

INTRODUCTION TO COMMUNITY CARE

Local Authorities have powers and duties to accommodate and support people who meet certain conditions. This can include offering assistance to asylum seekers. There are various Acts of Parliament that allow Local Authorities to assist asylum seekers however perhaps the most relevant are the Children Act 1989 and the National Assistance Act 1948. This fact sheet will advise how these pieces of legislation work and explain how asylum seekers can benefit from them and highlight any restrictions that asylum seekers may face.

The National Assistance Act 1948

Section 21(1) of this Act states that a Local Authority can accommodate people over the age of 18 who because of age, illness, disability or any other circumstances is in need of care and attention which they cannot access anywhere else. 'In need of care and attention' can simply mean that the person needs warmth and shelter not necessarily one to one care. A homeless asylum seeker with no access to facilities who requires a level of care is able to request an assessment from Social Services (who have to provide an assessment) and may be able to access accommodation. The Act also makes an allowance for pregnant and nursing mothers who can also access accommodation if there is none available to them.

The Children Act 1989

A child "in need" can access support from Social Services. Section 17 of this Act defines what it means to be a child "in need". In short a child is "in need" if he or she is disabled or if he or she is unlikely to achieve or maintain a "reasonable standard of health or development". This means that a child whose parents cannot accommodate and faces homelessness is likely to be entitled to support from Social Services. Social Services have a power to accommodate a child's family also however there is no legal duty for them to do this and Social Services can legitimately assist the child and refuse to accommodate his or her parents. Social Services need to consider whether refusing to accommodate the parents would breach the child's human rights under the European Convention on Human Rights (ECHR).

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The Children Act 1989

Excluded Asylum Seekers

The information contained in this factsheet is intended for guidance only and whilst every effort is made to ensure it is correct at time of publication it should not be used as a substitute for legal advice. For client specific advice please contact the ASAP.

How Asylum Seekers Can be Excluded

Asylum Seekers may not be able to access all the entitlements under the Children Act 1989 and the National Assistance Act 1948. This is because the Immigration and Asylum Act 1999 excludes certain people who are subject to immigration control from benefiting from them. If a person needs permission or leave to remain in the UK or does not have access to public funds they will be subject to immigration control and some asylum seekers will fall into this category.

How Excluded Asylum Seekers are Affected

Under the Children Act 1989 Social Services will have a duty to accommodate a child regardless of their parent's asylum status and this can extend to the child's family if not assisting the entire family would lead to a breach of the child's human rights under the ECHR even if the family are failed asylum seekers. If it would not breach a child's convention rights to be accommodated away from their family, there is no duty for Social Services to assist the family. For more information on the duty Social Services may have to a failed asylum seeker family refer to ASAP fact sheet "Section 9 - Failed Asylum Seekers With Family".

Under the National Assistance Act 1948, a person who is subject to immigration control may not be able to access assistance from a Local Authority under this Act if their need for care and attention arises solely from their destitution. In other words if it is homelessness that causes an otherwise healthy person to require care and attention, that person will be excluded from support under this Act. As with the Children Act 1989, a Local Authority can only refuse to assist a person if this would not breach their human rights. For example if refusing to support a person would lead them to suffer, on the streets, actual bodily harm or extreme mental suffering it can be argued that this breaches Article 3 under the ECHR which prohibits torture and inhuman treatment.

A new case known as *AW* has clarified when a failed asylum seeker can access social services support. A failed asylum seeker who claimed asylum 'at port' on arrival in the UK can access social services support. Anyone who claimed asylum after arriving in the UK ('in country') will not be able to access social services support unless they can show they need support to avoid a breach of their human rights. They will be able to do this if they have made a fresh claim for asylum.

For further advice on whether an asylum seeker is entitled to assistance under the National Assistance Act 1948 or the Children Act 1989 contact ASAP.

For more information on Human Rights and the ECHR refer to ASAP fact sheet "Introduction to Human Rights".

For more information and factsheets, visit www.asaproject.org.uk
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ASAP Fact-sheets:

No 1: Asylum Support

No 2: Section 4 Support for Failed Asylum Seekers

No 3: What to Bring to the AST

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No 5: After a Negative Decision at the AST

No 6: Section 9 Withdrawal of Support for Failed Asylum Seeker Families

No 7: Introduction to Community Care

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No 9: The European Convention on Human Rights and The Human Rights Act 1998

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No 11: Section 4 Breach of Conditions

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