

IMMIGRATION AND ASYLUM ACT 1999

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part VI: Support for asylum seekers

269. Part VI of the Act sets out provisions for the support of asylum seekers.

Section 94: Interpretation of Part VI

270. Subsection (1) defines an asylum seeker as someone who has made a claim for asylum under the Refugee Convention, which has not yet been determined, or for protection under Article 3 of the ECHR, and whose claim has not yet been determined. Dependants of asylum seekers are supported alongside the asylum seeker, and a dependant is defined as an asylum seeker's spouse or any dependent child of the asylum seeker or spouse who is under the age of 18. There is a power to add to this list by means of regulations. This subsection also defines a supported person under the terms of the Secretary of State's scheme so that it includes both the principal asylum seeker or his dependants. This reflects the ability of the Secretary of State to provide support for an asylum seeker's dependants even though he may not be supporting the principal asylum seeker, for example, because he is detained.
271. Under section 95 support may be provided to an asylum seeker by the Secretary of State, or through arrangements made by him with another party. The Home Office proposes to contract with local authorities, housing associations, private sector landlords and the voluntary sector for the provision of accommodation and subsistence for asylum seekers. Subsection (2) of section 94 clarifies that throughout Part VI of the Act, references to support provided under the main power include support provided under arrangements made with others.
272. Subsection (3) of section 94 defines when an asylum claim is to be treated as having been determined for the purposes of the support arrangements. A claim would be determined a prescribed number of days after either the Secretary of State's decision on an asylum application, or (where there has been an appeal) the final determination of the appeal. It is expected that this period will not be less than 14 days; this period of grace would allow a former asylum seeker time to make other arrangements before his stay in accommodation provided under Part VI ends. This provision would only apply to single asylum seekers or childless couples; the effect of subsection (5) is that families with dependent children will continue to be eligible for support for as long as they remain in the country. Subsection (6) makes it clear, however, that they would cease to be eligible for support under the Secretary of State's scheme if the asylum seeker was recognised as a refugee or otherwise granted leave to enter or remain (because he would be entitled to transfer to the main benefits system).
273. Subsection (7) gives the Secretary of State power to reach a decision on the age of a person claiming support. This provision is necessary, for example, because some asylum seekers claim to be minors when they are not.

Section 95: Persons for whom support may be provided

274. This section contains the key support power conferred on the Secretary of State, and in particular sets out whom he may support. It sets out the core tests that will be applied when considering applications for assistance under these provisions.
275. Subsection (1) provides that support may be provided for asylum seekers and their dependants who appear to the Secretary of State to be either destitute or who are likely to become destitute within a period to be prescribed in regulations; this latter provision will allow the Secretary of State to start making support arrangements in anticipation of destitution occurring. The power to provide support exists only so long as destitution (or the threat of it) exists; thus if someone assisted under these provisions ceases to be destitute, the Secretary of State will cease to be able to assist him. Support may either be provided by the Secretary of State (in practice the Home Office) directly, or under arrangements he makes with others who will provide support.
276. Subsection (2) provides for the making of regulations to exclude people from entitlement under prescribed circumstances; for example, asylum seekers who remain eligible for social security benefits because they are nationals of countries which are signatories to either the European Social Charter or the European Convention on Social and Medical Assistance.
277. Subsection (5) provides for regulations to be made setting out matters to be taken into account in determining the adequacy of accommodation for those asylum seekers who already have access to accommodation before applying to the Secretary of State for support. Subsection (6) sets out certain matters which may not be taken into account in determining whether accommodation is adequate for this purpose. No account may be taken of whether the asylum seeker has any right to occupy accommodation (eg whether or not he has a tenancy or is a licensee), or the fact that the accommodation is shared with others, that it is of a temporary character (eg a short stay hostel), or the area in which it is located. Subsections (7) and (8) provide for the Secretary of State to make secondary legislation specifying what kinds of items or expenses are, or are not, to be treated as essential living needs and identifying matters to which he may or may not have regard in considering whether these needs are met.
278. Subsections (9) to (11) provide that the Secretary of State may make the support subject to conditions which must be notified to the person in writing. These conditions could cover matters such as the behaviour of the applicant, his responsibilities as an occupier of property made available by the Secretary of State, or a requirement to live at the accommodation provided or (for those receiving assistance with living expenses only) for him to live at the address notified to the Home Office for the purpose of his asylum application. If a person is in breach of these conditions he could be evicted from the accommodation, and/or the support for living expenses ended. Subsections (12) and (13) are the enabling provisions giving effect to Schedules 8 and 9. Schedule 8 provides the Secretary of State with powers to make regulations governing the operation of the support scheme when Part VI comes into force, while Schedule 9 provides for support to be provided on an interim basis during a period from shortly after Royal Assent until the main Part VI arrangements come into operation.