EXPLANATORY MEMORANDUM TO
THE ASYLUM SUPPORT (INTERIM PROVISIONS) (AMENDMENT) REGULATIONS 2005

2005 No.595

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 amend the Asylum Support (Interim Provisions) Regulations 1999 (also referred to in this Memorandum as "the Interim Provisions Regulations"). Regulation 2 amends regulation 2(5) of the Interim Provisions Regulations (which has been amended twice before) by extending the "interim period" during which local authorities are required to provide support to asylum seekers or their dependants who appear to be destitute or likely to become destitute. The day prescribed for the ending of the interim period under these Regulations is 3rd April 2006.

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

3.1 None.

4. Legislative Background

4.1 Section 95 of the Immigration and Asylum Act 1999 gives a power to the Secretary of State to provide or arrange for the provision of support for asylum seekers and their dependants. Subsection (13) (which in turn refers to Schedule 9 to that Act) gives the Secretary of State a separate power to make regulations requiring local authorities to provide support during an "interim period" to eligible persons. The Asylum Support (Interim Provisions) Regulations 1999 were made under the powers conferred by Schedule 9.

4.1 The Asylum Support (Interim Provisions) Regulations 1999 (as amended by the Asylum Support (Interim Provisions) (Amendment) Regulations 2002 (S.I. 2002/471) and the Asylum Support (Interim Provisions) (Amendment) Regulations 2004 (S.I. 2004/566) make provision requiring local authorities to provide support to asylum seekers and their dependants who appear to be, or to be likely to become, destitute.

5. Extent

5.1 This instrument does not extend to Scotland or Northern Ireland. This is by virtue of the fact that regulation 1(2) of the Asylum Support (Interim Provisions) Regulations 1999 provides that the regulations do not extend to Scotland or Northern Ireland.

6. European Convention on Human Rights

Not applicable.

7. Policy background

7.1 The Regulations have one key element; they provide for the extension of the interim period in the Asylum Support (Interim Provisions) Regulations 1999 to 3rd April 2006.

7.2 The Interim Provisions Regulations, which came into force on 6 December 1999, provide a statutory duty for local authorities to provide support to destitute asylum seekers. From 6 December 1999 asylum seekers who had been supported by local authorities (in England and Wales) under the provisions of the National Assistance Act 1948 or the Children Act 1989 were deemed to be supported under the Interim Provisions Regulations. Four Directions made under paragraph 14(1) of Schedule 15 to the 1999 Act ended the applicability of the Interim Provisions Regulations for various categories of asylum seeker throughout 2000 to enable the National Asylum Support Service (NASS), rather than local authorities, to provide support to newly arrived destitute asylum seekers.

7.3 The Interim Provisions Regulations originally provided that the interim period during which support may be provided would end on 1 April 2002 but this was subsequently extended until 5 April 2004 and then further extended until 4 April 2005.

7.4 The estimated number of cases (excluding dependants) still receiving local authority support under the Interim Provisions Regulations was approximately 5,700 in December 2004. If the interim period was not extended again, local authorities would have no obligation to continue to provide support beyond 4 April 2005 and all those supported under the Interim Provisions Regulations immediately prior to that date could overnight become eligible to apply to NASS for support.

7.5 The policy intention is, that by extending the interim period for a further year to 3 April 2006, NASS can successfully undertake a phased transfer of the remaining cases to NASS support by then, by bringing the interim period gradually to an end in prescribed categories (most likely by reference to geographical area), by way of the same direction-making power mentioned in paragraph 7.2 above.

7.6 Arrangements would be made to disperse interim cases supported by local authorities in London and the South East in line with the current NASS dispersal policy.

7.7 NASS has held discussions with a number of local authority associations regarding the proposed extension to the interim period brought about by these Regulations and the transfer of these interim cases to NASS. Representatives of these organisations have been invited to sit on a steering group overseeing the transfer of cases to NASS support.

8. Impact

8.1 The Regulations will have no impact on business, charities or voluntary bodies.

8.2 There will be some impact on the public sector when the remaining cases supported under the Interim Provisions are transferred to NASS support. Many local authorities will be able to disband their asylum teams resulting in resource savings to them.

9. Contact

Elaine Bass at NASS Secretariat, Policy & Communications at the Home Office can answer any queries regarding the instrument.

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ANNEX C

[DRAFT LETTER TO ALL MP's]

ASYLUM SEEKERS
TRANSFER OF INTERIM & DISBENEFITED CASES TO NASS SUPPORT

I write to advise you that all remaining asylum seekers currently supported by local authorities under the Interim Provisions will be transferred to National Asylum Support Service [NASS] support during 2005/06. NASS will also take direct responsibility for disbenefited cases during this period.

The Interim Provisions, which came into force on 6th December 1999, provide a statutory duty for local authorities to provide support to destitute asylum seekers. From that date asylum seekers who had been supported by local authorities in England and Wales under the provisions of the National Assistance Act 1948 or the Children Act 1989 were deemed to be supported under the Interim Provisions.

The Interim Provisions are currently due to expire on 4th April 2005. A Statutory Instrument to extend the Interim Provisions for a further year to 3rd April 2006 will be laid before parliament by 11 March. During that time all existing asylum support applicants will be reassessed and those eligible transferred to NASS support. This transfer, and any dispersal, will be undertaken on a phased basis throughout the year.

Asylum seekers who applied for asylum on arrival at their port of entry to the United Kingdom before 3rd April 2000 were eligible for mainstream social security benefits. Those whose claims for asylum were refused on or after 25th September 2000 and appealed against that decision are eligible for NASS support (since entitlement to mainstream social benefits ceases at the time the asylum claim is refused). These cases are referred to as disbenefited cases, and NASS has agreed special arrangements to fund local authorities to continue to provide necessary accommodation. During 2005/06 NASS will take direct responsibility for these cases.

It is intended that both disbenefited cases and those asylum seekers transferring to NASS support who are living in London and the South East will be dispersed in line with normal dispersal policies.

NASS is already in contact with the local authority associations, and will work closely with them and individual local authorities during the transfer of these cases.

DES BROWNE