



Immigration and Nationality Directorate

NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002 SECTION 54 AND SCHEDULE 3 AND THE WITHHOLDING AND WITHDRAWAL OF SUPPORT (TRAVEL ASSISTANCE AND TEMPORARY ACCOMMODATION) REGULATIONS 2002

GUIDANCE TO LOCAL AUTHORITIES AND HOUSING AUTHORITIES

Issued by the Home Office

Introduction

This guidance is issued by the Home Office to assist local authorities and housing authorities and, in the case of Northern Ireland, the Health and Social Services Boards, to implement Section 54 and Schedule 3 of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") and the associated regulations – the Withholding and Withdrawal of Support (Travel Assistance and Temporary Accommodation) Regulations 2002. Schedule 3 has the effect of preventing local authorities from providing support under certain provisions, including section 21 of the National Assistance Act and section 17 of the Children Act, to :

- nationals of the European Economic Area (EEA) States (other than UK);
- those with refugee status in another EEA state;
- persons unlawfully present in the UK who are not asylum seekers; and
- failed asylum seekers who refuse to co-operate with removal directions.

2. They also impose reporting obligations on local authorities when it appears that a person is unlawfully present in the United Kingdom or is a failed asylum seeker who has refused to comply with removal directions issued by the Immigration Service. The provisions will also allow for local authorities to provide travel assistance to nationals of other EEA Member States and those with refugee status in another EEA Member State in order for them to travel back to that State and to provide temporary accommodation to these groups pending their departure from the UK. Additionally, they will be able to provide similar accommodation to those unlawfully present in the UK whilst they await removal directions from the Immigration Service.

The provisions come into effect on 8 January 2003.

3. Chief Executives are reminded of the desirability of ensuring that all staff employed within the social services and housing directorates of local authorities, and all housing authority staff, receive appropriate training in these new legal requirements.
4. Separate guidance is to be issued on the implications for local authorities of Section 55 of the 2002 Act which is also to come into force on 8th January 2003. This has the effect of restricting the support given to single asylum seekers or couples without dependent minor children who do not make a claim for asylum as soon as reasonably practicable after arrival in the United Kingdom. Section 55 (3) also provides that an authority may not provide or arrange for the provision of support to a person under one of the provisions mentioned in section 55 (4) if the person has made a claim for asylum and the Secretary of State is not satisfied that the asylum claim was made as soon as reasonably practicable after the person's arrival in the United Kingdom.

Background

5. Section 54 and Schedule 3 of the 2002 Act, which come into force on 8 January 2003, have the effect of preventing local authorities from providing support under certain provisions, including section 21 of the National Assistance Act and section 17 of the Children Act, to:
 - nationals of the European Economic Area (EEA) States (other than UK) ;
 - those with refugee status in another EEA state;
 - persons unlawfully present in the UK; and
 - failed asylum seekers who refuse to co-operate with removal directions.
6. The changes introduced apply to those who have been receiving support or assistance before 8 January 2003. Where it comes to light that individuals have been receiving support or assistance under any of these provisions since prior to that time and have ceased to be eligible by virtue of Schedule 3, the relevant support and assistance should cease as well as those who seek support after that date.
7. Schedule 3 to the 2002 Act is attached at annex A. Briefly, the Schedule sets out the following:
 - Paragraph 1 (1) explains the types of support and assistance that are to be withheld or withdrawn.
 - Paragraphs 2 and 3 set out the exceptions to the provisions. Paragraph 2 states that support and assistance may continue to be provided to; a British citizen; a child; in cases where such support and assistance are permitted by regulations made under paragraphs 8, 9 and 10 of the Schedule (for travel assistance to enable some categories of people to leave the United Kingdom and for temporary accommodation to be provided in certain cases). Paragraph 3 specifies that support and assistance may also continue to be provided if and to the extent that it is necessary to avoid a breach of a person's rights under the European Convention on Human Rights or Community Treaties.
 - Paragraphs 4 to 7 define the groups for whom support and assistance should be withheld or withdrawn.

- Paragraphs 8 to 10 provide the Secretary of State with powers to allow the provision of travel and assistance and temporary accommodation in certain cases.
- Paragraphs 11 and 12 define the scope of the regulations that may be made under the powers provided for by paragraphs 8 to 10.
- Paragraph 13 explains that it will be an offence should: a person who has previously left the United Kingdom by virtue of paragraph 8, subsequently returns and then requests that travel assistance or temporary accommodation be provided; and where a person requests arrangements be made for them under paragraphs 8 – 10 of the Schedule and at the time of the request fails to mention any previous such request. Such offences would attract a maximum sentence of six months.
- Paragraph 14 places a reporting obligation on local authorities in cases where it appears to the authority that a person in their area is unlawfully present in the United Kingdom or is a failed asylum-seeker who has refused to comply with removal directions issued by the Immigration Service.
- Paragraph 15 makes provision for future variations to the categories of ineligible people already included in paragraphs 4 – 7. Categories can be either added or withdrawn. Similarly, it also provides for future variations to the types of support and assistance set out in paragraph 1(1). Such variations would be made by Order by the Secretary of State.
- Paragraph 16 explains that any Orders made under paragraph 15 (as well as regulations under paragraph 2(1)(d) or (e) and any regulations that amend primary legislation) must be made by statutory instrument and subject to the affirmative resolution procedure (i.e. a debate in each House of Parliament). Other Regulations made under Schedule 3 are to be subject to the negative procedure (that is, they are subject to annulment in pursuance of a resolution of either House of Parliament). Paragraph 17 explains the definitions of terms used in the Schedule.

Important: Contacting the Home Office

8. Authorities should determine whether section 54 of the 2002 Act applies by applying this guidance. They should not generally contact the Home Office.

GUIDANCE TO ASSIST AUTHORITIES TO DETERMINE WHETHER SECTION 54 AND SCHEDULE 3 OF THE 2002 ACT APPLIES

9. Before granting support or assistance to any person under any of the provisions set out in paragraph 1(1) of Schedule 3, local authorities must ensure that the individual is eligible to receive such support. By virtue of paragraph 14(2) of Schedule 3 to the 2002 Act, authorities must act in accordance with paragraphs 10 to 25 of this guidance. A questionnaire is enclosed at Annex B to this guidance that provides a standard list of questions that must be posed to all persons seeking support or assistance under any of the Schedule 3 provisions. If an error is discovered, support should be terminated immediately.

10. The questionnaire is divided into four sections:

Section A: Common questions for all applicants

Section B: Identifying those with refugee status in other EEA states

Section C: Identifying current and failed asylum seekers

Section D: Identifying those unlawfully present in the UK.

11. Where an individual presents to a local authority for support and the authority is considering providing support under one of the Schedule 3 provisions, the questions in Section A must be asked. This applies to ALL persons.

12. Prior to any services being provided, the individual must produce positive proof of their ordinary residence, immigration status and nationality. The following documents are to be regarded as proof:

- (a) Full current passport; or
- (b) Birth Certificate; or
- (c) Original Home Office letter confirming immigration status.

13. Only original documents are acceptable. Photocopies are not acceptable. Where an individual is unable to produce documents that prove their eligibility for support or assistance under one of the Schedule 3 provisions, none can be offered, other than the minimum necessary under their ECHR or treaty rights and s.20 Children Act 1989 support to children under 18.

14. Those individuals unable to provide proof should be asked to obtain it as soon as possible. Where an individual does not return with proof, the Home Office Immigration and Nationality Directorate should be advised (see reporting requirements) as in such circumstances a reasonable person might suspect that the individual is unlawfully present in the UK. Until such time as documentary proof of eligibility is produced, support cannot be provided (other than the minimum required under ECHR, treaty rights, or section 20 Children Act 1989 support to children under 18).

15. A sole exception exists where an individual claims a document has been lost or stolen. In these cases they must be asked to provide details of the police station, embassy or other consulate where the loss or theft was reported. The local authority must contact the police station, embassy or consulate and verify the information.

16. Section B aims to identify those with refugee status in other EEA states.

17. Section C aims to identify current and failed asylum seekers.

19. Local authorities' social services departments will in many cases be experienced in identifying asylum seekers whom NASS has the responsibility to support and in referring them to NASS. This process should continue where appropriate, following existing local authority departmental guidance. Separate guidance will also be issued to help local authorities identifying those approaching them for support who have been refused support by NASS under section 55 of the Nationality, Immigration and Asylum Act 2002 due to making a late claim for asylum.

20. The answers to questions at Annex A to C should provide sufficient information for local authorities to be able to decide that a person is a failed asylum seeker (or a

dependant of a failed asylum seeker – see paragraph 17 below) who has failed to comply with removal directions set by the Immigration Service. Supplementary questions may, of course, be asked where it is considered appropriate. Individuals will have been given documentation by the Immigration Service relating to their removal, but it is not necessary for the local authority to examine such documentation in order to reach a decision that the person is a failed asylum seeker who has failed to comply with removal directions. Individuals will also have been given documentation showing that their asylum claim has been determined (see below)

21. A person is considered to be a failed asylum seeker when:

- The person has been notified by the Home Office of a negative decision on their asylum claim, and the person has not appealed against that decision (an out of time appeal lodged more than 10 working days after the person was deemed to have been notified should be disregarded unless there is confirmation that an out of time appeal has been accepted either by appeals group or an asylum adjudicator); or
- The person has been notified of a negative decision on their asylum claim and they have appealed, but they have lost their appeal and they have no further avenue of appeal under the Immigration Acts or the Special Immigration Appeals Commission Act 1997 (judicial review is not considered to be an appeal under these Acts).

22. A person is considered to be a dependant of a failed asylum seeker, if he or she is:

- (a) his spouse;
- (b) a child of his or his spouse, is dependent on him and is, or was at the relevant time, under 18;
- (c) is a member of his or his spouse's close family and is, or was at the relevant time, under 18;
- (d) had been living as part of his household for at least six of the twelve months before the relevant time, or since birth and is, or was at the relevant time, under 18;
- (e) is in need of care and attention from him or a member of his household by reason of disability and would fall within paragraph c) or (d) but for the fact that he is not, and was not at the relevant time, under 18;
- (f) had been living with him as an unmarried couple for at least two of the three years before the relevant time.

23. Removal directions are issued to failed asylum seekers and their dependants by the Immigration Service using standard pro-formas in either the IS 82, 92 or 151 series. They allow for a person to be removed from the United Kingdom to a country or territory of which they are a citizen or national, or to a third country provided that they are acceptable there. Removal can be at either the expense of the inbound carrying company (if known) or the Secretary of State. Removal directions can specify a date and time of intended removal, or may state "at a time and date to be notified". A person is considered to have failed to comply with removal directions when the Immigration Service has served the person with Removal Directions and the person has not travelled out of the United Kingdom on the set date. If the person claims that the Removal directions were withdrawn by the Immigration Service then the onus is on the applicant to produce documentary evidence to support this. If the evidence is produced then asylum support may normally be provided by NASS or the local authority depending on the date of the

original asylum application. In the case of single people or childless couples, if removal directions are not set within 21 days of the date their asylum claim became determined, asylum support will normally be withdrawn at the end of the 21 days.

24. Local authorities who have queries about the general procedures for identifying failed asylum seekers who have failed to comply with removal directions may ring IND on 020 8760 4527 or fax details to 020 8760 3728.
25. Section D questions aim to identify those who are unlawfully present in the UK. Persons unlawfully present in the UK are ineligible for Schedule 3 support or assistance. Local authorities should notify their local immigration office of such cases; a list of contact numbers is at annex D.

Former Unaccompanied Asylum Seeking Children

26. Unaccompanied Asylum Seeker Children are normally granted exceptional leave until the age of 18. If, upon reaching 18 the individual applies for asylum, NASS will normally provide support (depending on the date the person applied for asylum). If such an individual becomes a failed asylum seeker then they should be treated in the same way as any other asylum seeker as regards asylum support (i.e. asylum support will be withdrawn). In addition if they become a failed asylum seeker and fail to comply with removal directions then any assistance being provided by a local authority under the provisions of the Children Act 1989 must be withdrawn. Such individuals can leave the UK either through removal by the Immigration Service or through a voluntary departure with VARP.

GUIDANCE TO ASSIST AUTHORITIES TO DETERMINE WHETHER TO MAKE TRAVEL ARRANGEMENTS/GRANT TEMPORARY SHORT-TERM ACCOMMODATION

27. The Withholding and Withdrawal of Support (Travel Assistance and Temporary Accommodation) Regulations 2002 (hereafter referred to as “the Regulations 2002”) give limited powers to local authorities to make arrangements for:

- (a) Nationals of other EEA Member States; and
- (b) Those with refugee status in another EEA Member State.

to travel back to that member state. No arrangements may be made in respect of failed asylum seekers and those unlawfully present in the UK – responsibility for making travel arrangements for these groups of person rests with the Home Office Immigration and Nationality Directorate.

28. Additionally, Local Authorities are also granted a power under the Regulations 2002 to grant temporary short-term accommodation to some classes of person listed in Schedule 3 pending departure from the United Kingdom. The powers to grant temporary accommodation are limited to the following classes of person who have with them a dependent child:

- (a) Nationals of EEA states other than the UK;
- (b) Those with Refugee status in another EEA Member State; and
- (c) Those unlawfully present in the UK.

29. There is no power to grant temporary accommodation to failed asylum seekers who are refusing to co-operate with removal directions, regardless of whether they have with them a dependent child. In cases where there is a dependent child, local

authorities may grant temporary accommodation to the child only if the authority identifies that they have a duty to the child under section 20 of the Children Act 1989.

30. By virtue of paragraph 11(e) of Schedule 3 to the 2002 Act, local authorities should have regard to the guidance set out paragraphs 31 to 50 when determining how to make these arrangements.

Temporary Accommodation

31. Accommodation is purely a temporary measure to allow a person with dependent children to be accommodated pending departure from the UK. Local authorities should have regard to the desirability of ensuring that the overall cost of accommodation and the return journey is as cost-effective as possible.
32. For those persons returning to EEA Member States, it is preferable if accommodation does not continue for a period of more than a further 5 days from the date the family first presented for support or assistance to the local authority. For those returning to other countries, it is preferable if accommodation does not continue for a period of more than a further 10 days from the date the family first presented for support or assistance to the local authority.
33. In the event of failure to travel, should the person have an acceptable reason and be able to provide acceptable proof, further accommodation could, in principle, be provided. New travel arrangements should ideally be made at the first possible opportunity and it is preferable if accommodation does not continue for a period of a further 5 days (returns to EEA member states) or 10 days (for those returning to non-EEA States).
34. Where an individual fails to travel and they do not provide an acceptable reason or cannot provide acceptable proof, further accommodation should not be provided to them as set out in the Regulations 2002. Offers of care may be made to any children under Section 20 of the Children Act 1989. But further accommodation, or any other form of support as defined in Paragraph 1(1) of Schedule 3 of the Nationality, Immigration and Asylum Act 2002 should not be provided to the adults.
35. In respect of individual(s) here unlawfully, the Home Office Immigration and Nationality Directorate will inform local authorities should the individual refuse to cooperate with removal directions. In such an event, all accommodation must be immediately terminated as set out in the Regulations 2002. Offers of care may be made to any children under Section 20 of the Children Act 1989. Again, it follows from the Regulations 2002 that no further accommodation, or any other form of support as defined in Paragraph 1(1) of Schedule 3 of the Nationality, Immigration and Asylum Act 2002 should be provided to the adults.
36. In the event families here unlawfully are detained by IND, there will be no need for local authorities to provide support to children under Section 20 of the Children Act 1989.

Travel Arrangements

37. In making travel arrangements for nationals of other EEA Member States or those with refugee status in another EEA Member State to travel back to that State, the Regulations 2002 provide that Local Authorities must not provide cash or other forms of finance to persons in respect of whom travel arrangements are being

made to allow them to make arrangements themselves. Local Authorities should endeavour to :

- (a) Make all travel arrangements on behalf of the person(s) travelling;
- (b) Provide those person(s) with appropriate tickets or other documents allowing them to travel;
- (c) Ensure that in as far as is practicable, the ticket or other travel document contains the name of the person travelling and that name is not capable of change;
- (d) Ensure the method of travel home is by the most cost-effective means possible.

38. Local Authorities should inform the person that failure to travel without an acceptable excuse might result in no further accommodation being made available to them. They should also be informed that if they fail to co-operate with attempts to make arrangements for them to travel, support and accommodation could be refused or immediately withdrawn. The Regulations 2002 state that neither the local authority making the arrangements nor any other local authority may make arrangements for the accommodation of a person who has failed to co-operate with travel arrangements, unless the local authority considers that the failure to travel was because either:

- (a) the person or a person within the family group was medically unfit to travel as arranged; or

that despite having taken all reasonable steps to ensure they co-operated with the travel arrangements, they were prevented from doing so by a failure of a transport service.

39. In respect of (b) this is designed to stop people getting up at the last minute, missing a train, then claiming they could not travel as they missed a connection. Generally, there would be an expectation that they should use public transport, which might be regarded as:

- (a) Trains and underground trains (in London and elsewhere)
- (b) Aircraft;
- (c) Licensed Hovercraft (in case the Isle of Wight is involved);
- (d) Ships operated by a licensed operator;
- (e) Trams;
- (f) Coaches operated by a licensed operator;
- (g) Buses operated by a licensed operator;
- (h) Licensed hackney carriages.

40. If someone uses transport that is not public transport (or transport provided or arranged by the local authority), and that fails, this may not be regarded as an acceptable reason under the for failure to travel and that is a risk they take. Local Authorities should point this out as soon as possible to applicants.

41. If a person fails to co-operate with travel arrangements because of illness, local authorities may wish to request that they provide a medical certificate issued by a doctor registered with the UK General Medical Council certifying:

- (a) that they are unfit to travel; and
- (b) the reason(s) they are unfit to travel.

42. This certificate should be presented to a local authority as soon as practicable. Where it is not possible to do so, the individual should inform the local authority before the time of travel:
- (a) that they are unfit to travel;
 - (b) the reason(s) they are unfit to travel;
 - (c) the reason(s) it is not possible to produce a medical certificate;
 - (d) the name(s) of any doctors they have approached to provide such a certificate.
43. Local Authorities should take all reasonable steps to satisfy themselves that it was not possible for the person to produce a medical certificate at the first practicable opportunity.
44. Where the authority is satisfied a medical certificate could not be obtained it shall have the power to grant further accommodation whilst travel arrangements are re-arranged.
45. Even where person(s) fail to travel for unacceptable reason(s) and/or they are unable to satisfy the proof requirements, local authorities may wish to leave the offer of travel at public expense open. Other than leaving the offer of travel open, no other forms of support or assistance set out in Paragraph 1(1) should be provided.
46. Where a dependent child is certified as medically unfit to travel, subject again to the limitations on production of proof as detailed above, local authorities may wish to consider whether one parent remains with the child until they are fit to travel. The remainder of the family may travel as arranged. In the event they fail to do so, support and accommodation to those family members must be terminated immediately.
47. In terms of failing to travel the local authority should seek proof from the person of the reason for the failure as soon as possible. Otherwise the local authority may not provide further accommodation.
48. In respect of this type of failure to travel, before a local authority grants further accommodation, the person should provide a full explanation as to why they failed to travel. Before granting further accommodation, the authority may wish to consider that:
- the reason given is accurate and truthful;
 - that the applicant took all reasonable steps to ensure they were able to travel as arranged; and
 - it was only despite the best efforts of the individual to comply with travel arrangements they were unable to do so.
49. Where it is not possible for the authority to satisfy itself, or the authority is not satisfied, the authority may wish to consider whether further accommodation should be offered until the time that it is so satisfied. Again, offers of travel home at public expense must be left open.
50. Nothing here prevents the offer of s.20 Children Act 1989 accommodation to the children.

SECTION 54 and SCHEDULE 3 OF THE NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002

54 Withholding and withdrawal of support
Schedule 3 (which makes provision for support to be withheld or withdrawn in certain circumstances) shall have effect.

Schedule 3 Withholding and withdrawal of support

Ineligibility for support

- 1(1) A person to whom this paragraph applies shall not be eligible for support or assistance under -
- (a) section 21 or 29 of the National Assistance Act 1948 (c.29) (local authority: accommodation and welfare),
 - (b) section 45 of the Health Services and Public Health Act 1968 (c. 46) (local authority: welfare of elderly),
 - (c) section 12 or 13A of the Social Work (Scotland) Act 1968 (c. 49) (social welfare services),
 - (d) Article 7 or 15 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)) (prevention of illness, social welfare, &c),
 - (e) Article 7 or 15 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)) (prevention of illness, social welfare, &c),
 - (f) Section 29 (1) (b) of the Housing (Scotland) Act 1987 (c. 26)) (interim duty to accommodate in case of apparent priority need where review of a local authority decision has been requested),
 - (g) Section 17, 23C, 24A or 24B of the Children Act 1989 (c. 41) (welfare and other powers which can be exercised in relation to adults),
 - (h) Article 18, 35 or 36 of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)) (welfare and other powers which can be exercised in relation to adults),
 - (i) Sections 22,29 and 30 of the Children (Scotland) Act 1995 (c. 36) (provisions analogous to those mentioned in paragraph (g)),
 - (j) Section 188(3) or 204 (4) of the Housing Act 1996 (c. 52) (accommodation pending review or appeal),
 - (k) Section 2 of the Local Government Act 2000 (c.22) (promotion of well-being),
 - (l) A provision of the Immigration Asylum Act 1999 (c. 33), or
 - (m) A provision of this Act.
- (2) A power or duty under a provision referred to in sub-paragraph (1) may not be exercised or performed in respect of a person to whom this paragraph applies (whether or not the person has previously been in receipt of support or assistance under the provision).
- (3) An approval or directions given under or in relation to a provision referred to in sub-paragraph (1) shall be taken to be subject to sub-paragraph (2).

Exceptions

- 2 (1) Paragraph 1 does not prevent the provision of support or assistance -
- (a) To a British citizen, or
 - (b) To a child, or
 - (c) Under or by virtue of regulations made under paragraph 8, 9 or 10 below, or
 - (d) In a case in respect of which, and to the extent to which, regulations made by the Secretary of State disapply paragraph 1, or
 - (e) In circumstances in respect of which, and to the extent to which, regulations made by the Secretary of state disapply paragraph 1.
- (2) Regulations under sub-paragraph (1) (d) may confer a discretion on the Secretary of State.
- (3) Regulations under sub-paragraph (1) (e) may, in particular, disapply paragraph 1 to the provision of support or assistance by a local authority to a person where the authority –
- (a) Has taken steps in accordance with guidance issued by the Secretary of State to determine whether paragraph 1 would (but for the regulations) apply to the person, and
 - (b) Has concluded on the basis of those steps that there is no reason to believe that paragraph 1 would apply.
- (4) Regulations under sub-paragraph (1) (d) or (e) may confer a discretion on an authority.
- (5) A local authority which is considering whether to give support or assistance to a person under a provision listed in paragraph 1 (1) shall act in accordance with any relevant guidance issued by the Secretary of State under sub-paragraph (3) (a).
- (6) A reference in this Schedule to a person to whom paragraph 1 applies includes a reference to a person in respect of whom that paragraph is disapplied to a limited extent by regulations under sub-paragraph (1) (d) or (e), except for which the regulations provide otherwise.
- 3 Paragraph 1 does not prevent the exercise of a power or the performance of a duty if, and to the extent that, its exercise or performance is necessary for the purpose of avoiding a breach of -
- (a) a person's Convention rights, or
 - (b) a person's rights under the Community Treaties.

First class of ineligible person: refugee status abroad

- 4 (1) Paragraph 1 applies to a person if he –
- (a) Has refugee status abroad, or
 - (b) Is the dependent of a person who is in the United Kingdom and who has refugee status abroad.

- (2) For the purposes of this paragraph a person has refugee status abroad if –
- (a) He does not have the nationality of an EEA State, and
 - (b) The government of an EEA State other than the United Kingdom has determined that he is entitled to protection as a refugee under the Refugee Convention.

Second class of ineligible person: citizen of other EEA State

5. Paragraph 1 applies to a person if he –
- (a) Has the nationality of an EEA State other than the United Kingdom, or
 - (b) Is the dependent of a person who has the nationality of an EEA State other than the United Kingdom.

Third class of ineligible person: failed asylum-seeker

- 6 (1) Paragraph 1 applies to a person if –
- (a) He was (but is no longer) an asylum seeker, and
 - (b) He fails to cooperate with removal directions issued in respect of him.
- (2) Paragraph 1 also applies to a dependent of a person to whom that paragraph applies by virtue of sub-paragraph (1).

Fourth class of ineligible person: person unlawfully at large in the United Kingdom

7. Paragraph 1 applies to a person if –
- (a) he is in the United Kingdom in breach of the immigration laws within the meaning of section 11, and
 - (b) he is not an asylum-seeker.

Travel assistance

- 8 The Secretary of State may make regulations providing for arrangements to be made enabling a person to whom paragraph 1 applies by virtue of paragraph 4 or 5 to leave the United Kingdom.

Temporary accommodation

- 9 (1) The Secretary of State may make regulations providing for arrangements to be made for the accommodation of a person to whom paragraph 1 applies pending the implementation of arrangements made by virtue of paragraph 8.
- (2) Arrangements for a person by virtue of this paragraph –
- (a) may be made only if the person has with him a dependent child, and
 - (b) may include arrangements for a dependent child.
- 10 (1) The Secretary of State may make regulations providing for arrangements to be made for the accommodation of a person if –

- (a) paragraph 1 applies to him by virtue of paragraph 7, and
- (b) he has not failed to cooperate with removal directions issued in respect of him.

(2) Arrangement for a person by virtue of this paragraph –

- (a) may be made only if the person has with him a dependent child, and
- (b) may include arrangements for a dependent child.

Assistance and accommodation: general

11 Regulations under paragraph 8, 9 or 10, may –

- (a) provide for the making of arrangements under a provision referred to in paragraph 1(1) or otherwise;
- (b) confer a function (which may include the exercise of a discretion) on the Secretary of State, a local authority or another person;
- (c) provide that arrangements must be made in a specified manner or in accordance with specified principles;
- (d) provide that arrangements may not be made in a specified manner;
- (e) require a local authority or another person to have regard to guidance issued by the Secretary of State in making arrangements;
- (f) require a local authority or another person to comply with a direction of the Secretary of State in making arrangements.

12 (1) Regulations may, in particular, provide that if a person refuses an offer of arrangements under paragraph 8 or fails to implement or cooperate with arrangements made for him under that paragraph –

- (a) new arrangements may be made for him under paragraph 8, but
- (b) new arrangements may not be made for him under paragraph 9.

(2) Regulations by virtue of this paragraph may include exceptions in the case of a person who –

- (a) has a reason of a kind specified in the regulations for failing to implement or cooperate with arrangements made under paragraph 8, and
- (b) satisfies any requirements of the regulations for proof of the reason.

Offences

13 (1) A person who leaves the United Kingdom in accordance with arrangements made under paragraph 8 commits an offence if he –

- (a) returns to the United Kingdom, and
- (b) requests that arrangements be made for him by virtue of paragraph 8, 9 or 10.

(2) A person commits an offence if he –

- (a) requests that arrangements be made for him by virtue of paragraph 8, 9 or 10, and
- (b) fails to mention a previous request by him for the making of arrangements under any of those paragraphs.

- (3) A person who is guilty of an offence under this paragraph shall be liable on summary conviction to imprisonment for a term not exceeding six months.

Information

- 14 (1) If it appears to a local authority that paragraph 1 applies or may apply to a person in the authority's area by virtue of paragraph 6 or 7, the authority must inform the Secretary of State.
- (2) A local authority shall act in accordance with any relevant guidance issued by the Secretary of State for the purpose of determining whether paragraph 1 applies or may apply to a person in the authority's area by virtue of paragraph 6 or 7.

Power to amend Schedule

- 15 The Secretary of State may by order amend this Schedule so as –
- (a) to provide for paragraph 1 to apply or not to apply to a class of person;
 - (b) to add or remove a provision to or from the list in paragraph 1(1);
 - (c) to add, amend or remove a limitation of or exception to paragraph 1.

Orders and regulations

- 16 (1) An order or regulations under this Schedule must be made by statutory instrument.
- (2) An order or regulations under this Schedule may –
- (a) make provision which applies generally or only in specified cases or circumstances or only for specified purposes;
 - (b) make different provision for different cases, circumstances or purposes;
 - (c) make transitional provision;
 - (d) make consequential provision (which may include provision amending a provision made by or under this or another Act)
- (3) An order under this Schedule, regulations under paragraph 2(1)(d) or (e) or other regulations which include consequential provision amending an enactment shall not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (4) Regulations under this Schedule to which sub-paragraph (3) does not apply shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Interpretation

- 17 (1) In this Schedule –
- “asylum-seeker” means a person –
- (a) who is at least 18 years old,
 - (b) who has made a claim for asylum (within the meaning of section 16 (3)),
- and

- (c) whose claim has been recorded by the Secretary of State but not determined.

“Convention rights” has the same meaning as in the Human Rights Act 1998 (c.42),

“child” means a person under the age of eighteen,

“dependant” and “dependent” shall have such meanings as may be prescribed by regulations made by the Secretary of States,

“EEA State” means a State which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992 (as it has effect from time to time),

“local authority” –

- (a) in relation to England and Wales, has the same meaning as in section 124 (3),
- (b) in relation to Scotland, has the same meaning as in section 124 (4), and
- (c) in relation to Northern Ireland, means a health service body within the meaning of section 128 (4)(d) and the Northern Ireland Housing Executive (for which purpose a reference to the authority’s area shall be taken as a reference to Northern Ireland),

“the Refugee Convention” means the Convention relating to the status of Refugees done at Geneva on 28th July 1951 and its Protocol, and

“removal directions” means directions under Schedule 2 to the Immigration Act 1971 (c.77) (control of entry, &c), under Schedule 3 to that Act (deportation) or under section 10 of the Immigration and Asylum Act 1999 (c.33) (removal of person unlawfully in United Kingdom).

- (2) For the purpose of the definition of “asylum-seeker” in sub-paragraph (1) a claim is determined if –
 - (a) the Secretary of State has notified the claimant of his decision,
 - (b) no appeal against the decision can be brought (disregarding the possibility of an appeal out of time with permission), and
 - (c) any appeal which has already been brought has been disposed of.
- (3) For the purpose of sub-paragraph (2)(c) an appeal is disposed of when it is no longer pending for the purpose of –
 - (a) Part 5 of this Act, or
 - (b) The Special Immigration Appeals Commission Act 1997 (c.68).
- (4) The giving of directions in respect of a person under a provision of the Immigration Acts is not the provision of assistance to him for the purposes of this Schedule.



Immigration and Nationality Directorate
DRAFT QUESTIONNAIRE TO ASSESS ELIGIBILITY FOR SUPPORT

The purpose of this questionnaire is to provide you with a series of questions that enable you to establish if an applicant is ineligible for support or assistance under the terms of Schedule 3 the Nationality, Immigration and Asylum Bill.

This requires local authorities to take all reasonable steps to ensure support is not granted to those who are ineligible.

Section A

- A1** What is your name?

- A2** Do you use, or are you known by any other names?

- A3** What is your date of birth?

- A4** Why are you seeking social care support?

- A5** Where do you live?
(Check this is a permanent address. If not ask for one)

- A6** Where were you born?

A7 What is your nationality?

Inform the applicant:

Prior to any services being provided I will need to see proof of ordinary residence and nationality. This means I will need to see your full current passport or birth certificate or original Home Office letter confirming immigration status and some other positive proof of identity such as a credit card, building society book or other official document.

At this stage:

If the applicant is an EEA national you can discontinue questioning and refer to your departmental guidance on eligibility. Otherwise, continue to ask all questions in sections B, C and D.

Section B

Identifying those with refugee status in other EEA states

B1 Have you ever applied for asylum or refugee status in another country?

B2 If so, where?

B3 What was the outcome of that application?

B4 Do you have a wife/husband/partner and if so have they ever applied for asylum or refugee status in another country?

B5 Where was that application made and what was the outcome?

Section C

Identifying current and failed asylum seekers

C1 Have you ever applied for asylum in the UK?

C2 What was the outcome of that application – or is it still pending?

C3 Do you have a wife, husband or other partner?

C4 Have they ever applied for asylum in the UK?

C5 What was the outcome of that application – or is it still pending?

Section D

Identifying those unlawfully present in the UK

D1 When did you enter the UK?

D2 How did you enter the UK?

D3 What is your current immigration status in the UK?

D4 When does/when did your permission to stay expire?

D5 Have you submitted an application to the Home Office to remain in the UK?

Interpreting Responses

If a person has an refugee status in another EEA state, or they are a dependant of a person with refugee status in another EEA state, they are ineligible for support or assistance.

If a person has an asylum claim outstanding in the UK they are ineligible for support. If their claim has failed or they are a dependant of a person whose claim has failed, and they are refusing to leave the UK, they are ineligible for support. If the applicant, or their partner, has had an asylum application refused you should refer to the Home Office to establish if they can leave, and if so, if they are refusing to leave.

Persons here unlawfully are ineligible for support or assistance. If they have entered the UK lawfully, they will have a passport or national identity card. You must ask to see this before granting support. If they have lost it, you must ask the applicant to produce official confirmation from the police and the relevant embassy/high commission.

Reporting to the Home Office

You are obliged to report to the Home Office Immigration and Nationality Directorate the details of any person whom you reasonably suspect to be:

- A failed asylum seeker refusing to leave the UK; and/or
- Unlawfully present in the UK.

Annex C

PRO-FORMA FOR NOTIFYING THE HOME OFFICE WHEN A LOCAL AUTHORITY IS PROPOSING TO WITHHOLD OR WITHDRAW SUPPORT OR ASSISTANCE UNDER THE PROVISIONS SET OUT IN SECTION 54 AND SCHEDULE 3 OF THE NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002

FAMILY NAME

FORENAMES

DATE OF BIRTH

NATIONALITY

ADDRESS

PHOTOGRAPH OF APPLICANT (If available)

ANY OTHER INFORMATION WHICH MIGHT
BE USEFUL IN TRACING/PROVIDING OTHER DETAILS
OF THE APPLICANT