EXPLANATORY MEMORANDUM TO

THE IMMIGRATION AND ASYLUM (PROVISION OF ACCOMMODATION TO FAILED ASYLUM-SEEKERS) (AMENDMENT) REGULATIONS 2026

2026 No. [XXXX]

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 the 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 amend regulation 6 of the Immigration and Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005 to enable the Secretary of State to make the continued provision of accommodation to a person falling within section 4(2) or (3) of the Immigration and Asylum Act 1999 subject to a condition that he does not work illegally.

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 same as the extent.

5. Policy Context

What is being done and why?

5.1 Failed asylum seekers, individuals whose asylum claims have been declared inadmissible, and their dependents may be eligible for support under Section 4 of the Immigration and Asylum Act 1999, provided they meet specific eligibility criteria. This support is offered as a combination package of accommodation and subsistence; it cannot be provided as subsistence-only.

5.2 Persons provided with accommodation under section 4 are not normally allowed to work. They are instead provided with accommodation and support to meet their essential living needs if they would otherwise be destitute. 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 is £9.95 per week for each person in a household. When a failed 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 Failed asylum seekers may be allowed to work if they have submitted further submissions based on protection grounds, and those submissions have been outstanding for 12 months or more, through no fault of their own. 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 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 a failed 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 asylum support provided to failed asylum seekers can be discontinued provides a mechanism to do so, without the requirement for a fraud investigation. As the support provided to failed asylum seekers is a combined package of accommodation and subsistence, it is the combined package that would be discontinued under this instrument. 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 Skilled Worker visa: immigration salary list - GOV.UK: 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 6(2) of the Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005 sets out the types of conditions to which the continued provision of accommodation to a person falling within section 4(2) or (3) of the Immigration and Asylum Act 1999 can be made subject. This instrument amends regulation 6(2) by inserting a paragraph enabling the Secretary of State to impose a condition that relates to complying with a requirement that the person does not work illegally.

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.

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 to 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.

Impact on businesses, charities and voluntary bodies

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

9.3 The legislation does not impact small or micro businesses.

9.4 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 mechanisms. This includes regular analysis of operational data, stakeholder feedback and casework outcomes.

10.2 The effectiveness of this legislation will be assessed against key indicators, such as:

- Appeals and legal challenges arising from these amendments,
- Rate of asylum support discontinuation,
- Stakeholder engagement 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 appropriate 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 inspections 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 Asylum Support (Amendment) Regulations 2026, an instrument that will be laid shortly. That instrument will make similar provision in relation to support provided under section 95 and 98 of the Immigration and Asylum Act 1999 to asylum seekers and their dependents.

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 Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) (Amendment) Regulations 2026 are compatible with the Convention rights."

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").