

UK BORDERS ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Treatment of claimants

Section 17: Support for failed asylum-seekers

57. *Section 17* provides that a person whose claim for asylum has been determined and who can bring or has brought an in-country appeal against an immigration decision will remain an asylum-seeker for the purposes of section 4 and Part 6 of the Immigration and Asylum Act 1999 (the 1999 Act), Part 2 of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act) and Schedule 3 to the 2002 Act. The effect of this provision is that, whilst an in-country appeal against the immigration decision can be brought or is pending, such a person will be eligible for support on the same basis as asylum-seekers who have not yet received a decision on their claim. Support will continue for a prescribed period after the appeal ceases to be pending.
58. A judgment by the Court of Appeal in May 2006 (in the case of *Slough Borough Council v M*) held that, for the purposes of Schedule 3 to the 2002 Act, save for when a right of appeal arises under section 83 of that Act, a person ceases to be an asylum-seeker at the time at which the Secretary of State notifies his decision on the claim and not when the appeal related to his asylum claim had been disposed of. Section 17(3) defines an in country appeal as one brought while the appellant is in the United Kingdom and specifies that the possibility of bringing an appeal out of time with permission is to be ignored for the purpose of this section.
59. The purpose of section 17 is to avoid a situation where a person has made a claim for asylum and an in-country appeal against an immigration decision can be brought or is pending but support under Part 6 of the 1999 Act or Part 2 of the 2002 Act (currently not in force) is not available because the claim for asylum is deemed to be determined on conclusion of the prescribed period after the Secretary of State has notified his decision on the claim. Further, the section ensures that such a person will not fall within any of the classes of ineligible person within Schedule 3 of the 2002 Act.