may be enforced.

### **6. Why are refused asylum seekers being made destitute?**

Government policy is such that it is not necessary for refused asylum seekers to become homeless and destitute. The UK Border Agency has an effective end-to-end strategy to ensure that asylum support is provided throughout the asylum process to eligible asylum seekers who would otherwise be destitute. Support continues until the asylum application has been finally determined.

Those refused asylum seekers who are eligible to receive section 4 support continue to be supported until the barrier to their leaving is resolved. Refused asylum seekers without a barrier to leaving the UK are encouraged and assisted to make voluntary departures. Failure to leave the UK voluntarily may result in an enforced return.

Families with dependants under the age of 18 when their claim is determined will continue to be eligible for section 95 support until the youngest child reaches 18 or they leave the UK.

**7. What if a refused asylum seeker is afraid to return to their country of origin?**

All asylum seekers whose applications have been refused and whose appeal rights are exhausted have had their asylum claims carefully considered by the Home Office; many will also have had appeals heard by the independent Tribunal service. It has been decided that they do not require international protection. They are therefore required to leave the UK.

## **2) Provision of Support**

### **8. How are refused asylum seekers informed of the availability of section 4 support?**

All those in receipt of asylum support are informed of the availability of section 4 support when their section 95 support is terminated. Voluntary sector services are aware of, and advise on, the availability of section 4 support and the conditions for receipt.

### **9. How will the introduction of the new asylum case owner model affect the operation of section 4 support?**

From 1 May 2007, Asylum Case Owners will decide on section 4 applications for the cases they manage. Support Policy, the Central Section 4 Team and Asylum Directorate have collaborated to produce a section 4 Asylum Instruction. This will be used by Asylum Teams and the Central Section 4 Team, replacing previous guidance, and will ensure the quality and consistency of decisions on section 4 support applications across the UK Border Agency. The section 4 Asylum Instruction may be viewed here <http://www.ukba.homeoffice.gov.uk/applying/asylumsupport/section4support>.

Current policy on support under section 4, as contained within Policy Bulletin 71, has been incorporated into the new section 4 Asylum Instruction.

### **10. How do you apply for section 4 support?**

A section 4 application form is available from local One Stop Services or on the UK Border Agency website.

There are two section 4 application forms – one for Asylum Team cases and one for the Central Section 4 Team. Cases which are being managed by an Asylum Case Owner and those who claimed asylum after 5 March 2007 should apply using the Asylum Team application form. The forms are easily distinguishable by the heading at the top of the first page. A separate link for each form is on our Asylum website from the section 4 support page as follows

<http://www.ukba.homeoffice.gov.uk/applying/asylumsupport/section4support>.

Asylum Team cases – completed application forms should be faxed to the workflow manager, who will ensure it is passed to the Case Owner. Details of the relevant Asylum Team contacts are included at Annex B of the Asylum form.

A process has been set up to ensure section 4 applications are correctly routed, either to the relevant Asylum Team Case Owner or the Central Section 4 Team.

Central Section 4 Team cases – completed application forms should be sent by post to **Section 4, 8<sup>th</sup> Floor West, Whitgift Centre, Block B, 15**

**Wellesley Road, Croydon CR9 1AT** or faxed directly to **020 8604 6908** or **020 8604 6777**.

**11. How is section 4 support provided?**

Support is provided in the form of self-catering accommodation with vouchers to purchase food and essential toiletries. In exceptional cases, full-board accommodation may be provided, depending on availability.

**12. What is being done to improve the administration of section 4 support?**

Although, at times, there have been problems administering section 4 support, a range of initiatives has been implemented to improve the administration of section 4 support. Measures include quality checks on decisions, a regular review of all section 4 granted cases to ensure recipients remain eligible for support and new methods to improve the workflow and operational processes. Additional caseworkers have also been recruited to the Central Section 4 Team to enable initial decisions to be made more promptly, and cases to be reviewed periodically.

**13. Why is section 4 support not provided in cash?**

The legislation does not allow cash to be provided. Our policy is that this should remain the case, as section 4 support is intended as a limited and temporary form of support for people who are expected to leave the UK.

Section 4 support was originally intended to be full-board. We learned in 2003 that some section 4 accommodation providers were providing self-catering accommodation with cash. In July 2004 we obtained legal advice that the power under section 4 did not include a power to provide cash. We worked with the accommodation providers to ensure that vouchers rather than cash were provided for those in self-catering accommodation. This was achieved by April 2005.

**14. Is there a right of appeal if section 4 support is not granted?**

Under section 103 of the IAA 1999, as amended by section 10(3) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, there is a right of appeal to the Tribunal Service against a refusal of section 4 support made after 31 March 2005.

**15. How many people are supported on section 4 and what are the main nationalities?**

Statistics for numbers supported under section 4, which are produced on a quarterly basis, may be viewed on the RDS website

<http://www.homeoffice.gov.uk/rds/immigration1.html>.

Published figures show numbers of applicants supported, excluding dependants. The statistics also show the breakdown of principal nationalities

supported. Provision of support is dependent on meeting eligibility criteria, irrespective of nationality.

**16. How is the level of section 4 support decided?**

Section 4 support for refused asylum seekers is set at a flat rate as support is of a temporary nature. It covers food and essential toiletries and is comparable to the payments made in initial accommodation to asylum seekers not in full-board accommodation.

**17. Will the level of support provided under section 4 be reviewed?**

There are no plans to increase the core amount of support provided under section 4 as this is considered sufficient to meet accommodation needs. See Part 5 for information on new provisions to be introduced shortly.

**18. How long are refused asylum seekers entitled to receive support under section 4?**

Refused asylum seekers in receipt of section 4 support will continue to be supported until the barrier to leaving the UK, which qualifies them for section 4 support, is removed or resolved and providing there is no change in their circumstances which would affect their eligibility. All cases will be regularly reviewed to determine if they remain eligible for section 4 support.

In cases where the applicant is found to be no longer eligible, support will be withdrawn. Support may also be withdrawn where there is a breach of the conditions of support.

**19. What are the review periods?**

Cases are reviewed on an ongoing basis. Review periods will be set as appropriate, but at no longer than 3 month intervals. The Asylum Instruction for review of section 4 eligibility may be viewed at:

<http://www.ukba.homeoffice.gov.uk/applying/asylumsupport/section4support>

**20. What is being done to address the issue of refused asylum seekers who have been supported under section 4 for long periods?**

Work is currently underway to improve the review of cases supported under section 4 to ensure continued eligibility for support. This, in conjunction with the Asylum whole case management approach, will reduce the number of people who remain on support for longer periods. We will continue to engage with external partners at strategic and operational level in taking this forward. See Part 5.

### **3) Vouchers**

#### **21. What types of vouchers are issued to section 4 recipients?**

The vouchers issued to refused asylum seekers in receipt of section 4 support are primarily luncheon vouchers, supermarket payment cards or supermarket vouchers – which are widely used by non-asylum seekers. They are not the National Asylum Support Service vouchers initially issued to all supported asylum seekers – and which were abolished in 2001 following concerns about their use. The vouchers used are those that would be used by any member of the public and because of this they do not identify persons using them as refused asylum seekers.

#### **22. Where are vouchers accepted?**

The vouchers can be used at supermarkets and a variety of other outlets. A list of outlets where Accor Luncheon Vouchers can be used to purchase goods may be viewed on the Accor website:

<http://www.luncheonvouchers.co.uk/Employee0/WhereToUse/WhereToUse.asp>.

We ensure with providers that the travel distance to shops that accept vouchers is not more than three miles from the relevant service user's accommodation. If the distance is further, or if a refused asylum seeker in receipt of section 4 support is unable to walk a distance of up to three miles by reason of a physical impediment or for some other medical reason, the provider may make transport arrangements, deliveries, or arrange for the service user to be moved closer to the local supermarket. In some instances, refused asylum seekers in receipt of section 4 support elect of their own volition to travel to specific outlets, which may be further than three miles.

#### **23. Which items may be purchased with vouchers?**

Vouchers provided for those accommodated under section 4 must be exchangeable for the following items:

- Food and drink items (including to meet dietary/religious requirements), but not alcohol
- Baby milk and food
- Toiletries, including:
  - feminine hygiene items
  - nappies
  - toiletries for a nursing mother
  - non-prescription drugs such as headache tablets
  - washing powder

The provider will be able to assist with the provision of the following if required:

- needle and thread to mend clothes
- pen and paper

**24. Is there a list of outlets where specialist goods may be purchased with vouchers?**

Section 4 accommodation providers have negotiated for certain shops to take vouchers to ensure dietary needs are met (e.g. the purchase of halal meat). A list of outlets where specialist goods, such as halal meat or essential baby items, may be purchased with vouchers is available on the UK Border Agency website, [http://www.ukba.homeoffice.gov.uk/6353/12358/2006-06-20\\_Voucher\\_Availabi1.xls](http://www.ukba.homeoffice.gov.uk/6353/12358/2006-06-20_Voucher_Availabi1.xls).

The accommodation provider may also give specific information on where vouchers may be exchanged for such goods in local outlets.

**25. How are problems arising from the use of vouchers resolved?**

If practical difficulties arise with provision of support through vouchers, the UK Border Agency works with the providers concerned to ensure solutions are found. Any individual problems should be referred at first instance to the provider, who is best placed to resolve any problems, the Asylum Case Owner (for cases managed by Asylum Case Owners) or the Central Section 4 Team. We are committed to quickly resolving any problems that arise and have established a mechanism for doing so within 24 hours. The helpline number for One Stop Service providers to ring is 020 8604 6680, or e-mail [section4queries@homeoffice.gsi.gov.uk](mailto:section4queries@homeoffice.gsi.gov.uk).

**26. Is clothing provided under section 4?**

There is currently no power to provide clothing under section 4. The Immigration, Asylum and Nationality Act 2006 enable the Secretary of State to make regulations to provide services and facilities not connected with accommodation to those supported under section 4 and we intend to consult shortly on draft regulations.

## **4) Accommodation and Transition**

### **27. What plans are there for transition to Target Contracts?**

Information on Target Contracts and transition can be found at the following link:  
<http://www.ukba.homeoffice.gov.uk/applying/asylumsupport/projects/s4transitionproject/>.

Information on the impact of transition on service users is provided. Additionally Policy Bulletin 86 (Possessions) was updated in February 2007 and outlines the responsibility of accommodation providers when transporting service users and their possessions when being moved from one address to another (link below).  
<http://www.ukba.homeoffice.gov.uk/documents/general/pb86?view=Binary>.

### **28. What consultation arrangements are in place for procurement of section 4 accommodation in different regions?**

Section 4 accommodation providers are required to consult and liaise with local authorities and other regional stakeholders, both in respect of procurement of section 4 accommodation and ongoing use. This was made clear in a letter to providers dated 26 July 2005. The letter may be viewed on the UK Border Agency website:

<http://www.ukba.homeoffice.gov.uk/6353/12358/section4accommodationprovis1.pdf>.

Under Target Contracts, accommodation providers are specifically required to consider social tension and the increased risk of disharmony when choosing where to place asylum seekers and refused asylum seekers.

### **29. Do local authorities provide section 4 accommodation?**

Section 43 of the Immigration, Asylum and Nationality Act 2006 amended section 99 of the IAA 1999 and enables local authorities to enter into arrangements with the UK Border Agency for the provision of accommodation to refused asylum seekers under section 4, alongside private providers. Details of the provision may be viewed via the following link:

[http://www.opsi.gov.uk/ACTS/acts2006/ukpga\\_20060013\\_en.pdf](http://www.opsi.gov.uk/ACTS/acts2006/ukpga_20060013_en.pdf).

### **30. Are section 4 recipients accommodated in the area they lived in at the time of their application?**

Our policy is to offer all asylum support accommodation on a 'no choice' basis, although individual special circumstances are taken into account.

Our practice now is to offer accommodation elsewhere to new successful applicants who apply in the London area, unless they can demonstrate a special circumstance that requires them to be accommodated in London. In housing refused asylum seekers supported under section 4, we will seek to accommodate individuals in regions (other than London) where they were previously in receipt of asylum support, where applicable.

In some cases it is necessary, due to constraints on the availability of suitable accommodation or for other reasons, to move applicants to another town or city. In exceptional cases refused asylum seekers supported under section 4 may be moved closer to family members. Local authorities are provided with information on numbers and areas where those supported under section 95 and section 4 are housed.

**31. Is section 4 accommodation inspected?**

Housing inspections for section 4 properties have been established with regional offices, in line with the arrangements for inspecting section 95 properties. Any concerns about specific properties should be reported to the regional office, who will arrange for an inspection at the earliest opportunity.

**32. What are the minimum standards for section 4 accommodation?**

In line with section 95 accommodation, these are set out in contracts with providers. The minimum standards for section 4 accommodation are published on the UK Border Agency website:

<http://www.ukba.homeoffice.gov.uk/6353/12358/section4accomodationsupport.pdf>.

**33. What should section 4 recipients do if the accommodation does not meet acceptable standards?**

Properties where accommodation does not meet acceptable standards should be reported at first instance to the provider, who is best placed to resolve any problems, if still not resolved, to the regional office, who will investigate and ensure appropriate action is taken.

**34. Are section 4 recipients expected to share accommodation?**

The majority of those housed under section 4 are in shared accommodation. Where there are exceptional reasons why sharing is not considered appropriate written representations should be made by the service user citing the reasons for the objection.

## **5) Amendments to section 4 of the Immigration and Asylum Act 1999**

### **35. What amendment did the Immigration, Asylum and Nationality Act 2006 make to section 4 of the IAA 1999?**

Section 43(7) of the Immigration, Asylum and Nationality Act 2006 which added section 4(10) to section 4 of the IAA 1999, enables regulations to be made that will allow the provision of specified services or facilities to those supported under section 4 which are not connected with the provision of accommodation. The section 43 provision came into effect on 16 June 2006.

The regulations will provide improved support to the most vulnerable – pregnant women, young babies and children – and those who are supported longer term under section 4. The regulations will enable facilities to provide for travel to essential medical appointments and essential communications. The regulations will also allow additional support to be provided to meet exceptional and unforeseen needs.

The 2006 Act also enables local authorities to provide accommodation under section 4.

### **36. What is the timescale for the new regulations to meet additional needs of section 4 recipients?**

A first draft of the regulations was circulated in May 2006 to stakeholders for consultation and feedback has been received. A second draft is planned for issue shortly and it is intended for the regulations to be in place in autumn 2007. The regulations are subject to the negative resolution procedure.

## **6) Healthcare**

### **37. Who is entitled to access free NHS hospital treatment?**

Entitlement to access free NHS hospital treatment is based on whether someone is ordinarily resident in the UK. Persons who are deemed to be ordinarily resident in the UK or fall into one of the specified classes, are eligible for the full range of NHS services free of charge, except where statutory charges apply (e.g. prescription charges). Persons on low income, such as asylum seekers, can apply for an HC2 certificate giving exemption from statutory charges. Anyone who is not ordinarily resident, is subject to the *National Health Service (Charges to Overseas Visitors) Regulations 1989* (the 1989 Regulations), as amended.

### **38. What health treatment is available for refused asylum seekers?**

Refused asylum seekers are provided with health treatment, which is immediately necessary, free of charge within primary care. Refused asylum seekers are not eligible to receive free NHS hospital treatment except in cases where the treatment received is exempt from charges (e.g. that given in an Accident and Emergency department). Under secondary care, refused asylum seekers can receive a number of services free of charge, including:

- treatment in a hospital Accident and Emergency department unless and until accepted as an in-patient;
- treatment at a walk-in centre in respect of services similar to those at an Accident and Emergency department of a hospital; and
- the treatment of certain specific diseases e.g. TB and malaria.

### **39. Can treatment continue free of charge for asylum seekers whose application for asylum is unsuccessful?**

In what is known as an “easement clause”, the 1989 Regulations state that anyone who has begun a course of treatment free of charge will continue to receive it free of charge until the course finishes or they leave the country, whichever comes first. Therefore, an asylum seeker undergoing treatment (including maternity treatment) will not have that treatment withdrawn if their application for asylum is unsuccessful. New courses of treatment are chargeable for refused asylum seekers.

### **40. Do charges exist for maternity services?**

The 1989 Regulations do not exempt maternity services from charges. However, guidance issued to all NHS Trusts makes clear that maternity care should always be considered as being immediately necessary treatment, due to the risks involved for both mother and child. This can include treatment to prevent HIV transmission from the mother to the child, where clinically appropriate. In view of uncertainty within the NHS on how to deal with pregnant overseas visitors, the guidance was reissued to overseas visitors’ managers on 16 May 2005, to bring it more closely to their attention (see Annex A).

**41. Will maternity treatment be withheld if a refused asylum seeker is unable to pay the costs of an antenatal appointment?**

Further guidance was issued on 31 January 2006 to stress that pregnant overseas visitors should not be given the impression that if they do not pay the costs of an antenatal appointment, then future maternity treatment will be withheld (see Annex B).

If immediately necessary treatment has been given, this does not mean that charges will not apply. If the patient is chargeable, the charge will stand and cannot be waived. However, whilst the Trusts should take reasonable measures, based on each individual case, to pursue overseas debt they can elect to write off the debt if it is evident that it would not be cost effective to try to recover it.

**42. Can refused asylum seekers be registered as permanent patients?**

Local GP practices have the discretion to register anyone as a permanent patient, regardless of immigration status. They may register a person as a temporary patient if he or she has lived in the practice area for between 24 hours and 3 months. Further, GPs have an obligation to treat anyone whose need for treatment is immediately necessary or where there is a need for emergency treatment.

**43. Will there be a review of the healthcare treatment available to refused asylum seekers?**

The Health Secretary has given a commitment to review the rules governing access to NHS primary medical healthcare for foreign nationals. The review is to be extended to include the existing rules for secondary care services, clarifying the position of refused asylum seekers accessing the NHS. The review is underway, led by the Department of Health with a target for completion in October 2007.

## **7) Refused Asylum Seekers with Care Needs**

### **44. What support is available to refused asylum seekers with care needs?**

A refused adult asylum seeker with care needs may be eligible for support from the local authority.

Under section 21 of the National Assistance Act 1948 (in Scotland, section 12 of the Social Work (Scotland) Act 1968), local authorities have a duty to accommodate persons subject to immigration control who have a need for care and attention due to age, illness or disability which has not arisen solely because of destitution. "Accommodate" has a wide meaning and includes food etc as well as housing but does not include cash.

### **45. Can support for refused asylum seekers with care needs be withheld or withdrawn?**

Schedule 3 of the Nationality, Immigration and Asylum Act 2002 (NIAA 2002) provides that certain classes of persons are not eligible for support under Section 21 of the National Assistance Act 1948 or section 12 of the Social Work (Scotland) Act 1968, unless support is necessary to avoid a breach of a person's Convention rights. The classes of ineligible persons include: refused asylum seekers who are not co-operating with removal directions and persons unlawfully in the country who are not asylum seekers.

Refused asylum seekers who originally claimed in-country are likely to fall into the latter class. If the original asylum application was made in-country, it is likely eligibility would be limited to support required to prevent a breach of a person's rights under the European Convention.

### **46. When should a Community Care Assessment be carried out?**

Local authorities have a duty to conduct a CCA, upon application, under section 47 of the National Health Service and Community Care Act 1990 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 there is a care need, the local authority has a duty to provide that person with accommodation (which includes related financial support).

### **47. Can local authorities provide community care services pending a CCA?**

A local authority may provide community care services, including residential accommodation, pending a 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.

**48. What support is available for persons previously detained under section 3 of the Mental Health Act 1983?**

Section 117 of the Mental Health Act 1983 places duties on Primary Healthcare Trusts, Health Authorities and local authorities to support persons previously detained under section 3 of that Act. Support entitlement under section 117 is not affected by Schedule 3 of the NIAA 2002 but the NHS (Charges to Overseas Visitors) Regulations 1989 may be relevant.

## **8) Voluntary Return**

### **49. What happens to refused asylum seekers not supported under section 4?**

See question 4.

### **50. What happens if a refused asylum seeker does not choose to leave the UK voluntarily?**

See question 5.

### **51. What assistance is provided for voluntary returns?**

Under the Voluntary Assisted Returns and Reintegration Programme (VARRP), the IOM provide return and reintegration assistance for voluntary returnees. The reintegration assistance will be paid per returnee and to each family member. Further information on reintegration assistance is available on the IOM website:

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

### **52. What happens to refused asylum seekers who fail to take reasonable steps to leave the UK?**

All cases are reviewed to ensure that applicants remain eligible for support. For an applicant who has registered for an assisted voluntary return as a condition of support, the case will be reviewed after six weeks and then again if an applicant has been supported for three months. In a case where the applicant is not considered to be participating in the Assisted Voluntary Returns programme – for example by failing to report for a flight or by failing to leave the UK within a reasonable period – the asylum caseworker may discontinue support after full consideration of the facts.

### **53. What happens if an applicant claims to be taking all reasonable steps to leave the UK but does not register with the IOM for a voluntary return?**

We will consider, on a case by case basis, circumstances where an applicant claims he is taking all reasonable steps to leave the UK, but has not registered with the IOM for a voluntary return or complied with the relevant steps to obtain travel documentation.

## **9) Iraqi Refused Asylum Seekers**

### **54. Why were Iraqi nationals previously exempt from having to take reasonable steps to return to Iraq as a condition of receiving section 4 support?**

In December 2004 information from the Foreign and Commonwealth Office suggested there could be concerns about the viability of the route into Iraq used to repatriate Iraqis. It was therefore agreed that it should not be made a requirement for individuals from Iraq to sign up for a voluntary return with the IOM as a condition of receiving section 4 support until an alternative route of return had been established. This remained the position until the end of July 2005, when viable routes of return became established.

### **55. When did the Home Office contact Iraqi nationals to inform them of the change in eligibility criteria for support?**

We wrote to Iraqi refused asylum seekers accommodated under section 4 between 1 September 2005 and January 2006 requiring them to comply with specified steps to facilitate their departure from the UK or to provide evidence that they satisfy one of the other eligibility criteria for section 4 support.

Information concerning returns to Iraq may be viewed in the Iraq Country Policy Bulletin:

<http://www.ukba.homeoffice.gov.uk/documents/countryspecificpolicybulletins/iraqcountrypolicybulletinfeb2007?view=Binary>.

### **56. How are voluntary returns to Iraq organised and what reintegration assistance is available?**

The IOM website provides specific information on the voluntary returns package to Iraq:

<http://www.iomlondon.org/varrp.htm>

## **10) Zimbabwean Refused Asylum Seekers**

### **57. Why were enforced removals of Zimbabwean nationals suspended?**

We are currently deferring enforced removals to Zimbabwe pending the outcome of an Tribunal Service test case looking into the question of whether enforced returnees to Zimbabwe would be at risk on return simply because they have sought asylum in the UK. Enforced removals of refused asylum seekers to Zimbabwe will continue to be deferred pending the outcome of the Zimbabwean test case. We continue to expect Zimbabweans who have no right to remain in the UK to return to Zimbabwe voluntarily.

### **58. Can Zimbabwean nationals return voluntarily to Zimbabwe?**

Refused asylum seekers can and do return to Zimbabwe voluntarily. The Tribunal Service has not found that Zimbabwe is unsafe generally for returning refused asylum seekers, or that those who return voluntarily are at risk. We continue to expect those asylum seekers who have exhausted their rights of appeal and been found not to need international protection to leave the UK voluntarily. Based on Immigration Research and Statistics figures, between 1 January 2006 and 31 March 2007, 305 Zimbabweans returned to Zimbabwe voluntarily.

### **59. Can Zimbabwean refused asylum seekers access section 4 support?**

Zimbabwean refused asylum seekers can seek the provision of support under section 4 subject to meeting the eligibility criteria, for example by signing up with the IOM to make a voluntary return.

### **60. How are voluntary returns for Zimbabwean nationals arranged?**

The VARRP programme is administered in both the UK and Zimbabwe by the IOM. Returnees elect whether they wish to be met at Harare airport or not; the IOM has reported that most do not, preferring to be met by family or friends. Onward domestic transportation will be funded, or IOM London will book an internal flight from Harare to the final destination.

### **61. How is reintegration assistance provided for Zimbabwean nationals?**

The IOM office in Harare provides full reintegration assistance to those who return under VARRP. This includes helping people start up in business and assisting with education needs for both adults and children.

## **11) Travel to Reporting**

### **62. Does section 4 support cover travel expenses to reporting events?**

Travel to reporting events does not come within the scope of section 4 support. Refused asylum seekers supported under section 4 who do not meet the eligibility criteria for assistance under section 69 of the NIAA 2002 are expected to walk to reporting centres within three miles of their accommodation. Where there are extenuating circumstances, e.g. late stages of pregnancy, a request can be made to the Immigration Service to vary the conditions, e.g. to reduce reporting frequency or to report to a local police station. It can be arranged for refused asylum seekers supported under section 4 to be moved closer to the reporting centre.

### **63. Is assistance with the cost of travel to reporting events available?**

The Home Office has the power to pay travel expenses to reporting events under section 69 of the NIAA 2002. Immigration Service policy does not include organising travel to a first reporting event. Consequently, it is very important that an asylum seeker, or refused asylum seeker, updates Immigration Service with any change of address – particularly if this involves relocation to a different region – to ensure that there is continuity in reporting and provision of return travel tickets.

### **64. Are refused asylum seekers eligible to receive assistance to cover travel expenses under section 69?**

Support to cover travel expenses under section 69 is now available to those who report to a Reporting Centre, and live more than three miles away from the reporting centre. This includes those in receipt of section 4 support.

### **65. How can travel expenses be claimed?**

An application for assistance with the cost of travel must be made in person at the reporting centre. Travel expenses support is provided in the form of pre-paid travel tickets, which are issued by reporting centres during reporting events.

### **66. What if the eligibility criteria for section 69 assistance are not met?**

Where a person does not satisfy the basic criteria for help with travelling expenses an application for assistance may be made, based on exceptional need. Applications are made in writing to

Travel Expenses section  
5<sup>th</sup> Floor  
4M Offices  
GTI Building  
Manchester Airport  
M90 3WW

and are decided centrally.

**67. Is assistance available if reporting to a police station?**

Following the roll out of travelling expenses assistance to those reporting to reporting centres, the payment of travelling expenses to those reporting at other locations, such as police stations is under consideration.

## **12) Permission to Work**

### **68. Are refused asylum seekers permitted to work?**

Subject to paragraph 360 of the Immigration Rules, we do not give asylum seekers permission to work; this remains the position for those refused asylum who have been found not to be in need of international protection.

The Government believes that managed migration is a valuable source of skills and labour to the British economy and provides a legitimate channel for those who wish to seek work in the UK. Entering the country for economic reasons however is not the same as seeking asylum, and it is important to maintain the distinction between the two.

Those with a claim for asylum in the UK must have their applications processed as quickly as possible. Giving asylum seekers permission to work could potentially encourage asylum applications from those with no fear of persecution, hence slowing down the process of applications of genuine refugees. This is why we do not generally allow asylum seekers to work while their claim for asylum is under consideration.

We have made it clear that asylum seekers generally cannot work whilst their claims are considered and it would be inappropriate to allow refused asylum seekers to do so, when they have no legal basis to remain in the UK. Giving refused asylum seekers permission to work may also result in creating incentive to remain in the UK, when we expect all unsuccessful applicants to return home. We keep our policies on permission to work under review.

## **The NHS (Charges to Overseas Visitors) Regulations 1989, as amended – provision of maternity services to chargeable overseas visitors**

The Health Select Committee recently conducted a short inquiry into new developments in sexual health and HIV/AIDS policy. This included looking at the provision of HIV treatment for overseas visitors. In its subsequent report of 8 March 2005, the Committee recommended that guidance be reissued to the NHS on how maternity services are to be treated within the hospital charging regime. This followed evidence to the Committee from a number of voluntary organisations that some NHS trusts appeared not to be following the guidance on this issue included in the document *Implementing the Overseas Visitors Hospital Charging Regulations: Guidance for NHS Trust Hospitals in England*, issued in April 2004, and reprinted in October 2004.

The guidance document covers this issue on page 42 (either version), where it states that:

maternity services are not exempt from charges. However because of the severe health risks associated with conditions such as eclampsia and pre-eclampsia, maternity services should not be withheld if the woman is unable to pay in advance. The patient remains liable for charges and the debt should be pursued in the normal way.

NHS Trusts need to be clear that the effect of this is that hospital maternity services should always be considered as immediately necessary treatment because of the potential risks to mother and baby. This applies even in early pregnancy. Not to do so could be open to interpretation as being in breach of the Human Rights Act 1998. However, like any other immediately necessary treatment, if the woman is found to be liable for charges, she should be charged accordingly and whatever steps are considered reasonable taken to recover the debt if it is not paid.

As regards pregnant women who are known, or found to be HIV positive, maternity services could be taken as including HIV treatment where it is considered clinically necessary to prevent mother-to-child transmission of the condition. Whether this is appropriate will always be a matter for the clinical judgement of the treating physician, not a decision of the Overseas Visitors Manager.

**May 2005**



<http://www.dh.gov.uk/Home/fs/en>

## DEALING WITH PREGNANT OVERSEAS VISITORS

The guidance document *Implementing the Overseas Visitors Hospital Charging Regulations: Guidance for NHS Trust Hospitals in England* makes clear (on p.42) that maternity services must always be treated as immediately necessary care, and be neither delayed nor withheld because the patient is a chargeable overseas visitor who may not be able to pay. This is because of the severe risks involved to both mother and child if the mother does not present for medical attention throughout her pregnancy. This guidance was reiterated in a notice issued to all Overseas Visitors Managers (OVMs) in NHS trusts in England on 16<sup>th</sup> May 2005.

However, the Department of Health continues to receive regular reports that this guidance is not always being followed. We have been told of cases where women who are exempt from charges (e.g. because they are asylum seekers) have been asked to pay; where women have been refused proper care because they cannot pay in advance; and where payment has been pursued in such a way that women feel intimidated and unable to continue to receive necessary maternity care, placing themselves and their baby at increased risk.

It is entirely right that OVMs should be identifying chargeable overseas maternity patients and that such patients should be informed that they are liable to charges and all reasonable attempts made, given the individual circumstances, to recover the debt. However, OVMs are reminded that they need to be particularly sensitive to the circumstances in these cases. Women who present for maternity treatment must never be given the impression that if they cannot pay then treatment will be withheld, either there and then or at a later stage of their pregnancy. Moreover, extra care needs to be exercised to ensure that pursuing payment does not go beyond what is reasonable. Whilst the Regulations do not allow for charges to be waived, overseas debt can be written off if it is evident that it is not cost-effective to try to recover it.

OVMs are also reminded that under the “easement clause” in the Regulations, any woman who enters into maternity care free of charge, should continue to receive it on that basis, even if her residence status changes before the baby is born. Thus, asylum seekers, those whose applications, including any appeals, have failed but who began their maternity care before such a decision was reached, will continue to receive all their maternity services free of charge. Only maternity services begun after an application for asylum has been finally rejected are subject to charges but as indicated above, they must not be withheld because of doubts about the woman’s ability to pay.

**January 2006**

TABLE OF ENTITLEMENT TO NHS TREATMENT (Correct as of March 2006)		
Status	Primary Care	Secondary Care
<b>Asylum Seeker</b>	<p>A person who has formally applied for asylum is entitled to NHS treatment without charge for as long as their application (including appeals) is under consideration. They will have to pay certain statutory NHS charges (e.g. prescription charges) unless they also qualify for exemption from these (see notes section), and will go on waiting lists.</p> <p>Since asylum seekers are entitled to free NHS treatment, they can apply to a general practitioner to register as a patient. Asylum seekers are exempt from charges for NHS hospital treatment.</p>	<p>A person who has formally applied for asylum is entitled to NHS treatment without charge for as long as their application (including appeals) is under consideration. They will have to pay certain statutory NHS charges (e.g. prescription charges) unless they also qualify for exemption from these (see notes section), and will go on waiting lists.</p> <p>Since asylum seekers are entitled to free NHS treatment, they can apply to a general practitioner to register as a patient. Asylum seekers are exempt from charges for NHS hospital treatment.</p>
<b>Asylum Seeker refused but appealing decision.</b>	Access to <b>primary care</b> without charge. As for Asylum Seeker	Access to <b>secondary care</b> without charge As for Asylum Seeker.
<b>Asylum Seeker denied support under Section 55 of the 2002 Act, but still claiming asylum.</b>	Access to <b>primary care</b> without charge. As for Asylum Seeker	Access to <b>secondary care</b> without charge As for Asylum Seeker.
<b>Refused asylum seekers – including those getting UK Border Agency Section 4 (formerly “hard case”) support while awaiting departure from the UK</b>	<p>The Department of Health has sought to allay confusion over the entitlements of refused asylum seekers to primary care without charge. Health service Circular 1999/018 states that refused asylum seekers should not be registered, but equally, GP practices have the discretion to accept such people as registered NHS patients.</p> <p>Ministers wish to bring greater clarity and consistency to the rules regarding access to primary medical services and so have recently sought views on this issue as part of a consultation on the entitlement of overseas visitors to NHS primary care services.</p> <p>Ministers are still considering the responses and the</p>	<p>For secondary care, refused asylum seekers are not generally eligible for free hospital treatment. However, immediately necessary treatment to save life or prevent a condition from becoming life threatening should always be given to refused asylum seekers without delay, irrespective of their eligibility for free treatment or ability to pay. However if they are found to be chargeable, the charge will still apply, and recovery should be pursued as far as the trust considers reasonable.</p> <p>Any course of hospital treatment already underway at the time when the asylum seeker's claim, including any appeals, is finally rejected should remain free of charge until completion. It will be a matter for clinical judgement as to when a particular course of treatment has been completed.</p>

	<p>outcome of the consultation has not yet been announced. Therefore the current situation remains unchanged - Emergencies or treatment which is immediately necessary should continue to be provided free of charge within primary care to anyone, where in the clinical opinion of a health care professional this is required.</p>	<p>Any new course of treatment, begun after the asylum claim is finally rejected, will be chargeable (unless the treatment itself is exempt under the provisions of the NHS (Charges to Overseas Visitors) Regulations 1989, as amended, e.g. TB).</p> <p>Trusts should refer to the document "Implementing the Overseas Visitors Hospital Charging Regulations - Guidance for NHS Trust Hospitals in England" for advice on how and when to make the charge in these cases.</p>
<p><b>Given Refugee Status (successful asylum seeker or, arriving in the country through a Government initiative, i.e. Refugee Gateway Scheme)</b></p>	<p>Access to <b>primary care</b> without charge. As for Asylum Seeker.</p>	<p>Access to <b>secondary care</b> without charge As for Asylum Seeker.</p>
<p><b>Given Discretionary Leave to Remain</b></p>	<p>Access to <b>primary care</b> without charge As for Asylum Seeker.</p>	<p>Access to <b>secondary care</b> without charge As for Asylum Seeker</p>
<p><b>Given Humanitarian Protection</b></p>	<p>Access to <b>primary care</b> without charge As for Asylum Seeker.</p>	<p>Access to <b>secondary care</b> without charge As for Asylum Seeker.</p>

**Entitlement to NHS treatment (correct at March 2006 onwards)**

Certain services are exempt from charges for everyone. This includes treatment provided solely in an Accident and Emergency Department, treatment of certain specified communicable diseases (although prescription charges may be payable unless exempt) and compulsory mental health treatment. Flu immunisations are given to those who are in at risk categories. These categories include anyone over 6 months with respiratory disease (inc. asthma), chronic heart disease, renal disease, diabetes and immunosuppression or staying or living in long stay facilities – or who at the GPs' discretion needs to have a flu jab on a clinical need basis.

**HIV/AIDS**

In the case of services which relate to HIV/AIDS only the initial test and counselling is free to all. People not eligible for free hospital treatment are required to pay the full costs, including drugs, of any HIV treatment beyond the initial test and counselling. Where a person has been identified as chargeable (not an asylum seeker) for HIV/AIDS treatment a HC2 (certificate for full help with health costs) is not applicable and the full cost of the drugs should be recovered from them. The guidelines in the table above regarding immediately necessary treatment and treatment already under way when an application for asylum is finally rejected, apply equally to HIV/AIDS treatment.

**Maternity Services**

Maternity services should always be classed as immediately necessary treatment (see above) and provided even if the pregnant woman is unable to pay in advance. As with other immediately necessary treatment, however, the patient remains chargeable and reasonable steps should be taken to recover the debt. Maternity services can include treatment to prevent transmission of HIV/AIDS from mother to child if considered clinically appropriate.

**Enquiries about this table should be addressed to:** Justine Osborne on 0113 2546605, or [Justine.Osborne@dh.gsi.gov.uk](mailto:Justine.Osborne@dh.gsi.gov.uk)

**Notes****Secondary Care**

It is the responsibility of the NHS trust or Primary Care Trust (PCT) providing secondary care to establish if a person is entitled to treatment without charge (although out-patients may have to pay charges for drugs and appliances unless they are exempt). All patients, regardless of their status or nationality are subject to the same basic screening process and should be asked the following question about their residential status as part of the hospital registration procedure:

- Where have you lived for the last 12 months?
- Can you show that you have the right to live here?

A person who has not been living in the UK for the last 12 months is subject to the NHS (Charges to Overseas Visitors) Regulations and can therefore expect to be asked further questions such as,

- On what date did you arrive in the UK?
- What is the basis for your stay in the UK?

Patients who are unable to provide answers to these questions, or whose answers indicate that they may not be eligible for free hospital treatment should be referred to the NHS trust's Overseas Visitors Manager, who will conduct a full interview with the patient to establish whether he/she is chargeable. However, immediately necessary treatment should never be delayed or withheld because of doubts about the patient's chargeable status or his/her ability to pay.

### **Help with Access to Health Services**

If asylum seekers and refugees are having difficulties registering with a GP, they should contact their local PCT who will be able to provide a list of practices to which they can apply. Where a person, who is entitled to free NHS treatment, has had their application to join a practice's list of patients refused, they can apply to the PCT, which has the power to allocate them to a GP

PCTs will also be able to provide information on local Community Dental Services and dentists in an area treating patients under the NHS. NHS Direct, provides information on local GPs and NHS dentists. You can also find out about services in your area (including PCT contact details) by going to: <http://www.nhs.uk/localnhsservices/default.asp>

### **Help with Health Costs**

*Under the Immigration and Asylum Act 1999 and the Asylum and Immigration Act 1996, most asylum seekers are not entitled to welfare benefits. However they may qualify for:*

- Free NHS prescriptions;
- Free NHS dental treatment ;
- Free NHS wigs and fabric support ;
- Necessary travel costs to and from hospital for NHS treatment ;
- Free NHS sight tests ;
- The full value of an NHS optical voucher towards the cost of glasses or contact lenses.

UK Border Agency will issue HC2 certificates to asylum seekers after they claim asylum and when they are being dispersed.

## Asylum seekers not supported by UK Border Agency

*Asylum seekers who are not supported by UK Border Agency or those supported by the Interim Arrangements and who are not otherwise entitled to free prescriptions, will need to complete form HC1 (claim for help with health costs including prescriptions through the NHS Low Income Scheme (LIS)). Health practitioners who come into contact with asylum seekers should encourage them to apply. Refused asylum seekers can also apply.*

**Since the interim support arrangements were introduced on 6 December 1999, the Patient Services Division (PSD) (previously the Health Benefits Division) of the Prescription Pricing Authority (who run the LIS for the Department of Health) have made arrangements for claims from asylum seekers to be given priority. They have arranged for a separate postcode to be printed on white envelopes, which asylum seekers can use to send off their HC1 claim form.**

**HC1s are available from the PSD or in bulk from Department of Health, PO Box 777, London, SE1 6XN. Tel: 08701 555 4555 (Department of Health publications order line). Fax: 01623 724 524.**

### HC1 Completion Guidance Notes

This note contains guidance for case workers and health professionals who help asylum seekers to complete the HC1 form. Asylum seekers who have not received an HC2 certificate from UK Border Agency are eligible to apply for one using an HC1 form under the low-income scheme which is managed by Patient Services at the PPA. Refused asylum seekers are also able to apply for an HC2 certificate using an HC1 form.

Asylum seekers who have received an HC2 certificate should apply directly to UK Border Agency for a new certificate when their old one expires. There is no need to fill in a new HC1 form or to re-apply through Patient Services.

### Fast Track System

A system operated by Patient Services is in place that speeds up the process for asylum seeker cases. This fast-track procedure should also be adopted and followed by Social Services:

1. Order bulk supplies of HC1 forms (claim for help with health costs) from Department of Health PO Box 777, London SE1 6XN, Tel: 08701 555 4555, Fax: 01623 724 524.

2. To enable applications from asylum seekers to be fast-tracked, white envelopes (as opposed to the supplied brown ones) need to be used. To obtain these contact Patient Services on their enquiry line, 0845 850 1166.
3. Once the HC1 has been completed and signed by the claimant, post it in the white envelope to Patient Services.
4. Once received, Patient Services give claims in white envelopes priority and aim to issue a reply within 5 days.

In order for the appropriate level of support to be given and for the fast-track system to operate as intended, the HC1 form must be completed correctly. However, many assessments are delayed due to forms containing errors or being incomplete.

Common errors include:

- **Signatures** – Case workers often sign HC1s on behalf of their clients because the client cannot speak English. Patient Services is unable to accept HC1s signed by a third party, the claimant or partner must sign them or make their mark. The caseworker should ensure that this happens.
- **Income** – Often the amount of income that the applicant / their family receives is not specified on the HC1. Patient Services need to know this information, without it the HC1 will be returned as incomplete. UK Border Agency support should be recorded in section 5.2 “ Do you or your partner get any other income?”. Throughout the document the ‘no’ boxes should be ticked for which do not apply.

Where income is payable for a child, this is often paid under the Children’s Act. Income paid under sections 17, 23B 23C or 24A is fully disregarded in the assessment therefore if caseworkers could specify the act payments are made under, it will help their clients assessment.

- **Capital** – Although most asylum seekers are unlikely to have any capital or own any capital assets, the ‘no’ boxes must be ticked on the page covering property, savings and other money to indicate this.
- **Extended Families** – Under asylum laws, extended families are assessed and paid as one family unit. Low Income rules are different, assessments are made for traditional family units. Consequently it is not possible to include aunts, cousins or grandparents on a single assessment unless they are a minor for which the claimant and partner have responsibility. It is therefore necessary for separate applications to be submitted and for income details to be broken down accordingly.
- **Asylum seekers living in Hostels/Hotels** – Room numbers need to be added if the applicant lives in a hostel or hotel. In cases where asylum seekers are in temporary accommodation, it may be advisable to use Social Services’, voluntary agency or health centre addresses as large numbers of certificates are returned when asylum seekers move out.

- **Inconsistencies**– There have been cases where the asylum seeker states that they are supported by UK Border Agency, but no record appears on the database. This may be due to a delay in the data being entered onto the database. However for some cases the spelling of the name on the HC1 is different to the spelling on the UK Border Agency supplied database which is used by Patient Services. It is helpful if case workers, where possible, ensure that the spelling of names and order of names are consistent with the info which was given to UK Border Agency.