

Managing the impact on the wider community of discontinuation decisions – taking account of the views of those consulted.

Summary

- *All failed asylum seekers can access accommodation provided by the Home Office provided they take reasonable steps to leave the UK or place themselves in a position to leave when any obstacle preventing their departure no longer exists.*
- *However, on 27 March 2020 the Government announced a temporary suspension of decisions to discontinue support provided to asylum seekers and failed asylum seekers under section 95 or 4(2) of the Immigration and Asylum Act 1999. This decision was taken as a precautionary measure and reflected the uncertainty at the time as to the nature of Covid-19 and the steps that would need to be taken in order to prevent unnecessary movement of those receiving asylum accommodation and so help prevent the spread of the virus.*
- *From 8 March 2021, people in England began to see the current national Covid-19 restrictions imposed from 6 January 2021 start to be lifted in line with the Government's four-steps roadmap, which is intended to offer a route back to a more normal life. The development of the roadmap follows the success of the vaccination programme, the significant decline in hospital admissions and other measures to suppress the virus.*
- *The roadmap sets out 4 steps through which current Covid-19 restrictions will, subject to review, be progressively eased. The 'stay at home' rule ended on 29 March 2021 and step 2 will see the opening of non-essential retail, limited hospitality venues and wider social contact rules. After careful consideration it has been decided that the appropriate point to resume cessations is at step 2 of the roadmap (not to come into effect before 12 April 2020).*

- *Whilst the steps set out in the roadmap have not been set specifically with a view to identifying the circumstances where cessation decisions can be taken, they have been set having considered factors such as the level of Covid-19 risk, the demands on the NHS and the need for progress to be made in resuming the normal restriction free approach to societal interaction. Consequently, whilst the possibility of public health risks arising from homelessness of failed asylum seekers leaving Home Office accommodation has not been specifically considered in setting the steps, the significant easing in restrictions in social contact, business activities and travel set out in step 2 are considered to be a good general indicator that the possibility of such risks to the wider public are substantially reduced.*
- *The policy approach we have developed provides for some cessations to resume once step 2 is reached, though with some restrictions on the number of cessations that can be made per week and by individual local authority and some exceptions for a number of case categories (those with children or who are pregnant, the elderly and those who are clinically extremely vulnerable).*
- *As part of step 3 the Government will continue the easing of restrictions, generally lifting most legal restrictions on meeting others outdoors, with only gatherings of over 30 people remaining illegal, and allowing gatherings indoors with two households or 6 people. Most businesses will be permitted to reopen, and the rest of the accommodation sector including hotels, hostels and B&Bs. At this point it is considered that the possibility of health risks to the wider public is likely to be further reduced, permitting increased social interaction and travel. It is therefore considered appropriate to resume the normal policy relating to cessations that operated before March 2020.*
- *The policy approach we have developed is considered a proportionate approach to managing the problem of ineligible failed asylum seekers refusing to leave the UK and blocking scarce accommodation that could be used for newly arrived asylum seekers - many of whom currently have to be placed in other less than ideal accommodation, such as hotels and hostels. The*

Government has moved from a regional Tier based approach to a national roadmap, and this policy is intended to reflect that approach.

Analysis and consultation feedback

1. The overall policy objectives of the various Covid-19 restrictions put in place since March 2020 are to protect public health by containing the spread of the virus. That objective is likely to be best facilitated if all in the community have access to stable accommodation and where possible remain in the accommodation they already have. Failed asylum seekers who are evicted from Home Office accommodation and do not secure other accommodation, may therefore present a higher risk to the wider community than would be the case if they stayed put - for example because they may be less able to maintain social distancing or effectively self-isolate or arrange for a test if they become infected. In these circumstances, they may become more likely to be infected with the virus and in turn infect others.
2. It is not known with clarity what failed asylum seekers do when they leave Home Office accommodation, but the probability is that the majority “sofa surf” with friends, sometimes moving between several addresses within short periods and that a smaller number sleep rough. The cessation of asylum support may therefore result in some increased public health risks and may also result in some impacts on local authorities, especially through managing rough sleeping. Both of these risks are impossible to quantify.
3. **Public Health England (PHE)** agree that there are health risks exist arising from homelessness and have generally commented that it cannot advise that anyone should be enabled to become homeless from a public health perspective.
4. The level of any risk to public health arising from cessations is likely to depend on, amongst other matters, steps taken by the Government to ease national restrictions (as these are intended to reflect a decrease in Covid cases within the community, decrease in pressure on the NHS and increase in number of people vaccinated); the number of decisions made and what, if any, alternative accommodation the individuals secure. **Local authorities and NGOs** have highlighted these risks and drawn attention to the possibility of rough sleeping and the impact on their resources of managing that problem. Although local authorities are unlikely to have duties to house the group, they have responsibilities to provide advice and assistance, which generally involves signposting them to voluntary sector partners.
5. Local authorities have been concerned about the resource pressures of managing this group. Local authorities also point to practical problems in

identifying whether a rough sleeper is a failed asylum seeker who has made himself homeless by refusing to leave the UK.

6. The evidence on the link between negative cessations and rough sleeping is limited. Collecting the immigration status of those who are sleeping rough is challenging, particularly so with failed asylum seekers who may have specific reasons for avoiding such questions. The latest MHCLG rough sleeping statistics show that in autumn 2020 there were 2,688 people estimated to be sleeping rough on a single night, of which 128 were recorded as being foreign nationals from outside the EU and a further 166 were of unknown nationality. In 2019 the figures were higher (151 non-EU foreign nationals and 443 not known).
7. There is no way of knowing how many of these rough sleeping individuals were failed asylum seekers. It is unlikely that a significant proportion were because there are many other categories of foreign nationals in the UK, but there is anecdotal evidence from NGOs and local authorities that some rough sleepers have entered the streets following a negative cessation. As an indicator, the absolute maximum in this group would be the combined total of those rough sleeping who are known to be foreign nationals from outside the EU and those whose nationality is not known, which in 2019 was 594 on a typical night. This represents a relatively small proportion of the number of people leaving Home Office accommodation following a negative asylum decision (approximately 100-120 such decisions per week were typically made before the pause on cessations was implemented in March 2020) but does represent a significant number (14%) of the total UK rough sleeping population.
8. NGO stakeholders and the **Local Government Association**, who have been consulted about the proposal to resume cessations, have highlighted that charities, rather than friends or families, sometimes provide accommodation and that Covid restrictions on their operational activity mean that a higher proportion of the group than normal may only have the option to sleep rough if they decide they do not wish to leave the UK. This is possible, though it may be that the factor results in some of the group being incentivised to accept Home Office support on the terms offered. Overall, whilst the numbers likely to rough sleep are probably likely to be low, they may be higher in the short term than normal.
9. **NGOs** generally agree that most failed asylum seekers leaving Home Office accommodation secure other accommodation, usually through friends or family, but believe that this accommodation is often short-term (“sofa surfing”). The process of obtaining other accommodation often also involves moving between different areas and mixing with other groups, thus creating public health risks.
10. NGOs broadly welcome the temporary exclusion of certain groups from the cessation process (the elderly, those with children and those who are pregnant),

but also believe that consideration should be given to other groups who have mental health or other medical issues that, whilst not preventing departure from the UK, may expose them to higher risk of infection or of infecting others. There are existing safeguarding processes to identify through case by case individuals with some of these characteristics and take appropriate action – for example by liaising with health care professionals to put in place appropriate mitigations and the policy also requires referral to a local authority where it appears that a community care assessment may be required. However, it has been agreed to continue to discuss with NGOs how processes may be strengthened to identify such cases.

Policy response

11. Currently, there are around 1,000 cases in England whose circumstances, on the information available, appear not to meet the criteria for support provided for under section 4(2) of the Immigration and Asylum Act 1999. As more of the stock of failed asylum seekers currently receiving section 4(2) have their cases reviewed some further cessation cases are likely to be identified. Additionally, if cessation decisions are resumed there would be the normal flow of people leaving support because they have exhausted their appeals against the rejection of their asylum claim and have therefore become ineligible for support provided under section 95 of the 1999 Act and have not sought section 4(2) support. In normal times, these numbers are around 100-120 per week.
12. These numbers represent only a small number of people relative to the overall population and the individuals are spread across many local authorities in England. The numbers of such cases in any single local authority are therefore small and although there is a possibility of increased health public health risks and some pressures on local authorities these need to be seen in that context.
13. As a way of managing the potential risks described the policy approach will entail:
 - Cessations to generally resume once step 2 in the Government's roadmap is reached.
 - But no more than 175 discontinuation decisions are served per week for as long as step 2 restrictions remain in place. This number was reached by taking into account asylum support casework resources and of the need to mitigate against the possibility of health risks and pressures on individual local authorities (see caps and formula below) by ensuring the total numbers is very small in the context of the wider population. It also represents a number that is capable of making a realistic contribution to the objective of freeing up accommodation space for newly arrived asylum seekers entering the support system.

- For as long as step 2 remains in place, there is also a cap on the maximum number of decisions that can be made per week on individuals living in a particular local authority, based on the population of the local authority. The formula used to apply this mechanism is based on the existing principle that the maximum number of supported asylum claimants in a local authority should not exceed 1:200 of the general population. This gives the “cluster limit”. The maximum amount of discontinuation per week must exceed no more than 1% of the cluster limit.
- Local authorities are provided with weekly data of the number of eviction decisions made each week in their areas, which will assist them to assess whether any impacts on rough sleeping and their services may be linked to cessations.
- The notice period provided to those leaving section 4(2) accommodation following a negative decision should be increased to 21 days (from 14 days), which gives the individuals more time to consider if they are prepared to accept the offer of continued support on the terms offered.
- In the event that there is a return to the regional Tier based approach in place between 2 December 2020 and 6 January 2021 (the Tier 1-3 system), negative cessation decisions may still take place. However, the number of decisions that can be made in cases where the individuals live in an area subject to Tier 3 restrictions is subject to the same caps set out above.
- The above arrangements will cases accommodated in England. Separate arrangements will apply for those accommodated in other parts of the UK following discussions with the devolved administrations and others.

14. The Home Office will discuss any on-going issues with local authorities at meetings of the HOLGCEX Task & Finish Group.