

NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Other Support and Assistance

Section 43: Asylum-seeker: form of support

123. **Section 43** creates an order-making power under which support provided for asylum-seekers under section 96(1)(b) of the 1999 Act can be restricted to those asylum-seekers who have accommodation provided for them under section 96(1)(a) of the 1999 Act. An Order made under this power can apply generally or in specific circumstances. Any Order made under this provision must be approved in draft by both Houses of Parliament before it can be made.

Section 44: Destitute asylum-seeker

124. **Section 44** amends various provisions of Part VI of the 1999 Act (support for asylum seekers), to bring them into line with the provisions of Part 2 of the Act. Subsections (1) to (5) amend parts of section 94 of the 1999 Act to bring the definitions in relation to the meaning of “asylum seeker” and “dependant” in that section into line with those used in sections 18 and 20 of this Act. Subsection (6) substitutes a new provision for section 95(2) to (8) of the 1999 Act, which defines destitution for the purposes of support under that section. It mirrors section 19 (in relation to accommodation centres) by defining a person as destitute when that person does not have, and cannot obtain, both adequate accommodation and food and other essential items. This replaces the original provision in section 95 (2) but the effect is the same. Subsection (6) also mirrors section 19 by providing the factors to which the Secretary of State cannot have regard in determining when accommodation is adequate and what items are essential items. Like section 19, the Secretary of State also has the power to provide for when a person is not to be treated as destitute.

Section 45: Section 44: supplemental

125. Subsections (1) to (3) of section 45 make consequential amendments to the 1999 Act to reflect the changes made to section 95 of that Act by section 44. Subsections (5) to (7) make consequential amendments to certain social welfare provisions, that were amended by the 1999 Act, to take account of the changes which section 44 makes to section 95(2) to 95(8) of that Act.

Section 46: Section 44: supplemental: Scotland and Northern Ireland

126. This section makes further consequential amendments to social welfare provisions in relation to Scotland and Northern Ireland. These social welfare provisions were amended by the 1999 Act and now need to be amended to reflect the changes made to section 95(2) to (8) of the 1999 Act by section 44 of this Act.

Section 47: Asylum-seeker: family with children

127. **Section 47** extends section 122 of the 1999 Act to accommodation centres by inserting a new section 122 into the 1999 Act. The new section 122 places a duty on the Secretary of State, where support under section 95 of the 1999 Act or section 17 of this Act is applied for by a person whom the Secretary of State thinks is eligible for support, to offer support under one of those provisions where the asylum seeker's household includes a dependant child under the age of 18. It also prevents local authorities from assisting a child under various provisions of the Children Act 1989 (or equivalent Scottish or Northern Irish legislation) if the Secretary of State has offered support in respect of the child and that offer remains open, or if the Secretary of State is providing the child with support under section 95 of the 1999 Act or section 17 of this Act, or has indicated that he would offer to support the child if an application for support were made, subject to any order disapplying subsection (3) made under subsection (5). Where support has been offered or provided pursuant to this section but later withdrawn, subsection (6) provides that only the local authority within whose area the withdrawn support was provided may provide assistance under the various child welfare provisions set out in subsection (4).

Section 48: Young asylum-seeker

128. **Section 48(a)** provides a power for the Secretary of State to make payments to local authorities under section 110 of the 1999 Act to reimburse them for the support they have provided for Unaccompanied Asylum-Seeking Children (UASCs). The Secretary of State already makes these payments but requires a special grant report under the Local Government Finance Act 1988. The definition of asylum-seeker in section 94(1) of the 1999 Act excludes those who are under the age of 18 and, therefore, payments under section 110 of the 1999 Act cannot currently be made in respect of those who are under the age of 18. Section 48 will enable payments under section 110 to be made in respect of asylum-seekers that are under the age of 18. The new power does not affect the amounts to be paid to local authorities or the requirements for auditing claims and ensuring payments only relate to those entitled. Section 48(b) provides a similar power for the Secretary of State to make payments to voluntary organisations under section 111 of the 1999 Act in respect of UASCs.

Section 49: Failed asylum-seeker

129. **Section 49** gives the Secretary of State additional powers to support failed asylum-seekers. Section 4 of the 1999 Act currently provides that the Secretary of State may provide, or arrange for the provision of, accommodation of persons temporarily admitted to the United Kingdom or released from detention as specified in paragraphs (a), (b) and (c) of that section. However, the existing power does not allow the provision of accommodation to all categories of asylum-seekers whose claims for asylum have been rejected, should the Secretary of State decide to provide such accommodation in particular cases. Section 49 remedies this.

Section 50: Conditions of support

130. Section 95(9) of the 1999 Act provides that support for asylum-seekers (accommodation and subsistence) may be provided subject to conditions. Section 50 provides a power for the Secretary of State to link the provision of support (accommodation and subsistence) with compliance with the conditions on which temporary admission or release from detention has been granted.

Section 51: Choice of form of support

131. **Section 51** provides that the Secretary of State may refuse support under sections 17 or 24 of this Act, or under section 4, section 95 or section 98 of the 1999 Act to a person if that person has already been offered support under one of those provisions.

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The Secretary of State is given a discretion as to the provision under which he may choose to offer support.

Section 52: Back-dating of benefit for refugee

132. Section 123(7) of the 1999 Act provides that where a person who has been recognised as a refugee within the meaning of the Refugee Convention, or a dependant of such a person, makes a claim for any benefit to which he would have been entitled had he been regarded as a refugee when he made his claim for asylum and has received support under Part VI of the 1999 Act, regulations may make provision for the value of that support to be offset against the backdated payment of any benefit. Section 52 extends the provisions of section 123(7) of the 1999 Act to persons provided with support under Part 2 of the Act.

Section 53: Asylum-seeker: appeal against refusal to support

133. **Section 53** makes provision for appeals against refusal of asylum support or the ending of support. This section substitutes sections 103, 103A and 103B for the existing section 103 of the 1999 Act.
134. The provisions substituted for the existing section 103 of the 1999 Act extend the existing rights of appeal against refusal or ending of support under section 95 of the 1999 Act to refusal or ending of support under section 17 of the Act which provides for support in accommodation centres (new section 103(1)-(3)). This section also re-enacts provisions of the 1999 Act relating to appeals to the asylum support adjudicators and extends them to support under section 17 (new section 103(4)-(5)). It also re-enacts the provision of the 1999 Act providing for the payment of reasonable travelling expenses incurred by an appellant in connection with attending an appeal hearing under section 103 or 103A and extends this to section 17 (new section 103B).

Section 54 and Schedule 3: Withholding and withdrawal of support

135. This section introduces Schedule 3, which restricts the type of support and accommodation that is provided to those who are European Union (EU)/European Economic Area (EEA) citizens; those with refugee status in other EU/EEA states; failed asylum seekers and persons unlawfully present in the UK.
136. Paragraph 1 (1) (a) – (m) of Schedule 3 lists the various pieces of legislation in England and Wales, Scotland and Northern Ireland under which support and/or accommodation to individuals in these categories will be restricted.
137. Sub-paragraph (2) provides that any powers or duties imposed by the legislation in Paragraph 1 may not be exercised in respect of any person to whom this applies, regardless of whether that person has received support or not in the past.
138. **Paragraph 2** provides a safety net to children under 18. Children will remain eligible for support or assistance, as will adults provided for in regulations as eligible to receive it. Further, this paragraph allows the Secretary of State, by regulation, to extend the categories of those persons eligible for support.
139. **Paragraph 3** addresses our international obligations. Nothing prevents local authorities or the National Asylum Support Service (NASS) exercising powers or performing duties to the extent that it is necessary to avoid breaching any European Convention on Human Rights (ECHR) right or a person's rights under the European Community treaties.
140. **Paragraph 4** details the first class of people ineligible for support. If an individual has refugee status in another EEA Member State, or is the dependant of a person who is in the UK and has refugee status in another EEA Member State, they are ineligible for support.

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141. **Paragraph 5** makes citizens of other EEA member states ineligible for support if they are not present in the UK exercising Community Treaty rights or they are residing in the UK but Community Treaties forbid the person being supported from public funds.
142. **Paragraph 6** makes failed asylum seekers ineligible for further support if they have failed to co-operate with removal directions issued in respect of them.
143. **Paragraph 7** provides that persons who are unlawfully present in the UK, and who are not asylum-seekers, are ineligible for support.
144. **Paragraph 8** allows the Secretary of State to make arrangements, by regulation, for citizens of other EU/EEA states and those with refugee status in other EU/EEA states to be provided with a journey home.
145. **Paragraph 9** allows the Secretary of State to make arrangements, by regulation, for persons to be provided with accommodation until the time of their journey home. Only persons with dependent children will have accommodation arranged. Paragraph 10 makes the same arrangement for persons unlawfully in the UK. Again, only persons with dependent children will be provided with accommodation **as long as they have not failed to co-operate** with removal directions issued in respect of them.
146. **Paragraph 11** provides further powers in relation to the regulation- making power.
147. **Paragraph 12** enables provision to be made in regulation in respect of persons who refuse the offer of a journey home or fail to travel or co-operate with efforts being made to enable them to leave the UK. It allows regulations to be made that ensure only new arrangements enabling a person to leave can be made, but no additional accommodation can be provided. Sub-paragraph (2) allows for regulations to make exception for people who are unable to travel for a defined acceptable reason, and who can provide the required proof of the reason.
148. Sub-paragraph (1) of paragraph 13 creates a new criminal offence. It will be an offence for a person to accept temporary accommodation and/or travel assistance to another country then return to the UK and make another request for an arrangement to be made under paragraph 8, 9, or 10, i.e. travel assistance or temporary accommodation. Sub paragraph (2) creates an additional criminal offence. It will be an offence for a person who has previously requested arrangements be made for him to fail to mention this in any future application. Both offences are punishable on conviction by imprisonment for a term not exceeding six months.
149. **Paragraph 14** places an obligation upon local authorities to inform the Secretary of State of any person they suspect or know to be unlawfully present in the UK or a failed asylum seeker.
150. **Paragraph 15** allows the Secretary of State to amend the Schedule by order so as to remove or add categories of persons ineligible for support, to add or remove other statutes to the list of those which might provide support or assistance, and to add, amend or remove any limitations or exceptions to the list.

Section 55: Late claim for asylum: refusal of support

151. **Section 55** makes provision to restrict access to support provided to asylum seekers under certain provisions of the 1999 Act and this Act and under certain provisions of housing and local government legislation in cases where the Secretary of State is not satisfied that a person has made his asylum application as soon as reasonably practicable after his arrival in the United Kingdom. Section 55 is intended to put the burden of proof on the asylum seeker claiming support to satisfy the Secretary of State that he made his asylum claim as soon as reasonably practicable after he arrived in the UK. If he cannot so satisfy the Secretary of State then the provision of support is prohibited.

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152. Subsection (1) provides that the Secretary of State may not provide or arrange for the provision of support to a person under a provision mentioned in subsection (2) of the section to a person who has claimed asylum if the Secretary of State is not satisfied that the person has made his claim for asylum as soon as reasonably practicable after his arrival in the United Kingdom.
153. Subsection (2) specifies the provisions of the 1999 Act and of this Act under which support may not be provided in the circumstances specified in subsection (1) of the section.
154. Subsection (3) provides that a local authority may not provide or arrange for the provision of support to a person under a provision mentioned in subsection (4) of the section to a person who has claimed asylum whom Secretary of State is not satisfied has made his asylum application as soon as reasonably practicable after his arrival in the United Kingdom.
155. Subsection (4) specifies the provisions of certain housing and local government legislation under which support may not be provided in the circumstances specified in subsection (3) of the section.
156. Subsection (5) provides that section 55 shall not prevent the Secretary of State exercising his power to provide support to the extent necessary to avoid the breach of a person's rights under ECHR or to children and their families under section 95 of the 1999 Act, section 17 of this Act, section 98 of the 1999 Act or section 24 of this Act.
157. Subsection (6)(a) and (b) stipulate that a local authority that proposes to provide or arrange for the provision of support under a provision mentioned in subsection (4) of this section must inform the Secretary of State if the authority believes the person has made a claim for asylum and must act in accordance with any guidance issued by the Secretary of State to determine whether subsection (3) of this section (the provision preventing support in certain circumstances) applies.
158. Subsection (6)(c) provides that a local authority shall not be prevented from providing support where it has complied with the requirements of the previous two paragraphs of this subsection and has concluded that the prohibition on providing support does not apply.
159. Subsection (7) enables the Secretary of State by order to amend the list of provisions specified in subsection (4) of this section.
160. Subsection (8) specifies the procedure for making an order under subsection (7) and makes provision for it to include transitional, consequential or incidental provision.
161. Subsection (9) provides that "claim for asylum" has the same meaning as in section 18 of this Act, thereby removing any uncertainty as to how it is to be interpreted.
162. Subsection (10) provides that a decision by the Secretary of State that the section prevents him from providing or arranging for the provision of support under this section does not attract a right of appeal to the Asylum Support Adjudicators under section 103 of the 1999 Act.
163. Subsection (11) provides that the section does not prevent a person residing in a place in accordance with a residence restriction imposed in reliance on section 70 of this Act.

Section 56: Provision of support by local authority

164. **Section 56** makes provision to enable local authorities to provide support under section 98 of the 1999 Act to asylum seekers pending the determination by the Secretary of State of a claim for support under section 95 of the 1999 Act. This support may be provided in any of the ways mentioned in sections 96(1) and 96(2) of the 1999 Act.

Section 57: Application for support: false or incomplete information

165. **Section 57** makes additional provision in respect of regulations about asylum support made under paragraph 12 of Schedule 8 to the 1999 Act. The section provides that such regulations may provide for an application for asylum support not to be entertained where the Secretary of State is not satisfied that information provided by an applicant is complete or accurate or that the applicant is co-operating with enquiries under paragraph 12 (d) of Schedule 8 to the 1999 Act.

Section 58: Voluntary departure from United Kingdom

166. **Section 58** allows the Secretary of State to make arrangements to assist “voluntary leavers”. A person qualifies for assistance as a “voluntary leaver” if he is leaving the United Kingdom for a place where he hopes to take up permanent residence and if the Secretary of State thinks it is in his interests to leave the United Kingdom and that he wishes to do so. British citizens and EEA nationals are excluded.
167. **Section 58** replaces section 29 of the 1971 Act. The class of person who qualifies for assistance has been largely unchanged (the only difference is that section 58 now excludes EEA nationals as well as British citizens), but the sort of assistance which can be given has been expanded. In addition to meeting travel expenses of voluntary leavers and their families, the Secretary of State is now able to meet costs associated with their immediate arrival and reception and longer-term support to facilitate successful re-integration. It is also able to fund “explore and prepare” visits by persons who wish to assess the possibility of becoming voluntary leavers.
168. The Home Office is currently responsible for a number of schemes to assist “voluntary return”. The existing schemes are being run for the Home Office by the International Organisation for Migration in partnership with Refugee Action. Section 58 enables the Secretary of State to make payments directly to these organisations.

Section 59: International projects

169. **Section 59** provides a power for the Secretary of State to participate in certain projects, either with other Governments, the EU or other non-governmental organisations of a domestic or international nature. The types of projects in respect of which this power to participate may be exercised are set out in subsection (1). Such projects may have as their aim, amongst others, the return of migrants both inside and outside of the United Kingdom to their country of origin by voluntary or compulsory means. For example participation in projects for the resettlement of refugees run by the UN would fall within this provision. Subsection (2) clarifies that the power to participate may be exercised by the Secretary of State in a way that involves the provision of funding to both governmental and non-governmental organisations, both in the United Kingdom and abroad.
170. Pilot projects of the type authorised by this provision have already been undertaken, funded by the Secretary of State under the terms of the Appropriation Act. The terms of this Act are not sufficient to enable the funding of projects on a long-term basis.
171. Subsection (4) makes clear that no new power of removal is created by this section, nor are the rights to enter or remain of individuals affected in any way by it.

Section 60: Northern Ireland Authorities

172. **Section 60** amends the definition of a Northern Ireland authority in the 1999 Act to ensure it is wide enough for the purposes of emergency accommodation, induction and accommodation centres.

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Section 61: Repeal of spent provisions

173. This section repeals sections 96(4) to (6) and section 166(4)(e) of the Immigration and Asylum Act 1999.