

# SAFEGUARDING AND SUPPORT FOR PERSONS FROM ABROAD

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# SUPPORT FOR ADULTS: INTRODUCTION

**There are 4 issues:**

- **Does the PFA qualify for support under the terms of the support statute eg the Care Act 2014?**
- **If so, is the PFA ineligible, by virtue of paragraphs 1 and 4 to 7A of Schedule 3 to the Nationality, Immigration and Asylum Act 2002?**
- **If so, is the PFA restored to partial eligibility by paragraph 3 of Schedule 3?**
- **If not, is the PFA entitled to ‘packing up’ help under the Travel Assistance Regulations?**

## CENTRAL GOVERNMENT SUPPORT

- **PFA who are destitute and who apply for LTR under the Refugee Convention/Article 3 ECHR are eligible for accommodation and support under Part VI of the Immigration Act 1999, together with their dependants.**
- **If their claim fails, but they cannot be expected to leave the UK, and remain destitute, they qualify for accommodation under section 4 of the Immigration Act 1999.**
- **There are large scale changes pending in the Immigration Act 2016.**

# LOCAL AUTHORITY SUPPORT UNDER THE CARE ACT 2014

- **Section 21 of the Care Act 2014 excludes the provision of care and support for persons subject to immigration control, where their needs, or future needs, have arisen solely because of destitution.**
- **An applicant for international protection, and a failed applicant for international protection for whom it remains necessary to make provision to avoid a breach of a person's ECHR/EU rights, will qualify for accommodation and support under the Care Act 2014, rather than from the Secretary of State under the Immigration and Asylum Act 1999, when he is destitute and has an eligible need for the sort of care that is normally provided in a home (whether ordinary or specialised) or that would be effectively useless if he had no home: *R (SL) v Westminster CC* [2013] UKSC 27, *R (SG) v Haringey LBC* [2015] EWHC 2579, [2017] EWCa Civ 332.**

# SCHEDULE 3 TO THE NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002

- **Schedule 3 to the 2002 Act prohibits local authorities providing support or assistance under the Care Act 2014, and a raft of other social welfare enactments, in the case of adults who fall within a defined class of persons from abroad.**
- **That prohibition is dis-applied insofar as it is necessary to make provision in order to avoid a breach of a person's ECHR/EU rights.**
- **It will be necessary to make provision in order to avoid a breach of a person's ECHR rights when, unless provision is made, the person concerned will suffer to an inhuman or degrading extent and the person cannot reasonably be expected to alleviate their suffering by returning to their country of origin.**
- **It will be necessary to make provision in order to avoid a breach of a person's EU rights when the person concerned is lawfully resident in the UK in the exercise of EU Treaty rights e.g. as a worker or a person with the permanent right of residence, or a family member.**
- **A local authority always has the power to take interim protective steps to prevent inhuman and degrading suffering.**

## QUESTIONS

- **A disabled asylum-seeker applies for accommodation and support under the Care Act 2014. How do you assess whether he is entitled?**
- **A failed asylum-seeker applies for accommodation and support under the Care Act 2014. How do you assess whether he is entitled?**
- **An asylum-seeker is released from treatment under section 3 of the Mental Health Act 1983 and is in need of after-care services. Is he eligible and, if so, what is the test? Would it make any difference if the patient was unlawfully present in the UK?**

## QUESTIONS

- **How may a local authority assess, lawfully, whether it is necessary to provide accommodation and support under the Care Act 2014, to avoid a breach of a person's ECHR rights under paragraph 3 of Schedule 3 to the Nationality, Immigration and Asylum Act 2002?**
- **How may a local authority assess, lawfully, whether it is necessary to provide accommodation and support under the Care Act 2014, to avoid a breach of a person's EU rights under paragraph 3 of Schedule 3 to the Nationality, Immigration and Asylum Act 2002?**

# CHILDREN

- **Unaccompanied asylum-seeking children are accommodated under section 20 of the Children Act 1989.**
- **Families including children are accommodated under Part VI of the Immigration and Asylum Act 1999 (but local authorities may need to provide supplementary services under section 17 of the Children Act 1989 if any of the children are a ‘child in need’ in the usual understanding of that expression.**
- **A former relevant child, who is a foreign national, applies for accommodation, support and help with education. Is he entitled if he is (a) an applicant for international protection; (ii) a failed applicant for international protection who has made further submissions?**

## QUESTIONS

- **An unaccompanied child, who a foreign national but not an asylum-seeker, applies for accommodation and support. Are they entitled if so on what basis?**
- **Are the duties owed to foreign looked-after children any different than those owed to British citizen children? What about Zambrano children?**

# SAFEGUARDING

- The process duties are the same.
- It is hard to imagine how it could be lawful to provide lesser protection to a PFA, irrespective of their immigration status, having regard to paragraph 3 of Schedule 3 to the Nationality, Immigration and Asylum Act 2002.

# Thank you for listening

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