The introduction of the new support arrangements

It had originally been intended that all of the components of the new system of asylum support would be introduced at the same time, in April 2000—that from this date the majority of asylum seekers would be taken outside the scope of both welfare benefits and Social Services assistance and would instead need to look to support administered by a new Home Office agency—the National Asylum Support Service (NASS).

However, whilst the benefit regulations were amended from 3 April 2000, changes to the role that many local authorities would play in the new system had already been made towards the end of 1999. In addition it was decided at the eleventh hour that NASS would not in fact take responsibility for all destitute asylum seekers from April 2000, but would instead be phased in.

In consequence we are currently left with a confused scenario—rather than one support system, we find some asylum seekers reliant on welfare benefits, others needing to access support from their local authority, and still others the responsibility of NASS.

Local Authority Support

Before December 1999, if an asylum seeker had not been able to access welfare benefits, consideration would usually have been given to possible entitlement to support from Social Services under either the National Assistance Act 1948 (NAA), or the Children Act 1989 (CA) (and equivalent legislation in Scotland/N.Ireland).

However, on the Immigration & Asylum Act receiving Royal Assent, the Government acted immediately to reduce pressure on local authorities in London and the South East. As a result, under interim measures introduced in England and Wales on 6 December 1999—

Section 21 of the NAA was amended in order that those “subject to immigration control” would no longer be eligible for assistance if their need for care and attention had arisen solely as a result of destitution or its physical effects.

Section 17 of the CA was amended in order that a family would not be eligible for assistance if they could access support under the new asylum support provisions.

In place of their former duties under the NAA and CA, local authorities have instead been given a statutory basis for supporting destitute asylum seekers under interim provisions in advance of the (full) implementation of the NASS support scheme. In addition, where accommodation is to be provided as part of the support package there is scope for dispersal—the allocation of accommodation, on a no-choice basis, in cluster areas around the country.

NB—the above amendments to the NAA/CA were made to the equivalent legislation in Scotland/N.Ireland to have effect from NASS’s introduction there.
Can Asylum Seekers still claim benefits?  
– new rules from 3 April 2000

Section 115 of the Immigration and Asylum Act 1999, in force from 3 April 2000, effectively excludes the majority of those “subject to immigration control” from entitlement to any of the following benefits –

- Income Support
- Income-based JSA
- Housing Benefit
- Council Tax Benefit
- Social Fund Payments
- Child Benefit
- Disability Living Allowance
- Attendance Allowance
- Invalid Care Allowance
- Severe Disablement Allowance
- Working Families’ Tax Credit
- Disabled Person’s Tax Credit

However, from the same date, the Social Security (Immigration and Asylum) Consequential Amendment Regulations 2000 (SI 636/2000), prescribe exceptions to the general welfare benefit exclusion.

As a result, certain people who are “subject to immigration control” are nevertheless still able to access welfare benefits. We focus here then on those asylum seekers who remain within the scope of the benefit system.

**Income Support, income based JSA, Housing Benefit, Council Tax Benefit & the Social Fund**

The following asylum seekers are still able to access the above benefits (until such time as their asylum application is recorded by the Secretary of State as decided; or an appeal that had been submitted before, or was pending at, 5 February 1996, is determined; or that the asylum application is abandoned) –

- a person who submitted an “on-arrival” asylum application, on or before 2 April 2000.

This applies irrespective of whether the person was in receipt of benefit at the point of change or, for someone who has established entitlement, whether they subsequently break their claim.

- a person who applied for asylum within 3 months of the date of an “upheaval” declaration by the Home Secretary that their country "is subject to such a fundamental change in circumstances that he would not normally order the return of a person to that country".

However this provision will only assist nationals of Zaire and Sierra Leone who claimed asylum within three months of 16 May and 1 July 1997 respectively when these countries were declared to have gone through an “upheaval". These were the only two declarations ever made – the provision in the benefit regulations that allowed the Home Secretary to make upheaval declarations has now been removed.

- an asylum seeker who is “entitled to, or is receiving” Income Support, Housing Benefit or Council Tax Benefit, in consequence of the transitional protection afforded to those who were in receipt of benefit immediately before 5 February 1996.

NB – A person who is “subject to immigration control” can also be entitled to the above benefits if they are lawfully present in the UK and a national of a country that has ratified either the European Convention on Social and Medical Assistance, or the Social Charter (ie – a national of Cyprus, Czech Republic, Hungary, Malta, Poland, Slovakia, Turkey).

However, “lawfully present” is not defined in the benefit regulations. As a result it is possible that case law may need to be established to determine whether asylum seekers, for example, are "lawfully present" and therefore able to take advantage of this provision. We will provide an analysis of this issue in a future briefing.

**Disability Living Allowance, Attendance Allowance, Invalid Care Allowance, Severe Disablement Allowance, Child Benefit, Working Families’ & Disabled Person’s Tax Credits, & the Social Fund**

The following asylum seekers are still able to access the above benefits –

- a person who is a family member of a European Economic Area (EEA) national.

NB – the EEA comprises the EU + Iceland, Liechtenstein and Norway.

- a national of Algeria, Morocco, Slovenia, Tunisia or Turkey, who is lawfully working in Great Britain (and, in certain circumstances, who has formerly worked in GB).

In addition a person who is a family member of the above can also access this range of benefits in their own right.

- those who are covered by a reciprocal agreement.

However this provision is of limited use for the majority of asylum seekers – we would not ordinarily expect people to seek refuge from many of the countries with which the UK has reciprocal agreements (eg Australia and the USA), and each agreement only covers certain benefits – for example, the agreement between the UK and the countries of the former Yugoslavia only covers Child Benefit of the above benefits.

- a person who is entitled to or is receiving benefit in consequence of the transitional protection afforded to those who were in receipt of that benefit immediately before 5 February 1996 (7 October 1996 for Child Benefit).

Entitlement to benefit under this heading will end however when –

- the award of benefit is revised or superseded;
- the person is an asylum seeker, the asylum application is recorded by the Secretary of State as decided, or is abandoned.

**Asylum Support Briefings**

Asylum support briefings are available from Lasa, funded by Comic Relief and produced by Lasa. The address is Universal House, 88–94 Wentworth St, London E1 7SA. The telephone number is 020 7247 4725 and the email is lasa@lasa.org.uk. The address for subscriptions is 3rd Column, London E17. The telephone number for subscriptions is 020 7247 3903. The address for distribution/admin is 020 7377 2748. The subscription form can be found on the Lasa website at www.lasa.org.uk.