

Immigration and Asylum Act 1999

Part 6

Support for Asylum-Seekers Etc

Keeling Schedule

Showing changes which would be effected by the Immigration Bill support measures in Schedule 8, paragraphs 1 to 15.

(Bill 96, ordered by the House of Commons to be printed, 17 November 2015)

This schedule has been prepared by the Home Office. It is intended for illustrative purposes only to assist the reader of the Bill to understand the changes to sections 94 to 100 in Part 6 of the Immigration and Asylum Act 1999 which would be made by the Bill.

Notes

When text is **repealed or omitted** – text is struck through and presented in red text

When new text is **inserted**

- Text is surrounded with square brackets and inserted in red text

When existing text is **substituted**

- Text to be replaced is struck through and presented in red text. The text replacing it is presented straight afterwards enclosed with square brackets and also in red text

Part VI Support for Asylum-Seekers [,Etc]

94 Interpretation of Part VI

(1) In this Part—

~~“asylum-seeker” means a person who is not under 18 and has made a claim for asylum which has been recorded by the Secretary of State but which has not been determined;~~

[“asylum-seeker” means a person falling within subsection (2A) or (2B) (but see also subsection (3C));]

~~“claim for asylum” means a claim that it would be contrary to the United Kingdom’s obligations under the Refugee Convention, or under Article 3 of the Human Rights Convention, for the claimant to be removed from, or required to leave, the United Kingdom;~~

“the Department” means the Department of Health and Social Services for Northern Ireland;

“dependant”, in relation to an asylum-seeker [, a failed asylum-seeker] or a supported person, means a person in the United Kingdom who—

- (a) is his spouse;
- (b) is a child of his, or of his spouse, who is under 18 and dependent on him; or
- (c) falls within such additional category, if any, as may be prescribed;

“the Executive” means the Northern Ireland Housing Executive;

[“failed asylum-seeker” has the meaning given by subsection (2D);]

[“further qualifying submissions” has the meaning given by subsection (2C);]

“housing accommodation” includes flats, lodging houses and hostels;

“local authority” means—

- (a) in England and Wales, a county council, a county borough council, a district council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly;
- (b) in Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;

“Northern Ireland authority” has the meaning given by section 110(9).

[“protection claim” has the meaning given by section 82(2) of the Nationality, Immigration and Asylum Act 2002;]

~~“supported person” means—~~

- ~~(a) an asylum-seeker, or~~
- ~~(b) a dependant of an asylum-seeker, who has applied for support and for whom support is provided under section 95.~~

[“supported person” means—

- (a) in relation to support under section 95, an asylum-seeker, or a dependant of an asylum-seeker, who has applied for support and for whom support is provided under that section, and

- (b) in relation to support under section 95A, a failed asylum-seeker, or a dependant of a failed asylum-seeker, who has applied for support and for whom support is provided under that section.]

(2) References in this Part to support provided under section 95 [or 95A] include references to support which is provided under arrangements made by the Secretary of State under that section.

[(2A) A person is an asylum-seeker for the purposes of this Part if—

- (a) the person is at least 18 years old,
- (b) the person has made a protection claim, and
- (c) the person's claim—
 - (i) has been recorded by the Secretary of State, but
 - (ii) has not been determined.

(2B) A person is also an asylum-seeker for the purposes of this Part if—

- (a) the person is at least 18 years old,
- (b) the person has made further qualifying submissions (see subsection (2C)), and
- (c) the person's submissions—
 - (i) have been recorded by the Secretary of State, but
 - (ii) have not been determined before the end of such period as may be prescribed.

(2C) A person makes "further qualifying submissions" if—

- (a) the person makes submissions to the Secretary of State that the person's removal from the United Kingdom would breach any of the obligations mentioned in section 82(2)(a)(i) or (ii) of the Nationality, Immigration and Asylum Act 2002 (protection claims), and
- (b) the submissions fall to be considered by the Secretary of State under paragraph 353 of the immigration rules.]

[(2D) A person is a failed asylum-seeker for the purposes of this Part if—

- (a) the person is at least 18 years old,
- (b) the person—
 - (i) was an asylum-seeker, or
 - (ii) would have been an asylum-seeker at any time if the person had been at least 18 years old at that time,
- (c) the person's protection claim has been rejected, and
- (d) the person is not an asylum-seeker.]

(3) For the purposes of this Part, a ~~claim for asylum~~ [protection claim] is determined at the end of such period beginning—

- (a) on the day on which the Secretary of State notifies the claimant of his decision on the claim, or
- (b) if the claimant has appealed against the Secretary of State's decision, on the day on which the appeal is disposed of,

as may be prescribed.

~~[(3A) For the purposes of this Part, further qualifying submissions made by a person are determined—~~

- ~~(a) at the end of a prescribed period beginning with the relevant day (see subsection (3B)), or~~
- ~~(b) in a case where no period is prescribed for the purposes of paragraph (a), at the end of the relevant day.~~

~~(3B) In subsection (3A) "the relevant day" means the day on which the Secretary of State notifies the person that the submissions made by the person are to be—~~

- ~~(a) accepted,~~
- ~~(b) rejected without being treated as a fresh protection claim, or~~
- ~~(c) treated as a fresh protection claim.~~

~~(3C) If—~~

- ~~(a) further qualifying submissions made by a person are rejected without being treated as a fresh protection claim, and~~
- ~~(b) the person is granted permission to apply for judicial review of that rejection, the person is to be treated as an asylum-seeker for the purposes of this Part during the review period (see subsection (3D)).~~

~~(3D) In subsection (3C) "the review period" means the period—~~

- ~~(a) beginning with the day on which permission to apply for judicial review is granted, and~~
- ~~(b) ending with—~~
 - ~~(i) a prescribed period beginning with the day on which the judicial review is disposed of, or~~
 - ~~(ii) in a case where no period is prescribed for the purposes of sub-paragraph (i), that day."]~~

(4) An appeal is disposed of when it is no longer pending for the purposes of the Immigration Acts or the Special Immigration Appeals Commission Act 1997.

~~(5) If an asylum-seeker's household includes a child who is under 18 and a dependant of his, he is to be treated (for the purposes of this Part) as continuing to be an asylum-seeker while—~~

- ~~(a) the child is under 18; and~~

~~(b) he and the child remain in the United Kingdom.~~

~~(6) Subsection (5) does not apply if, on or after the determination of his claim for asylum, the asylum-seeker is granted leave to enter or remain in the United Kingdom (whether or not as a result of that claim).~~

(7) For the purposes of this Part, the Secretary of State may inquire into, and decide, the age of any person.

(8) A notice under subsection (3) ~~[or (3B)]~~ must be given in writing.

(9) If such a notice is sent by the Secretary of State by first class post, addressed—

(a) to the asylum-seeker's representative, or

(b) to the asylum-seeker's last known address,

it is to be taken to have been received by the asylum-seeker on the second day after the day on which it was posted.

95 ~~Persons for whom support may be provided~~ [Support for asylum-seekers, etc]

(1) The Secretary of State may provide, or arrange for the provision of, support for—

(a) asylum-seekers, or

(b) dependants of asylum-seekers,

who appear to the Secretary of State to be destitute or to be likely to become destitute within such period as may be prescribed.

(2) In prescribed circumstances, a person who would otherwise fall within subsection (1) is excluded.

(3) For the purposes of this section, a person is destitute if—

(a) he does not have adequate accommodation or any means of obtaining it (whether or not his other essential living needs are met); or

(b) he has adequate accommodation or the means of obtaining it, but cannot meet his other essential living needs.

(4) If a person has dependants, subsection (3) is to be read as if the references to him were references to him and his dependants taken together.

(5) In determining, for the purposes of this section, whether a person's accommodation is adequate, the Secretary of State—

(a) must have regard to such matters as may be prescribed for the purposes of this paragraph; but

(b) may not have regard to such matters as may be prescribed for the purposes of this paragraph or to any of the matters mentioned in subsection (6).

(6) Those matters are—

- (a) the fact that the person concerned has no enforceable right to occupy the accommodation;
 - (b) the fact that he shares the accommodation, or any part of the accommodation, with one or more other persons;
 - (c) the fact that the accommodation is temporary;
 - (d) the location of the accommodation.
- (7) In determining, for the purposes of this section, whether a person's other essential living needs are met, the Secretary of State—
- (a) must have regard to such matters as may be prescribed for the purposes of this paragraph; but
 - (b) may not have regard to such matters as may be prescribed for the purposes of this paragraph.
- (8) The Secretary of State may by regulations provide that items or expenses of such a description as may be prescribed are, or are not, to be treated as being an essential living need of a person for the purposes of this Part.
- (9) Support may be provided subject to conditions.
- (9A) A condition imposed under subsection (9) may, in particular, relate to—
- (a) any matter relating to the use of the support provided, or
 - (b) compliance with a restriction imposed under paragraph 21 of Schedule 2 to the 1971 Act (temporary admission or release from detention) or paragraph 2 or 5 of Schedule 3 to that Act (restriction pending deportation).
- (10) The conditions must be set out in writing.
- (11) A copy of the conditions must be given to the supported person.
- (12) Schedule 8 gives the Secretary of State power to make regulations supplementing this section.
- (13) Schedule 9 makes temporary provision for support in the period before the coming into force of this section.

[95A Support for failed asylum-seekers, etc who are unable to leave UK

- (1) The Secretary of State may provide, or arrange for the provision of, support for a person, for such period or periods as may be prescribed, if—
- (a) the person is a failed asylum-seeker, or a dependant of a failed asylum-seeker,
 - (b) an application for support under this section is made in respect of the person which meets such requirements as may be prescribed,
 - (c) it appears to the Secretary of State that the person is destitute, or is likely to become destitute within such period as may be prescribed, and
 - (d) the person faces a genuine obstacle to leaving the United Kingdom.

- (2) Subsections (3) to (8) of section 95 (meaning of “destitute”) apply for the purposes of this section as they apply for the purposes of that section.
- (3) Regulations made by the Secretary of State may make provision for determining what is, or is not, to be regarded as a genuine obstacle to leaving the United Kingdom for the purposes of this section.
- (4) The Secretary of State may make regulations prescribing other criteria to be used in determining—
 - (a) whether or not to provide support, or arrange for the provision of support, for a person under this section;
 - (b) whether or not to continue to provide support, or arrange for the provision of support, for a person under this section.
- (5) Regulations under subsection (4) may, in particular—
 - (a) provide for the provision of support (or the continuation of the provision of support) to be subject to conditions;
 - (b) provide for the provision of support (or the continuation of the provision of support) to be a matter for the Secretary of State’s discretion to a prescribed extent or in cases of a prescribed description.
- (6) A condition imposed by regulations under subsection (5)(a) may, in particular, relate to any of the following—
 - (a) any matter relating to the use of the support provided;
 - (b) compliance with a restriction imposed under paragraph 21 of Schedule 2 to the 1971 Act (temporary admission or release from detention) or paragraph 2 or 5 of Schedule 3 to that Act (restriction pending deportation);
 - (c) the person’s performance of, or participation in, community activities in accordance with arrangements made by the Secretary of State.
- (7) A copy of any conditions imposed by regulations under subsection (5)(a) must be given to the supported person.
- (8) For the purposes of subsection (6)(c)—
 - (a) “community activities” means activities that appear to the Secretary of State to be beneficial to the public or a section of the public, and
 - (b) the Secretary of State may, in particular—
 - (i) appoint one person to supervise or manage the performance of, or participation in, activities by another person;
 - (ii) enter into a contract (with a local authority or any other person) for the provision of services by way of making arrangements for community activities in accordance with this section;
 - (iii) pay, or arrange for the payment of, allowances to a person performing or participating in community activities in accordance with arrangements under this section.
- (9) Regulations by virtue of subsection (6)(c) may, in particular, provide for a condition requiring the performance of, or participation in, community activities to apply to a person only if—
 - (a) accommodation is to be, or is being, provided for the person under this section, and
 - (b) the Secretary of State has made arrangements for community activities in an area that includes the place where the accommodation is to be, or is being, provided.

- (10) A local authority or other person may undertake to manage or participate in arrangements for community activities in accordance with this section.
- (11) The powers conferred by Schedule 8 (supplementary regulation making powers) are exercisable with respect to the powers conferred by this section as they are exercisable with respect to the powers conferred by section 95, but with the modification in subsection (12).
- (12) Paragraph 9 of Schedule 8 (notice to quit) has effect with respect to the powers conferred by this section as if sub-paragraph (2)(b) were omitted.]

96 Ways in which support may be provided.

- (1) Support may be provided under section 95 [or 95A] —
 - (a) by providing accommodation appearing to the Secretary of State to be adequate for the needs of the supported person and his dependants (if any);
 - (b) by providing what appear to the Secretary of State to be essential living needs of the supported person and his dependants (if any);
 - (c) to enable the supported person (if he is ~~the asylum-seeker~~ [an asylum-seeker]) to meet what appear to the Secretary of State to be expenses (other than legal expenses or other expenses of a prescribed description) incurred in connection with his ~~claim for asylum~~ [protection claim];
 - (d) to enable ~~the asylum-seeker~~ [an asylum-seeker] and his dependants [, or a failed asylum-seeker and his dependants,] to attend bail proceedings in connection with his detention under any provision of the Immigration Acts; or
 - (e) to enable the asylum-seeker and his dependants to attend bail proceedings in connection with the detention of a dependant of his under any such provision.

[(1A) Support under section 95A may, in particular, be provided in the form of vouchers which may be exchanged for goods or services (as well as in the form of cash).]

- (2) If the Secretary of State considers that the circumstances of a particular case are exceptional, he may provide support under section 95 [or 95A] in such other ways as he considers necessary to enable the supported person and his dependants (if any) to be supported.

97 Supplemental

- (1) When exercising his power under section 95 [or 95A] to provide accommodation, the Secretary of State must have regard to [the following]—
 - (a) [in the case of the provision of accommodation under section 95,] the fact that the accommodation is to be temporary pending determination of the asylum-seeker's claim;
 - (b) the desirability, in general, of providing accommodation in areas in which there is a ready supply of accommodation; and
 - (c) such other matters (if any) as may be prescribed.

- (2) But he may not have regard to—
- (a) any preference that the supported person or his dependants (if any) may have as to the locality in which the accommodation is to be provided; or
 - (b) such other matters (if any) as may be prescribed.
- (3) The Secretary of State may by order repeal all or any of the following—
- (a) subsection (1)(a);
 - (b) subsection (1)(b);
 - (c) subsection (2)(a).
- (4) When exercising his power under section 95 [or 95A] to provide essential living needs, the Secretary of State—
- (a) must have regard to such matters as may be prescribed for the purposes of this paragraph; but
 - (b) may not have regard to such other matters as may be prescribed for the purposes of this paragraph.
- (5) In addition, when exercising his power under section 95 [or 95A] to provide essential living needs, the Secretary of State may limit the overall amount of the expenditure which he incurs in connection with a particular supported person—
- (za) to such portion of the maximum amount of an award of universal credit under section 8(1) of the Welfare Reform Act 2012, or
 - (a) to such portion of the income support applicable amount provided under section 124 of the Social Security Contributions and Benefits Act 1992, or
 - (b) to such portion of any components or elements of that amount,
- as he considers appropriate having regard to the temporary nature of the support that he is providing.
- (6) For the purposes of subsection (5), any support of a kind falling within section 96(1)(c) is to be treated as if it were the provision of essential living needs.
- (7) In determining how to provide, or arrange for the provision of, support under section 95 [or 95A], the Secretary of State may disregard any preference which the supported person or his dependants (if any) may have as to the way in which the support is to be given.
- [(8) A tenancy is not a Scottish secure tenancy (within the meaning of the Housing (Scotland) Act 2001 (asp 10)) if it is granted in order to provide accommodation under section 95A.
- (9) A tenancy which would be a Scottish secure tenancy but for subsection (8) becomes a Scottish secure tenancy if the landlord notifies the tenant that it is to be regarded as such.]

98 Temporary support [for asylum-seekers, etc]

- (1) The Secretary of State may provide, or arrange for the provision of, support for—
- (a) asylum-seekers, or
 - (b) dependants of asylum-seekers,
- who it appears to the Secretary of State may be destitute.

- (2) Support may be provided under this section only until the Secretary of State is able to determine whether support may be provided under section 95.
- (3) Subsections (2) to (11) of section 95 apply for the purposes of this section as they apply for the purposes of that section.

[98A Temporary support for failed asylum-seekers, etc

- (1) The Secretary of State may provide, or arrange for the provision of, support for persons within subsection (2) who it appears to the Secretary of State—
 - (a) may be destitute, and
 - (b) may face a genuine obstacle to leaving the United Kingdom.
- (2) The persons referred to in subsection (1) are—
 - (a) failed asylum-seekers, and
 - (b) dependants of failed asylum-seekers.
- (3) Support may be provided under this section only until the Secretary of State is able to determine whether support may be provided under section 95A.
- (4) Subsections (3) to (12) of section 95A apply for the purposes of this section as they apply for the purposes of that section.]

99 Provision of support by local authorities.

- (1) A local authority or Northern Ireland authority may provide support for persons in accordance with arrangements made by the Secretary of State under section 4, 95 ~~or 98~~ [95A, 98 or 98A].
- (2) Support may be provided by an authority in accordance with arrangements made with the authority or with another person.
- (3) Support may be provided by an authority in accordance with arrangements made under section 95 [or 95A] only in one or more of the ways mentioned in ~~section 96(1) and (2)~~ [section 96(1) to (2)].
- (4) An authority may incur reasonable expenditure in connection with the preparation of proposals for entering into arrangements under section 4, 95 ~~or 98~~ [95A, 98 or 98A].
- (5) The powers conferred on an authority by this section include power to—
 - (a) provide services outside their area;
 - (b) provide services jointly with one or more other bodies;
 - (c) form a company for the purpose of providing services;
 - (d) tender for contracts (whether alone or with any other person).

100 Local authority and other assistance for Secretary of State.

- (1) This section applies if the Secretary of State asks—

- (a) a local authority,
- (aa) a private registered provider of social housing,
- (b) a registered social landlord,
- (c) a registered housing association in Scotland or Northern Ireland, or
- (d) the Executive,

to assist him to exercise his power under section 95 [or 95A] to provide accommodation.

- (2) The person to whom the request is made must co-operate in giving the Secretary of State such assistance in the exercise of that power as is reasonable in the circumstances.
- (3) Subsection (2) does not require a private registered provider of social housing or a registered social landlord to act beyond its powers.
- (4) A local authority must supply to the Secretary of State such information about their housing accommodation (whether or not occupied) as he may from time to time request.
- (5) The information must be provided in such form and manner as the Secretary of State may direct.
- (6) “Registered social landlord” has the same meaning as in Part I of the Housing Act 1996.
- (7) “Registered housing association” has the same meaning—
 - (a) in relation to Scotland, as in the Housing Associations Act 1985; and
 - (b) in relation to Northern Ireland, as in Part II of the Housing (Northern Ireland) Order 1992.