

A Guide to Care Act Support for Pregnant People

Who is this guide for?

This guide is for advisers working with pregnant people who do not already have children and who have 'no recourse to public funds' and are experiencing destitution and/or homelessness. Pregnant people who already have children (who they are responsible for) should access support from their Local Authority under Section 17 of the Children Act 1989.

What does 'no recourse to public funds' mean?

Most welfare benefits, homeless assistance and social housing are 'public funds'. Many migrants will have 'no recourse to public funds' (NRPF) which means that they are unable to claim these welfare benefits or get social housing. This includes people who have leave to enter or remain in the the UK with an NRPF condition attached, eg leave to enter as a visitor or leave to remain as a student. It also includes people whose leave to enter or remain is subject to a maintenance undertaking, for instance leave to remain as the adult dependent of someone with settled status. In these situations the term 'no public funds' will be stated on the residence permit. People with no leave to enter or remain, for instance someone who has overstayed their visa, an asylum seeker who has exhausted their appeal rights, or an undocumented migrant will also have NRPF.

What is the Care Act 2014?

The Care Act 2014 sets out the responsibilities that Local Authorities have to meet the needs of adults with 'care needs' who are present in their area. Services provided by Local Authorities under the Care Act 2014 are not 'public funds' so they can be accessed by people with NRPF.

To access support under the Care Act 2014, an adult would usually need to have 'eligible needs' - meaning that because of a health problem they are unable to achieve certain 'specified outcomes' (for example being able to cook/feed themselves, wash, dress, take care of their home etc.) and this has an impact on their wellbeing.

Historically, there was a law that specified that Local Authorities had the power to provide residential accommodation for pregnant women and new mothers who were in need of care and attention which was not otherwise available to them. This law was replaced by the Care Act 2014, which doesn't specifically mention pregnant women or new mothers, however, during consultation Local Authorities confirmed that no individual who would have been provided for in the previous legislation should be left out under the Care Act.

This has resulted in a 'grey area' around what support Local Authorities are required to provide for pregnant people.



When can pregnant women get support?

A pregnant person will have needs for care and support subject to how advanced their pregnancy is, even if these needs aren't 'eligible' in terms of the very narrow definition set out in the Regulations. Section 19(1) of the Care Act gives Local Authorities the power to meet 'non-eligible needs' and this argument has successfully been applied in cases of destitute and homeless pregnant people with the result that they have been accommodated and supported.

In practice, where a person is otherwise fit and well, the closer they are to their due date, the easier it is likely to be to demonstrate that they have care and support needs.

If a pregnant person has a physical or mental health condition that impacts on their ability to achieve the 'specified outcomes' this should be also be looked at as part of the Care Act assessment and may mean that they have 'eligible needs' which the Local Authority may have a duty to meet (as they would for any other adult).

The Destitution-Plus Test

Section 21 of the Care Act states that where an adult has NRPF, the Local Authority will not have to meet their needs for care and support if these needs arise solely from destitution or its effects - this is known as the 'destitution-plus' test. It is likely to be easier to demonstrate that needs arise from factors other than destitution later in pregnancy and/or if the person is experiencing any complications and/or if there are any underlying medical conditions.

The Human Rights Test

Some people with NRPF are excluded from accessing support under the Care Act unless a failure of the Local Authority to meet their needs would result in a breach of their human rights (under the European Convention on Human Rights), and this breach could not be avoided by their return to their country of origin. Schedule 3 of the Nationality, Immigration and Asylum Act 2002 lists the categories of people who are excluded in this way; it includes undocumented migrants and asylum seekers who have exhausted their appeal rights. These people not only need to demonstrate that they have eligible care needs and that these needs do not arise solely from destitution or its effects, but also that a failure of the Local Authority to provide support would breach their Human Rights and that this breach could not be avoided by them returning to their country of origin - this is known as the 'human rights test'. A person's human rights could be breached in a number of different circumstances, for instance if they were left homeless and destitute because the Local Authority failed to act this would breach their rights under Article 3. This breach of human rights could not be avoided by the person returning to their country of origin if there was a barrier in place, for instance, if they were making an application for leave to remain in the UK, their Human Rights would be breached by returning to their country of origin, or they were in the later stages of pregnancy or too unwell to travel etc.

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How can pregnant people get support?

Pregnant people should be referred to the Adult Social Services team of the Local Authority where they normally live. If a person is homeless, they should be referred to the Local Authority where they are physically present. If the person is close to their estimated due date (EDD), a copy of the referral should also be sent to Children's Services, as the Local Authority will have a responsibility to the baby under Section 17 of the Children Act as soon as it is born. Sometimes, Local Authorities will decide to provide support under the Children Act instead of the Care Act.

When making the referral it is important to include as much accurate detail and evidence as possible. You can use our template letter or write your own letter/email setting out all the relevant information.

The Local Authority will want to know:-

- When the baby is due
- Details of any complications of the pregnancy and/or health conditions that impact on the person's ability to achieve the 'specified outcomes' set out in the Regulations.
- Where the person has been living until now, why they cannot continue to live there
- How the person has been supporting themselves until now, why this cannot continue
- Who else has been supporting them, why this support cannot continue
- When the person came to the UK and details of their immigration status, if they are receiving immigration advice and/or are in the process of making an application to the Home Office you should explain this

It is helpful to send as much evidence as you can with your referral for example:-

- Letters from GP/midwife relating to the pregnancy that include the EDD
- Letters from medical professionals relating to any complications/underlying health conditions
- Eviction notice/letter from host who has been accommodating the person stating when they must leave
- Bank statements
- Letters from friends or family who have been supporting the person until now, explaining why they cannot continue to do this
- Copy of ID, details of immigration solicitor and/or outstanding application for leave to remain

We also suggest referencing the previous legislation (National Assistance Act 1948) and reminding the Local Authority that it was the intention that no one who would have been provided with accommodation under the previous legislation should fall out of scope of the Care Act ([Department of Health, Response to the consultation on draft regulations and guidance for implementation of Part 1 of the Care Act 2014, page 23](#))

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Risks associated with requesting support

Local Authorities will routinely inform the Home Office about migrants who approach them for help; the Home Office and some Local Authorities have a shared database system (Connect) and some Local Authorities also have embedded Immigration Officers working alongside social workers in specialist 'No Recourse' teams. The Illegal Migration Act 2023 means that pregnant people who arrived on or after the 20th July 2023 can be detained regardless of whether there is a barrier to their removal from the UK and although most pregnant people who arrived before the 20th July 2023 can only be detained if removal is imminent or if the Home Office decides that the case is exceptional, it is not possible to be sure that a client who arrived before this date will not be detained.

The Home Office may expedite immigration decision-making for people supported by the Local Authority. If the claim is strong, this could lead to a positive result, but for weak claims it could lead to a quicker refusal. This is another reason to seek immigration advice and discuss the possible consequences with the client prior to making a referral.

Not all NHS services are free for people with NRPf and although maternity care is chargeable, it is considered to be 'immediately necessary' so should always be provided without the requirement for upfront payment. A client's GP/Health Trust may not be aware of their NRPf status and may have already provided chargeable treatment for free. Before contacting any health professionals to request supporting evidence it is important to check the potential impact on the client. For instance the client may be required to pay up-front for other treatment (that is not considered urgent or immediately necessary) that they are being referred for. If they have already received chargeable treatment/have had an invoice they should be referred to an immigration adviser to discuss the impact of NHS debts on future applications for leave to remain.

It is important that you discuss these potential risks this with your client before making a referral and if going ahead with a referral it is crucial that you carefully check all the information to ensure that it is accurate and consistent with any application for leave to remain. Any inaccuracies or inconsistencies can undermine the client's credibility and result in help being refused.

The Assessment

Section 9 of the Care Act states that “*where it appears to a local authority that an adult may have needs for care and support, the authority must assess (a) whether the adult does have needs for care and support, and (b) if the adult does, what those needs are*”. It must do this regardless of its view of the adult’s needs for care and support or the adult’s level of financial resources.

This means that the threshold for carrying out an assessment (the ‘*appearance*’ of need) is very low and a refusal to carry out an assessment is quite likely to be challengeable.

There is nothing in the law that tells the Local Authority how long they have to carry out a needs assessment under the Care Act, but they must do it within a ‘reasonable’ amount of time. What is ‘reasonable’ will depend on individual circumstances, but where someone is suffering a detriment as the result of a delay they should be assessed urgently.

A needs assessment will normally be carried out by a social worker. It should include a discussion of the person’s pregnancy, health conditions, care and support needs (the help they need with every day activities) as well as help they might need with accommodation and subsistence. The social worker will often ask about alternative sources of support, such as family, friends, and acquaintances in the wider community and may question why the person can’t get help elsewhere. They may also look for indications that the person has been living in a different area.

If the Local Authority is carrying out a Human Rights assessment they will ask about whether the person can return to their country of origin. This can feel very intrusive and social workers will often ask very personal questions.

If there is going to be a delay in carrying out an assessment the Local Authority can exercise their powers under Section 19 (3) of the Care Act to meet urgent needs prior to an assessment. This can include interim accommodation.

The Decision

The Local Authority should inform the pregnant person (and anyone assisting or caring for them) whether they will support them under the Care Act, and if so, what support they will provide. They must also give a written copy of the care needs assessment (and human rights assessment if one is completed) to the pregnant person and anyone else who is assisting or caring for them. If a Local Authority fails to provide a copy of the assessment then this can be challenged.

If the Local Authority refuses to carry out an assessment, or the pregnant person disagrees with the Local Authority’s decision following an assessment it may be possible to ask for a review and to bring a legal challenge.

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What support can pregnant people get?

Depending on their circumstances, pregnant people may be able to get:-

- Care and support - this may be a carer visiting to help with washing/dressing/cooking/laundry etc or helping with shopping, getting around the local area. A local authority will not be able to provide a carer if the client's needs can continue to be met by an informal carer who is willing and able to do this. However, in circumstances where a carer needs support in order to continue with their role a referral for a carer's assessment should be made at the same time that the client is referred for a needs assessment. This may result in a care package to support both parties.
- Accommodation - there is not usually a choice about what accommodation is provided and it is usually very basic for instance a room in a hotel, hostel or HMO, however it must be suitable and allow for the person's care needs to be met. The accommodation may also be outside the Local Authority's area.
- Financial assistance - this is usually 'subsistence level', often a similar level to Asylum Support, however, Local Authorities are free to decide this for themselves so there is some variation. It can be in cash or on a pre-paid card. If the client is already receiving support under S95/4 of the Asylum and Immigration Act 1999 (or financial help from family/friends/charities) the Local Authority would only be obliged to provide additional assistance if it could be shown that it was required to meet specific care needs. The Local Authority can also provide goods/equipment eg bedding, clothing, heaters etc to meet needs.

After the baby is born the Local Authority should conduct a 'child in need assessment' under Section 17 of the Children Act. Financial support and accommodation for the family may then be provided by Children's Services alone although Adult Social Care should remain involved if the mother continues to have care and support needs.

What to do next?

It is very important to find an [immigration adviser](#) as soon as possible. You can read about the [Care Act](#) in more detail and get information and advice about a [child in need assessment](#). You can also get further information about the rights and entitlements of people with [NRPF](#).

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