

**EXPLANATORY MEMORANDUM TO THE  
ASYLUM SUPPORT (AMENDMENT) REGULATIONS 2005**

**2005 No.11**

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

**2. Description**

2.1 These Regulations, which amend the Asylum Support Regulations (SI 2000/704) (“the 2000 Regulations”), together with the Asylum Seekers (Reception Conditions) Regulations 2005 (which it is intended will be laid and come into force at the same time as these Regulations ) and the inclusion of a new Part 11B in the Immigration Rules (HC 395) make the provision which is necessary for the implementation of Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (OJ L31 6.2.03 p31) (“the Reception Conditions Directive”). Many parts of the Reception Conditions Directive do not require implementation as consistent provision is already made in existing domestic legislation.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

**4. Legislative Background**

4.1 The Treaty of Amsterdam (1997) committed Member States to a range of measures designed to establish minimum standards for asylum procedures and policies across the Union by 1 May 2004 as a first step towards a common European asylum system.

4.2 The Reception Conditions Directive is a key element of this package, laying down minimum standards for the reception of applicants for asylum. This is intended to lessen discrepancies between Member States’ support for applicants, and places certain obligations on Member States towards applicants and it also places certain obligations on applicants themselves. Provisions include minimum standards on information, documentation, education, healthcare, accommodation, withdrawal of reception conditions as well as extra provisions for children and vulnerable persons.

4.3 The Directive is being implemented both by the introduction of new legislation as well as reliance on existing legislation. Much of the Directive is concerned with the provision of housing and other living needs for asylum seekers whilst their claims are outstanding. Provision is already made in part VI of the Asylum and Immigration Act 1999 (“the 1999 Act) for the provision of accommodation and essential living needs for asylum seekers and their dependants. The 2000 Regulations are made under that Act and supplement those provisions. These Regulations amend the 2000 Regulations so that they are consistent with the Directive and make some further additional provision in those areas permitted by the Directive.

- 4.4 The amendments will apply to all asylum seekers as defined by Part VI of the 1999 Act, which is a wider group than that covered by the Directive. By contrast the other measures implementing the Directive will apply to asylum seekers as defined by the Directive only.
- 4.5 The Secretary of State has been designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to immigration, asylum, refugees and displaced persons. These Regulations are made using a mixture of existing powers and powers under this Act.
- 4.6 The Directive cleared Parliamentary scrutiny in June 2002.
- 4.7 A transposition note has been prepared and is annexed hereto.

## **5. Extent**

- 5.1 This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

Not applicable

## **7. Policy background**

- 7.1 The Directive sets a deadline of 6 February 2005 for member states to take all necessary steps to comply with its provisions. Much of the Directive does not require implementation because equivalent statutory provision is already made. Even in those areas where there is not, many of the Directive's provisions are already applied in practice, although they must now be given statutory effect. In policy and operational terms therefore, it is not anticipated that implementation will have a significant impact.
- 7.2 The UK's plans for implementation of the Directive were subject to a full twelve week public consultation exercise. This was made available on the Home Office website, and was raised at various stakeholder meetings with interested parties. We received a broad range of responses to this consultation. These broadly supported our view on implementation of the Directive, although there were some areas where practical questions were raised. A number of responses concerned wider policy issues not strictly related to this exercise. A detailed summary is available on the Home Office website.

## **8. Impact**

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

## **9. Contact**

Andrew Jackson at the Home Office Tel: 020 8760 8767 or e-mail: [andrew.jackson@homeoffice.gsi.gov.uk](mailto:andrew.jackson@homeoffice.gsi.gov.uk) can answer any queries regarding the instrument.

**TRANSPOSITION NOTE PREPARED BY THE HOME OFFICE**

<b>Directive</b>
<p>Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (“<b>the Directive</b>”).</p> <p>Many elements of the Directive do not require implementation as equivalent provision is already made. However where implementation is required this has been done by way of three instruments:</p> <p>(i) a new part 11B in the Immigration Rules (HC 395) (“<b>part 11B</b>” and a reference to a rule in this note is a reference to a rule in part 11B));</p> <p>(ii) the Asylum Support (Amendment) Regulations 2005 (“<b>the Amendment Regulations</b>”), which amend the Asylum Support Regulations 2000 (SI 704/2000) (“<b>the Asylum Support Regulations</b>”); and,</p> <p>(iii) The Asylum Seekers (Reception Conditions) Regulations 2005 (“<b>the Reception Conditions Regulations</b>”). Part 11B takes effect on 4th February 2005. The Amendment Regulations and the Reception Conditions Regulations both come into force on 5th February 2005.</p>

<b>Article</b>	<b>Objectives</b>	<b>Implementation</b>	<b>Responsibility</b>
1	Sets out the purpose of the Directive (to lay down minimum standards for the reception of asylum seekers in member states). The individual articles (detailed below) set out the specific obligations with which Member States must comply.	No action required	Throughout the Directive, the Secretary of State for the Home Department is responsible unless stated otherwise.
2	Defines terms used throughout the Directive.	Where necessary, in the legislation implementing the Directive, these terms have been defined.	
3 and 4	Describe the scope of the Directive and provide that the Directive establishes minimum standards – Member States may choose to go further than the Directive provides. The Directive applies to third country nationals who make	Where equivalent provision is already made which fulfils the requirements of the Directive, or go further than the provisions of the Directive, this will be retained.	

Article	Objectives	Implementation	Responsibility
	<p>a claim for asylum. An asylum claim is one made under the Refugee Convention only.</p>		
5	<p>Member states must tell asylum seekers in writing and in a language they may reasonably be supposed to understand about available reception conditions, obligations with which they (the asylum seekers) must comply and organisations that may be able to provide them with legal and other assistance. This information must be provided within a reasonable time of their having made their claim for asylum and, in any event, within 15 days.</p>	<p>Part 11B (rule 358) requires the Secretary of State to inform asylum applicants within a reasonable time, which must not exceed fifteen days after their claim for asylum has been recorded by him, of the benefits and services that they may be eligible to receive and of the rules and procedures with which they must comply relating to them. It also requires the Secretary of State to provide information about non-governmental organisations and legal advisers who may also be able to help asylum applicants or provide them with relevant information.</p> <p>Rule 358A requires the Secretary of State to provide this information in writing and, to the extent possible, in a language that asylum applicants may reasonably be supposed to understand.</p> <p>Part 11 of the Immigration Rules refers to ‘asylum applicants’ and defines an asylum applicant as a person who has made a claim for asylum under the Refugee Convention. Part 11B applies to those asylum applicants providing that they are not nationals of a Member State.</p>	
6	<p>Member States shall ensure that, within 3 days of an application being lodged with the competent authority, the applicant is provided with a document issued in his own name certifying his status as an asylum seeker or testifying that he is allowed to stay in the territory of the Member State while his application is pending or being examined.</p> <p>The document need not certify an asylum seeker’s identity.</p>	<p>Part 11B (rule 359) requires the Secretary of State to issue an asylum applicant with a document in his own name which certifies his status as an asylum applicant or testifies that he is allowed to remain in the United Kingdom while his asylum application is pending. However this document need not be provided if the asylum applicant is in immigration detention (rule 359A).</p> <p>Rule 359B confirms that the document issued is not evidence of the asylum applicant’s identity.</p> <p>Rule 359C provides that in specific cases asylum applicants may be provided with equivalent evidence to that required</p>	

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		<p>under rule 359. This might be, for example, in instances when it is only possible to issue a time-limited document.</p> <p>This places in the Immigration Rules the existing practise of providing asylum seekers with an Application Registration Card.</p>	
7	<p>Duty to allow applicants freedom of movement. This may be restricted for reasons of public interest, public order or quick processing and effective monitoring of applications.</p> <p>Member States may make provision of support subject to residence in a specific place;</p> <p>Applicants are required to inform the authorities of any change of address.</p>	<p>There is no bar on asylum seekers currently moving freely about the United Kingdom (unless they are otherwise detained) so this provision has not been specifically implemented.</p> <p>Under section 95(9) of the Immigration and Asylum Act 1999 (“the 1999 Act”) asylum support may be provided subject to conditions. A condition commonly imposed is that an asylum seeker, if he is provided with accommodation, resides in that accommodation. If he does not then he risks his asylum support being terminated under regulation 20 of the Asylum Support Regulations (and see further notes to Article 16 below).</p> <p>Rule 358B requires an asylum applicant to notify the authorities of a change of address without delay.</p>	
8	<p>Member States shall take appropriate measures to maintain as far as possible family unity as present within their territory, if applicants are provided with housing by the Member State concerned. Such measures shall be implemented with the asylum seeker's agreement.</p>	<p>In respect of minor children provision is already made in the 1999 Act (1). Further provision is made in the Reception Conditions Regulations (2):</p> <ol style="list-style-type: none"> <li>1. There is an existing obligation (section 122 of the 1999 Act) on the Secretary of State to offer adequate accommodation to an asylum seeker who he thinks is eligible for asylum support and whose household includes a dependant child. That accommodation must be offered for the child as part of the asylum seeker’s household. The definition of both dependant child and asylum seeker for the purposes of this section is wider than that required by the Directive.</li> </ol>	

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		<p>2. In addition (but only in cases where section 122 does not apply), regulation 3 of the Reception Condition Regulations will require the Secretary of State to have regard to family unity when he is providing accommodation for asylum seekers under sections 95 and 98 of the 1999 Act and he will have to ensure, in so far as it is reasonably practicable to do so, and providing that they agree, that family members are accommodated together. This provision will apply to asylum seekers and family members as defined by the Directive and both are defined for the purposes of the Reception Conditions Regulations in regulation 2.</p>	
9	<p>Member States may require medical screening for applicants on public health grounds.</p>	<p>Under the Immigration Act 1971 a person seeking leave to enter or remain may be referred for a medical examination. Medical screening is also offered to applicants at induction centres but is not compulsory.</p>	
10	<p>Member States shall grant access to the education system under similar conditions as nationals until expulsion measures are enforced.</p> <p>Access shall not be postponed for more than three months from the date of application for asylum.</p>	<p>Under the Education Act 1996 all local education authorities have a duty to provide education to those of compulsory school ages in their area. Children of compulsory school age in the United Kingdom as part of an asylum seeking family are entitled to attend school.</p> <p>Similar provisions exist for Scotland under a variety of legislation. These are the Education (Scotland) Act 1980, Mental Health (Scotland) Act 1984, Children (Scotland) Act 1995 (Sections 16, 17, 22, 23 and 52), Regulation of Care (Scotland) Act 2001, Standards in Scotland's Schools etc Act 2000 all. Specifically: Article 18.1 - S22 Children (Scotland) Act 1995, Article 18.2 - S23, Children (Scotland) Act 1995.</p> <p>In Northern Ireland, education is a transferred matter and statutory duties are provide for under the Education and</p>	<p>Secretary of State for Education</p> <p>Minister for Education and Young People</p> <p>Secretary of State for Northern Ireland</p>

Article	Objectives	Implementation	Responsibility
		Libraries (Northern Ireland) Order 1986.	
11	<p>Member States shall determine a time when the applicant shall not have access to the labour market. If after one year a first decision has not been made, Member States shall decide the conditions to grant access to the labour market</p> <p>Access must continue until a final decision on the claim.</p>	<p>Part 11B (rules 360 and 360A) provides that an asylum applicant may apply for permission to work if a decision at first instance has not been made within one year of his application for asylum having been recorded by the Secretary of State. Permission will not include permission to become self-employed or to engage in a business or professional activity. The Secretary of State will only consider such an application if, in his opinion, any delay is not attributable to the asylum applicant himself. Permission granted will apply until the applicant's claim has been fully determined (but not beyond that time).</p>	
12	<p>Member States may allow access to vocational training</p>	<p>We do not intend to introduce new measures in this area. However any applicants who have access to the labour market under rule 360 will be able to participate in vocational training funded by their employer in the usual way.</p> <p>In Scotland, asylum seekers may have access to part-time vocational courses, subject to the capacity of the college.</p>	<p>Secretary of State for Work and Pensions</p> <p>Minister for Enterprise and Life Long Learning</p>
13	<p>Member States shall ensure that material reception conditions are available to applicants when they make their application for asylum.</p> <p>Provisions on material reception conditions shall ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence.</p> <p>This may be subject to the condition that applicants do not have sufficient means to have a standard of living adequate for their health and to enable their subsistence.</p> <p>This may be provided in</p>	<p>Section 95 of the 1999 Act enables the Secretary of State to provide support to destitute asylum seekers and their dependants. A person is destitute if he does not have adequate accommodation or the means of obtaining it or, he has adequate accommodation but he cannot meet his other essential living needs. Whilst the Secretary of State is considering, and until he does, an application for support under section 95 he may provide temporary support under section 98 to an asylum seeker and his dependants who appear to be destitute. Further provision is made as to the meaning of destitution, adequate accommodation and essential living needs in the Asylum Support Regulations. These regulations also set out the sums that will, as a general rule, be provided for essential living expenses.</p>	

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	<p>kind, or in the form of financial allowances or vouchers or in a combination of these provisions.</p>	<p>Section 96 makes provision for how support under section 95 may be provided and in particular, this may be by the provision of accommodation appearing to the Secretary of State to be adequate for the needs of the supported person and his dependants and by provision of the supported person's essential living needs.</p> <p>Only one element of this part of Article 13 is therefore being specifically implemented. Article 13 requires Member States to ensure that material reception conditions are available. Sections 95 and 98 provide only that the Secretary of State may provide or arrange for the provision of support. In order to implement this provision, regulation 5 of the Reception Conditions Regulations will require the Secretary of State to offer the provision of support to an asylum seeker under section 95 if he (or his family member) makes an application for support under that section and the Secretary of State thinks that he is eligible. Likewise provision of support must be offered under section 98 if the Secretary of State thinks that the asylum seeker (or his family member) is eligible for it.</p>	
13 (cont)	<p>Member States shall ensure that that standard of living is met in the specific situation of persons who have special needs, in accordance with Article 17, as well as in relation to the situation of persons who are in detention.</p>	<p>Local authorities have a duty to provide residential accommodation to asylum seekers [over 18] in their area who by reason of age, illness, disability or any other circumstances are in need of care and attention which is not otherwise available to them, providing that need does not arise solely because the asylum seeker is destitute or because of the physical or anticipated physical effects of his being destitute. In England and Wales this is under section 21 of the National Assistance Act 1948; in Scotland under section 12 of the Social Work (Scotland) Act 1968; and in Northern Ireland under the Health and Personal Social Services Order 1972.</p> <p>Likewise local authorities have duties to</p>	

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		<p>provide residential accommodation to expectant and nursing mothers who are in need of care and attention which is not otherwise available to them.</p> <p>Local authorities have duties to provide services (which includes accommodation) to children in their area under the age of 18. Unaccompanied asylum seeking children are looked after by local authorities (these duties are excluded in respect of children in families who are receiving support under section 95 of the 1999 Act).</p> <p>The Detention Centre Rules 2001 (SI 2001/238) make provision for the regulation and management of detention centres and include (inter alia) provisions about families and minors (including provision that families will be provided with accommodation suitable to their need); the provision of warm and adequate clothing if needed; the provision of wholesome, nutritious, reasonably varied and sufficient food which meets (amongst others) dietary and medical needs; the certification by the Secretary of State that accommodation is of a specified standard (relating to size, lighting, ventilation etc); and the provision of personal care items and maintenance of standards of hygiene</p>	
13 (cont)	<p>Member States may make the provision of some or all material reception conditions and healthcare subject to the condition that applicants do not have sufficient means to have a standard of living adequate for their health and to enable their subsistence.</p> <p>Member States may require applicants to cover or contribute to the cost of the material reception conditions and of the health care provided for in this Directive if the applicants</p>	<p>Asylum support under the 1999 Act is available only to destitute asylum seekers and their dependants (see further below). A person is destitute if he does not have adequate accommodation or the means of obtaining it, or whether or not he does, he cannot meet his other essential living needs.</p> <p>Under regulation 15 of the Asylum Support Regulations asylum seekers who are in receipt of asylum support are required to inform the Secretary of State of a relevant change in their circumstances which includes (inter alia) if they receive or gain access to any money or become employed.</p>	

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	<p>have sufficient resources, for example if they have been working for a reasonable period of time.</p> <p>If it transpires that an applicant had sufficient means to cover material reception conditions and health care at the time when these basic needs were being covered, Member States may ask the asylum seeker for a refund.</p>	<p>All asylum seekers have access to free primary and secondary healthcare, whether they are destitute or not (and see further below).</p> <p>Regulation 4 of the Amendment Regulations inserts a new regulation 17A into the Asylum Support Regulations. Under this new regulation the Secretary of State may request a refund up to the value of all asylum support (living expenses and the value of accommodation) provided for a supported person or his dependants if it transpires that at any time during which support was being provided he and/or his dependants were not destitute. If necessary, an unpaid request may be enforced as if it were a debt due to the Secretary of State.</p> <p>There is also existing provision (regulation 17 of the Asylum Support Regulations) for the Secretary of State to recover a sum, equivalent to asylum support provided, from a person if assets that previously were not, become realisable.</p>	
14	<p>Where housing is provided it may take a number of forms suitable for applicants, and ensuring protection of family life, communication and safety.</p> <p>Transfers between accommodation should only take place where necessary.</p>	<p>Section 96 of the 1999 Act sets out the manner in which the Secretary of State may provide support for destitute asylum seekers and their dependants. This includes adequate accommodation, or provision for essential living needs (including meals and personal care items), or both.</p> <p>NASS has a model contract for use with housing providers. This states that accommodation must be fit for habitation as defined in the Housing Act 1985 or above the tolerable standard as defined in the Housing (Scotland) Act 1987 and meet all regulatory standards.</p> <p>Powers to establish accommodation centres were included in section 16 of the Nationality, Immigration and Asylum Act 2002. Relevant provisions will be required when these are established.</p>	

Article	Objectives	Implementation	Responsibility
14 (cont)	Member States shall ensure, if appropriate, that minor children of applicants or applicants who are minors are lodged with their parents or with the adult family member responsible for them whether by law or by custom.	There is existing provision at section 122 of the 1999 Act (and see notes to Article 8 above).	
15	Necessary health care to be provided. At least emergency care and essential treatment of illness. Those with special needs must be provided with necessary medical or other assistance.	<p>An asylum seeker is able to access NHS treatment without charge for as long as his application (including applicable appeals) is under consideration.</p> <p>Asylum seekers are exempt from charges in England under the NHS (Charges to Overseas Visitors) Regulations 1989 , which cover secondary care, for as long as an asylum application is being considered. Similar provision is made in Scotland under the NHS(Charges to Overseas Visitors)(Scotland) Regulations 1989.</p> <p>Asylum seekers who are being supported by NASS will be issued with an HC2 certificate for full help with health costs, including free NHS prescriptions.</p> <p>Decisions as to what health services should be provided for an individual whether adult or minor, including mental health provision and treatment for victims of torture and violence, is a matter of clinical judgement in each individual case, made within the policies of the particular NHS or Primary Care trust (the latter “PCTs”) in the absence of specific directions from the Secretary of State for Health under section 17 of the National Health Service Act 1977 (“the 1977 Act”). (and section 2(5) of the National Health Service (Scotland) Act 1978).</p> <p>Under section 16C(1) of the 1977 Act, PCTs have a duty to secure the provision of primary medical services within their area. (section 2C(1) of the NHS (Scotland) Act 1978)</p>	<p>Secretary of State for Health</p> <p>Minister for Health and Community Care in Scotland</p>

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		<p>In Scotland, general NHS provisions which make care available to residents of a NHS Board apply.</p>	
16	<p>Member States may reduce or withdraw reception conditions in the following cases:</p> <ul style="list-style-type: none"> <li>- (a) where an asylum seeker abandons the place of residence determined by the competent authority without informing it or, if requested, without permission, or</li> <li>- does not comply with reporting duties or with requests to provide information or to appear for personal interviews concerning the asylum procedure during a reasonable period laid down in national law, or</li> <li>- has already lodged an application in the same Member State.</li> </ul> <p>When the applicant is traced or voluntarily reports to the competent authority, a duly motivated decision, based on the reasons for the disappearance, shall be taken on the reinstatement of the grant of some or all of the reception conditions;</p> <p>(and under) Article 16(3) – Member States may determine sanctions applicable to serious breaching of the rules of the accommodation centres as well as to seriously violent behaviour.</p>	<p>The Asylum Support Regulations make provision for when support provided under section 95 may be suspended or discontinued and the circumstances in which further or renewed applications may be considered. Regulation 6 of the Amendment Regulations substitutes a new regulation 20 to reflect the provisions of the Directive. These changes will apply to all supported asylum seekers, not just those covered by the Directive.</p> <p>New regulation 20(1)(a)-(k) sets out the circumstances in which support may be suspended or discontinued. These circumstances reflect those at Article 16(1)(a) and (b) and Article 16(3) – whereby the sanction will be the discontinuation or suspension of support.</p> <p>By virtue of regulation 20A (inserted by regulation 7 of the Amendment Regulations) those grounds will also apply to support being provided under section 98 of the 1999 Act.</p> <p>In addition regulation 3 of the Asylum Support Regulations has been amended (by regulation 3 of the Amendment Regulations) to prescribe the time within which an applicant for support must respond to further enquiries made by the Secretary of State. Whilst the Secretary of State could already refuse to entertain an application which did not include sufficient information or if an applicant did not respond to his enquiries, no time limits within which a person needed to comply were prescribed.</p> <p>New Regulation 20(5) provides that in those cases where support has been withdrawn because an asylum seeker has abandoned his authorised address or failed to comply with reporting requirements and he voluntarily reports, a decision on reinstatement of his of</p>	

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		support, based on the reasons for his disappearance, shall be taken.	
16 (cont)	<p>Article 16(1) [cont...]</p> <p>MS may reduce or withdraw reception conditions :</p> <p>(b)Where an applicant has concealed financial resources and has therefore unduly benefited from material reception conditions.</p> <p>If it transpires that an applicant had sufficient means to cover material reception conditions and health care at the time when these basic needs were being covered, Member States may ask the asylum seeker for a refund.</p>	<p>This is a ground on which support may be discontinued or suspended under (new) regulation 20 of the amended Asylum Support Regulations. Committal of an offence under Part VI of the 1999 Act also remains a ground on which support may be terminated or discontinued. Offences under part VI include, inter alia, making false or dishonest representations with a view to obtaining support.</p> <p>In addition, regulation 4 of the Amendment Regulations inserts a new regulation 17A in the Asylum Support Regulations, under which the Secretary of State may require a supported person to refund asylum support if it transpires that at any time during which support was being provided he and/or his dependants were not destitute (and see above under note to Article 13). This provision applies to asylum support only, not healthcare.</p>	
16 (cont)	<p>Article 16(2)</p> <p>Member States may refuse conditions in cases where an asylum seeker has failed to demonstrate that the asylum claim was made as soon as reasonably practicable after arrival in that Member State.</p>	<p>Section 55(1) of the Nationality Immigration and Asylum Act 2002 prevents the Secretary of State providing support under, inter alia, sections 95 and 98 of the 1999 Act if he is not satisfied that a person has made his asylum claim as soon as reasonably practicable after his arrival in the United Kingdom. That section does not prevent the provision of support to a person whose household includes a dependant child or where support is necessary to avoid a breach of a person's rights under the European Convention on Human Rights (section 55(5)).</p>	
16 (cont)	<p>Article 16(4) and (5)</p> <p>Decisions for reduction, withdrawal or refusal of reception conditions or sanctions referred to in</p>	<p>Regulation 6(3) of the Amendment Regulations inserts a new regulation 20(3) in the Asylum Support Regulations which provides that any decision to discontinue support on the grounds in</p>	

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	<p>paragraphs 1, 2 and 3 shall be taken individually, objectively and impartially and reasons shall be given. Decisions shall be based on the particular situation of the person concerned, especially with regard to persons covered by Article 17, taking into account the principle of proportionality. Member States shall under all circumstances ensure access to emergency health care.</p> <p>Member States shall ensure that material reception conditions are not withdrawn or reduced before a negative decision is taken.</p>	<p>paragraph (1) [see above] shall be taken individually, objectively and impartially and reasons must be given. Decisions will be based on the particular circumstances of the person concerned and particular regard shall be had to whether the person concerned is a vulnerable person as described by Article 17 of the Directive.</p> <p>New regulation 20(4) (inserted by regulation 6(4) of the Amendment Regulations) provides that support shall not be discontinued before a decision has been made under regulation 20(1) (i.e. a decision as to whether support should be discontinued on one of the permissible grounds listed in paragraph (1)(a) to (k)).</p>	
17	<p>Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, in the national legislation implementing the provisions of Chapter II relating to material reception conditions and health care.</p> <p>This shall apply only to persons found to have special needs after an individual evaluation of their situation.</p>	<p>Local authorities already have duties to provide residential accommodation and associated services under the community care provisions referred to under Article 13 above. Under the the National Health Service and Community Care Act 1990 where it appears to a local authority that a person in their area may be in need of community care services (as defined) the authority must carry out an assessment of the person’s needs for those services.</p> <p>In addition regulation 4 of the Reception Conditions Regulations places a new duty on the Secretary of State to take into account the special needs of vulnerable persons (as described in that regulation) when providing support or considering whether to provide support under sections 95 or 98 of the 1999 Act. That regulation does not however oblige the Secretary of State to carry out (or arrange for one to be carried out) an individual evaluation of a person to determine</p>	

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		<p>whether he has special needs.</p> <p>Local authorities have duties towards, and may exercise powers in respect of, children in need in their areas under the Children Act 1989 (the Children (Scotland) Act 1968 and the Children (Northern Ireland) Order 1995). Before doing so they undertake assessments of children's needs in accordance with relevant statutory guidance.</p>	
18	<p>The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Directive that involve minors.</p> <p>Member States shall ensure access to rehabilitation services for minors who have been victims of any form of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment, or who have suffered from armed conflicts, and ensure that appropriate mental health care is developed and qualified counseling is provided when needed.</p>	<p>Sections 1 and 3 of the National Health Service Act 1977 provide for this care. In addition, the Children Act 1989 (or the Children (Scotland) Act 1995 and the Children (Northern Ireland) Order 1995) is relevant to some provisions of the Directive and has the best interest of the child as an underpinning principal.</p> <p>The National Service Framework for Children, published in 2004, has set out 10 standards aimed at improving the provision of health care and social services to children. Standard 9 focuses on 'The Mental Health and Psychological Well-being of Children and Young People' and makes specific reference to the mental health needs of children and young people who are seeking asylum.</p> <p>The general provision as to clinical judgement have not been included in the implementation para for Article 18 as they have been for included for the entries relating to Articles 15 and 20 although they would apply to the implementation of Article 18 in the same way</p>	<p>In most cases this will be the Secretary of State for the Home Department, however in relation to specific articles this will be the relevant Secretary of State or local authority for the purposes of those provisions.</p>
19	<p>Member States shall as soon as possible take measures to ensure the necessary representation of unaccompanied minors by legal guardianship or, where necessary, representation by an organisation which is responsible for the care and well-being of minors, or by</p>	<p>Unaccompanied asylum seeking children in the UK are provided with services or looked after by local authority social services departments under the Children Act 1989 (the Children (Scotland) Act 1995 and the Children (Northern Ireland) Order 1995), in the same way as any other child in the UK. The relevant social services department will carry out an assessment of the minor's needs in</p>	

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	<p>any other appropriate representation. Regular assessments shall be made by the appropriate authorities.</p> <p>Member States, protecting the unaccompanied minor's best interests, shall endeavour to trace the members of his or her family as soon as possible.</p>	<p>accordance with statutory guidance and will provide services (which may include accommodation) or accommodation under either section 17 or section 20 of the Children Act 1989 (and equivalents).</p> <p>Regulation 6 of the Reception Conditions Regulation makes provision for tracing family members of unaccompanied asylum seeking children, whether in the UK or in the child's or young person's home country.</p>	
20	<p>Member States shall ensure if necessary that victims of torture and violence receive the necessary treatment of damages caused by these acts.</p>	<p>See note to Article 15 for further detail on provision of treatment on the basis of clinical need.</p>	
21	<p>Member States shall ensure that negative decisions relating to the granting of benefits under this Directive or decisions taken under Article 7 which individually affect asylum seekers may be the subject of an appeal within the procedures laid down in the national law. At least in the last instance the possibility of an appeal or a review before a judicial body shall be granted.</p>	<p>Under section 103 of the 1999 Act a person may appeal to an asylum support adjudicator against a decision of the Secretary of State that he does not qualify for support under section 95 of the 1999 Act or to stop providing him with support before that support would otherwise have come to an end. When support is discontinued under one of the grounds in [new] regulation 20(1) the supported person will, therefore, have a right of appeal under section 103.</p> <p>Otherwise a decision of the Secretary of State or any other public authority (such as a local authority) is subject to judicial review in the usual way.</p>	