EXPLANATORY MEMORANDUM TO

THE ASYLUM SEEKERS (RECEPTION CONDITIONS) (AMENDMENT) REGULATIONS 2026

2026 No. 500

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Home Office and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Alex Norris MP, Minister for Border Security and Asylum, at the Home Office confirms that this Explanatory Memorandum meets the required standard.

2.2 Megan Jensen, Deputy Director for the Asylum Policy Unit at the Home Office confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Shahida Ilahi or Sophie Shaw at the Asylum Policy Unit, Home Office can be contacted by email at the following address with any queries regarding the instrument: AoAGuidanceChange@homeoffice.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument will revoke Regulation 5 of the Asylum Seekers (Reception Conditions) Regulations 2005 ("the 2005 Regulations"), the duty on the Secretary of State to offer asylum support to asylum seekers who would otherwise be destitute. This is to provide the Government with more flexibility to shape how asylum support is delivered, while still keeping important protections in place.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. Policy Context

What is being done and why?

5.1 The 2005 Regulations are EU-derived domestic legislation which were preserved by section 2 of the European Union (Withdrawal Act) 2018. The Government is revoking Regulation 5 of the 2005 Regulations to better support the effective operation of the asylum support system and its objectives. At the point of revocation, we will provide continuity and safeguards while the future policy is under development. Although replacement policy on Regulation 5 is in development as part of wider reforms of the asylum system, revocation must proceed now given the time-limited powers in the Retained EU Law (Revocation & Reform) Act 2023, which expire on 23 June 2026.

The development of a new framework forms part of a system-wide programme of reform rather than discrete changes.

5.2 Regulation 5 places a duty on the Secretary of State to offer asylum support to asylum seekers who would otherwise be destitute. By revoking this duty, the position reverts to that as contained in the 1999 Act, which confers a discretionary power upon the Secretary of State to provide support. This change will ensure that support remains available to those in genuine need. Additionally, support will be provided where an eligible person has a dependant under 18, in line with Section 122 of the 1999 Act. Revocation of this regulation allows a more targeted and flexible approach to allocating resources while reducing the potential for misuse and abuse of the system. It also provides flexibility to design an asylum support system aligned with domestic priorities.

What was the previous policy, how is this different?

5.3 Regulation 5 of the 2005 Regulations placed a duty on the Secretary of State to offer asylum support to destitute asylum seekers. Its revocation will facilitate and strengthen the effective delivery of asylum support and will allow the Secretary of State to reshape the asylum support framework to respond to current pressures and future demands.

5.4 In the longer term, and dependent on the policy framework that is put in place, revocation of Regulation 5 could allow us to deny support to those who have the right to work and could therefore support themselves, including those who enter the country on a work or student visa with permission to work before claiming asylum, or those granted permission to work while their claim has been outstanding for more than 12 months through no fault of their own.

5.5 Returning to the discretionary power could also allow us to refuse support to those who have deliberately made themselves destitute, thereby reducing misuse of the system. Importantly, legal protections remain in place. These safeguards such as duties under human rights legislation and equality law, ensure that any changes to policy will operate within a framework that respects fundamental rights.

6. Legislative and Legal Context

How has the law changed?

6.1 The 2005 Regulations place requirements on the Secretary of State when providing, or considering whether to provide, asylum support to asylum seekers. The 2005 Regulations are EU-derived domestic legislation, preserved by section 2 of the European Union (Withdrawal) Act 2018. Revocation of Regulation 5 removes the statutory framework set out in secondary legislation and returns the legal position to that provided for in the 1999 Act, under which the Secretary of State is conferred powers, rather than duties, in relation to the provision of asylum support. Following revocation, the Secretary of State will continue to exercise functions under the 1999 Act, alongside other relevant domestic and international obligations, including those relating to children, safeguarding, and human rights.

Why was this approach taken to change the law?

6.2 The 2005 Regulations are assimilated law, and the powers to revoke or replace any provisions (under section 14 of the Retained EU Law (Revocation & Reform) Act 2023) will expire in June 2026. Revocation is therefore being undertaken in advance of this deadline to ensure that the legislative framework for asylum support can be

updated in a timely manner. While there were two ways in which the law could have been changed to achieve the same policy objectives, revocation of Regulation 5 using section 14 powers (referred above) was considered the most straight forward approach. The alternative approach is to introduce new primary legislation which is more complex and resource intensive.

7. Consultation

Summary of consultation outcome and methodology

7.1 Consultations with external stakeholders were not necessary as any necessary consultations will take place as the new framework is being developed following revocation of Regulation 5.

8. Applicable Guidance

8.1 Policy guidance has been updated to reflect the revocation of Regulation 5. [1]

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument, as no impact on business is anticipated and the policy framework is not yet sufficiently defined to provide any basis for forecasting impacts on the private sector, public sector, and households. The policy framework for Regulation 5 will be reviewed, and any impacts would be dependent on proposed changes; it is not possible to assess impacts in advance of that review.

9.2 Any impact of Regulation 5 is dependent on the, as yet unknown, details of the operational design and the practical and legal constraints it will operate within. While the direct Duty to provide support is removed, the design of a future policy and its impacts will need to be cognisant of the wider human rights legal framework. As such, it is not possible to make a meaningful assessment of impact at this stage. Any necessary analysis of the impact will take place when the new framework is established following revocation of Regulation 5.

Impact on businesses, charities and voluntary bodies

9.3 There is no, or no significant, impact on business, charities or voluntary bodies.

9.4 The legislation does not impact small or micro businesses.

9.5 The impact on the public sector is uncertain until the policy guidance has been finalised.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is through standard operational assurance processes and updated guidance as required.

[1] https://www.gov.uk/government/publications/asylum-accommodation-requests-policy

10.2 As this instrument is only made under the relevant European Union Acts (as defined at 13.1), no review clause is required.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Minister for Border Security and Asylum has made the following statement regarding Human Rights:

"In my view the provisions of the Asylum Seekers (Reception Conditions) (Amendment) Regulations 2026 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is made under section 14 of the Retained EU Law (Revocation and Reform) Act 2023 and therefore relates to the reform of assimilated law. This instrument revokes secondary assimilated law, Regulation 5 of the Asylum Seekers (Reception Conditions) Regulations 2005. Revocation will provide greater flexibility to manage accommodation pressures within the asylum support system.