Welcome

... to the second issue of Lasa’s Asylum Support Briefing

In issue one we reported the delay in the full introduction of the National Asylum Support Service (NASS) and the consequent continued reliance of the majority of destitute asylum seekers on local authority support under the “interim arrangements”.

However, we are now able to provide an update on progress with the rollout of NASS, the Government having made the announcement that we had been anticipating as issue one went to print – that NASS will be extended to take responsibility for many more destitute asylum seekers across the country.

In addition in this issue we –

❖ provide an overview of the main rules governing eligibility for asylum support; and

❖ take the opportunity to provide an update on the “break in claim” issue – legal challenges against the DSS view that transitional protection is lost with a benefit award coming to an end.

Please feel free to photocopy the briefings and distribute to colleagues and other agencies.

NASS Rolls Out...

The Home Office has, at long last, announced the rollout across the country of the National Asylum Support Service (NASS) – the new Home Office agency responsible for the support of destitute asylum seekers.

Whilst NASS took responsibility, from 3 April 2000, for new on-arrival asylum seekers (and, in addition, in Scotland & Northern Ireland, for dis-benefited* and new in-country applicants) it is being phased in for other destitute asylum seekers across the UK as follows –

<table>
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<th>In</th>
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<tr>
<td>Those who claim asylum in-country ...</td>
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<tr>
<td>Kent</td>
<td>17 April</td>
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<tr>
<td>London</td>
<td>24 July</td>
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<tr>
<td>Yorkshire &amp; Humberside, the North East and Wales</td>
<td>31 July</td>
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<td>East Midlands, Eastern region, the North West, South West &amp; South Central</td>
<td>14 August</td>
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<tr>
<td>West Midlands and Sussex</td>
<td>29 August</td>
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<td>Those who are dis-benefited*...</td>
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<tr>
<td>Kent</td>
<td>17 April</td>
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<tr>
<td>Elsewhere</td>
<td>25 Sept</td>
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* ie – where the asylum applicant receives a negative Home Office decision, and as a result is no longer eligible for Income Support, for example.

... as the interim scheme rolls on

Those destitute asylum seekers who had already accessed support from a local authority (for example, under the interim asylum support scheme in England and Wales) ahead of the rollout of NASS, will continue to be so supported.

The Government has given no indication of any plans to transfer such people into the NASS scheme and, as we reported in issue one of this briefing, the interim scheme can run until April 2002.

Who is “subject to immigration control”?

The mechanism used to exclude the majority of asylum seekers from the scope of welfare benefits and assistance from Social Services Departments under section 21 of the National Assistance Act (and equivalent legislation in Scotland & Northern Ireland) will also impact on many others coming to the UK from abroad.

Indeed the legislation has been framed in such a way as to exclude from such support the majority of those “subject to immigration control” as defined in section 115(9) of the Immigration & Asylum Act 1999 – ie a person who is not a national of a European Economic Area State (ie the EU + Iceland, Liechtenstein and Norway) who –

❖ requires leave to enter or remain in the UK but does not have it

❖ has leave to enter or remain in the UK which is subject to a condition that s/he does not have recourse to public funds

❖ is a “sponsored person” – ie has leave to enter or remain in the UK given as a result of a maintenance undertaking (a written undertaking given by another person in pursuance of the immigration rules to be responsible for that person’s maintenance & accommodation)

❖ continues to have leave to enter or remain in the UK only as a result of an appeal against a decision to vary, or to refuse to vary any limited leave.
Who is entitled to Asylum Support?
– an overview of the main conditions governing entitlement

A person is eligible for asylum support if –

- they are an asylum seeker, or the dependant of an asylum seeker

“Asylum seeker” includes those appealing against an asylum refusal to, for example, the Special Adjudicator, Immigration Appeal Tribunal, Court of Appeal and House of Lords (although does not extend to those pursuing a judicial review of an unfavourable decision).

Where the asylum seeker’s household includes a child under 18, they will continue to be treated as an asylum seeker, and therefore potentially entitled to support, even after they have exhausted their appeal rights for as long as the child remains under 18 and the child and the adult remain in the UK.

With regard to the definition of “dependant”, this will include (in addition to, for example, spouses and children under 18) those –

- aged 18 or over who need care and attention from the asylum seeker or a member of the household by reason of a disability, and who are a member of the asylum seeker’s, or their spouse’s, close family or have been living with the asylum seeker as part of his/her household since birth, or for at least 6 of the last 12 months; or
- who have made a claim for leave to enter or remain in the UK, or for variation of any such leave, which is under consideration on the basis that they are dependent on the asylum seeker

However, a person who is the unmarried heterosexual partner of the support applicant will only be treated as their dependant if they had been living with him/her as a member of an unmarried couple for at least two of the last three years.

- they are aged 18 or over

Unaccompanied minors can instead access support from local authorities under s17 of the Children Act, and equivalent legislation in Scotland and Northern Ireland.

- they are not entitled to Income Support

However, entitlement to other benefits, eg Disability Living Allowance – see issue one of this briefing for more details – does not preclude a person accessing asylum support.

- they and any dependants appear to be destitute, or likely to become destitute within 14 days

ie they –

- do not have adequate accommodation or any means of obtaining it; and/or
- can not meet their other “essential living needs.”

A person will however be excluded from support if they are intentionally destitute – i.e. the destitution arises as a result of an act or omission deliberately done or made by the asylum seeker, or any dependant, without reasonable excuse, while in the UK.

Benefit case-law update
– the “break-in-claim” issue

Advisers may be aware that, when the rules governing benefit entitlement for asylum seekers were amended in 1996, those who were in receipt of benefit at the point of change were given transitional protection from the new, more onerous rules – see issue one of this briefing for more information.

However, the DSS took the view that this transitional protection is lost if the person either breaks their claim or, in the case of a fixed term award of benefit (for example, Disability Living Allowance), needs to renew their claim on the expiry of the fixed term. Unfortunately, the Social Security Commissioners and the higher courts have, until now, usually concurred with this interpretation.

The debate however rages on. As we go to press, Commissioner Mesher has given leave to appeal to the Court of Appeal in case reference CIS/6258/1999 – a case which will impact directly on IS, HB and CTB. In addition, whilst the Court of Appeal in 1998 (in ex parte B) found against a claimant whose award of DLA had expired, a further case is currently being pursued to the House of Lords.

In consequence, advisers should be prepared to continue to assist in appealing unfavourable decisions – should the Court of Appeal and/or House of Lords find in favour of the appellants in these cases, those who have kept their claims alive by appealing unfavourable decisions will be able to benefit as a result of the further clarification of the law.

www.rightsnet.org.uk
the welfare benefits website for advice workers