EXPLANATORY MEMORANDUM TO

THE ASYLUM SUPPORT (AMENDMENT) REGULATIONS 2026

2026 No. 209

1. Introduction

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

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee.

2. Declaration

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

2.2 Jason Buultjens, Deputy Director for the Asylum and Protection Unit, at the Home Office confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Louise McCullough at Home Office can be contacted by email at the following address with any queries regarding the instrument: louise.mccullough@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 enable asylum support to be suspended or discontinued if, following an investigation, there are reasonable grounds to suspect that an asylum seeker is working illegally.

4.2 This instrument applies to asylum seekers receiving asylum support under Section 95 (support for asylum seekers whose claims are still being processed) and Section 98 (temporary support while waiting for a decision on a Section 95 application) of the Immigration and Asylum Act 1999. This support can be provided in the form of accommodation, subsistence payments, or a combination of both.

Where does the legislation extend to, and apply?

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

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the same as its extent.

5. Policy Context

What is being done and why?

5.1 Asylum seekers who would otherwise be destitute can obtain asylum support under Section 95 and Section 98 of the Immigration and Asylum Act 1999. This support can

be provided in the form of accommodation, subsistence payments, or a combination of both.

5.2 Asylum seekers are not normally allowed to work while their claim is considered. They are instead provided with accommodation and support to meet their essential living needs if they would otherwise be destitute. Asylum support can be in the form of accommodation, a cash allowance, or both. Cash support is usually £49.18 per week for each person in a household, and this is provided to cover things like food, clothing and toiletries. If the asylum accommodation provides meals, cash support it £9.95 per week for each person in a household. When an asylum seeker is granted support, they are provided with a copy of the conditions of support. The conditions of support are detailed in writing and outline the terms and conditions that must be adhered to for the provision of asylum support. This includes compliance with requests, behavioural expectations and the consequences of a breach.

5.3 Asylum seekers whose claim has been outstanding for more than 12 months through no fault of their own may apply for permission to work. Those who are granted permission are restricted to jobs on the Immigration Salary List (previously known as Shortage Occupation List).[1]

5.4 As part of the Government's Plan for Change, there is a focus on dealing with the issue of illegal working. If an asylum seeker is found to be working illegally, this constitutes a criminal offence. However, working illegally is not currently a breach of the conditions of asylum support, and current legislation does not explicitly include illegal working as a condition where asylum support can be suspended or discontinued.

5.5 This legislation will provide a means to suspend or discontinue asylum support where the Secretary of State for the Home Department has reasonable grounds to suspect an individual is working illegally. Where an individual is suspected of working illegally, for example following an encounter with Immigration Enforcement, a referral will be made to the Home Office compliance team. They will complete an investigation to determine whether there are reasonable grounds for suspecting that the asylum seeker was working illegally. If the investigation concludes that there are reasonable grounds for suspecting that they were, asylum support may be suspended or discontinued. This legislation will form part of the Government's broader strategy to strengthen the immigration system and undermine people smugglers using false promises of jobs for migrants.

What was the previous policy, how is this different?

5.6 Previously, when an asylum seeker was suspected of working illegally, this was investigated as fraud/concealment of funds to prove that the individual was no longer destitute, and they have unduly benefited from the receipt of asylum support, with these investigations taking an average of seven weeks to complete. Setting out in legislation that illegal working is an explicit condition under which support provided to asylum seekers can be discontinued provides a mechanism to do so, without the requirement for a fraud investigation. This instrument also supports the broader strategy to deal with illegal working and strengthen the immigration system.

[1] For further information on what the immigration Salary list is and the types of jobs it include, see the https://www.gov.uk/government/publications/skilled-worker-visa-immigration-salary-list/skilled-worker-visa-immigration-salary-list

6. Legislative and Legal Context

How has the law changed?

6.1 Regulation 20(1) of the Asylum Support Regulations 2000 sets out the grounds on which asylum support for a supported person or his dependents may be discontinued or suspended. This instrument amends regulation 20(1) by inserting a paragraph to provide that working without permission is a ground on which asylum support can be discontinued or suspended.

Why was this approach taken to change the law?

6.2 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 Consultation took place with other departments and the devolved governments before this instrument was laid. Following consultation, agreement was provided to proceed with this instrument.

8. Applicable Guidance

8.1 The guidance that covers the conditions by which asylum support is provided is the Conditions of support: caseworker guidance.[2] This guidance will be updated to reflect the changes when the instrument is laid on 5 March 2026.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because there is no expected cost to business. The main impact on the public sector is a potential increase in appeals to the Asylum Support Tribunal (AST). This amendment may have an impact on the Administrative Court, His Majesty's Courts and Tribunals Service, and legal aid services. The amendment of secondary legislation might generate additional pressures, particularly in relation to appeals, judicial review (JRs), and interim relief applications, especially where support is discontinued.

9.2 An Economic Note has been produced and will be published alongside the legislation. This assessed there may be a reduction in the time it takes compliance officers to complete investigations because of this legislation. However, a significant increase in appeals is not anticipated without the addition of increased enforcement action to target illegal working. The Home Office is working iteratively with the Ministry of Justice to assess the potential impact through a Justice Impact Test.

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 through anticipated increased numbers of appeals to the Asylum Support Tribunal, as detailed in paragraph 9.1.

[2] https://www.gov.uk/government/publications/withdrawal-of-asylum-support-where-a-breach-of-conditions-has-occurred-instruction/conditions-of-support-instruction-accessible

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The Home Office will monitor the implementation and impact of this legislation through its existing asylum support oversight framework.

10.2 The effectiveness of this legislation will be assessed against key indicators, such as:
- Appeals and legal challenges arising from amendments,
- Rate of support discontinuation,
- Stakeholder engagement on outcomes, including regular engagement forums with other Government departments.

10.3 The Regulations will be subject to periodic review in line with the Home Office's policy review cycle. This review will consider whether the objectives of the amendments have been met, whether the provisions remain proportionate and effective, and whether further legislative or operational changes are required.

10.4 Any future amendments will be informed by evidence gathered through monitoring, consultation with stakeholders, and relevant inspection findings, including those from the Independent Chief Inspector of Borders and Immigration.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument is related to, but not dependent on, the Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) (Amendment) Regulations 2026, a draft affirmative instrument that will be laid shortly. That instrument will make similar provision in relation to accommodation provided under Section 4(2) and (3) of the Immigration and Asylum Act 1999 to failed asylum seekers, persons whose asylum claims have been declared inadmissible and their dependents.

12. European Convention on Human Rights

12.1 As the instrument is subject to negative procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").