

**EXPLANATORY MEMORANDUM TO THE
IMMIGRATION AND ASYLUM (PROVISION OF ACCOMMODATION TO
FAILED ASYLUM-SEEKERS) REGULATIONS 2005**

2005 No.

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 The Regulations set out the criteria for determining whether to provide or continue to provide accommodation to failed asylum seekers under section 4 of the Immigration and Asylum Act 1999. The Regulations also set out conditions – including that of performing or participating in community activities – for the continued provision of accommodation.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Background**
 - 4.1 Section 4 of the Immigration and Asylum Act 1999 (“the 1999 Act”), as amended by section 49 of the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”), enables the Secretary of State to provide accommodation to persons, including failed asylum seekers. It is currently available to failed asylum-seekers who have come to the end of the asylum process (including any appeals), but who are not immediately in a position to return home.
 - 4.2 Section 10 of the Asylum and Immigration (Treatment of Claimants, Etc.) Act 2004 (“the 2004 Act”) further amended section 4 by adding new subsections (5) to (9), and enables the Secretary of State to make regulations specifying the criteria to be used in determining:
 - whether or not to provide section 4 support.
 - whether or not to continue to provide section 4 support.
 - 4.3 Section 4(6)(a) provides that the regulations may, in particular, “provide for the continuation of the provision of accommodation for a person to be conditional upon his performance of or participation in community activities in accordance with arrangements made by the Secretary of State”. “Community activities” are defined in new subsection (7) as meaning “activities that appear to the Secretary of State to be beneficial to the public or a section of the public”.

- 4.4 Section 10(2) of the 2004 Act amended section 166(5) of the 1999 Act, so as to provide (through paragraph (za)) that regulations made under section 4(5) of the 1999 Act would be subject to the affirmative resolution procedure. These Regulations are the first to be laid pursuant to section 166(5)(za).
- 4.5 These Regulations apply only to failed asylum-seekers and their dependants, hence the references within them to subsections (2) and (3) of the 1999 Act (inserted by section 49(1) of the 2002 Act).
- 4.6 During the passage of section 10 through Parliament, the Government undertook to consult with interested bodies on the substance of the regulations, before they were laid in Parliament. The Government has honoured that undertaking (see section 7.9).

5. Extent

- 5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

Des Browne, Minister of State for the Home Department, has made the following statement regarding Human Rights:

In my view the provisions of the Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005 are compatible with the Convention rights.

7. Policy background

- 7.1 There are three key elements to the Regulations, each with a separate policy objective.
- Criteria for the initial decision on whether or not to provide section 4 support
 - Conditions for the continued provision of section 4 support
 - Performance of community activities as a condition for the continued provision of section 4 support

Criteria for the initial decision on whether or not to provide section 4 support

- 7.2 Section 4 support is provided by the National Asylum Support Service (NASS). When a failed asylum-seeker applies for support, the claim will be assessed by NASS caseworkers. Until now, the criteria for whether to approve the claim have been published in NASS policy bulletins but have not been set out in legislation. Regulation 3 places the criteria on a statutory footing. The two criteria are that:

- the individual appears to the Secretary of State to be destitute. Failed asylum-seekers who are not destitute will have no need for section 4 support, and
- one or more of five conditions are met. The conditions all relate to circumstances that could reasonably account for a failed asylum-seeker's continued presence in the United Kingdom, including an ECHR saving provision in regulation 3(2)(e).

Conditions for the continued provision of section 4 support

7.3 The conditions for continuing to provide section 4 support have also, until now, been a matter of NASS policy. Regulation 6 puts the conditions on a statutory footing. The Secretary of State may determine these conditions from time to time. The conditions can relate to:

- complying with specified standards of behaviour. This might include a requirement not to engage in violent behaviour, for example.
- complying with a reporting requirement.
- complying with a requirement to reside at a particular address, and to ensure that any unauthorised absence from that address is for no more than 7 consecutive days and nights, or a total of 14 days and nights in any 6-month period.
- complying with steps to facilitate the individual's departure from the UK.

7.4 Regulation 6 also provides that the conditions are to be set out in a written notice given to the failed asylum-seeker.

Performance of community activities as a condition for the continued provision of section 4 support

7.5 Regulations 4 and 5 mean that an extra condition – performing or participating in community activities – may be placed on failed asylum-seekers in order for them to continue to receive section 4 support. The condition is not intended to be a punishment. It is based on the principle that those who are not entitled to remain in the United Kingdom, but are in receipt of state support ought to give something back to the community supporting them. Taking part in community activities may also give failed asylum-seekers an opportunity to build and consolidate skills that will be of use to them in their home countries.

7.6 Regulation 4 sets out criteria for the Secretary of State to have regard to in determining whether recipients of section 4 support will be required to perform community activities:

- the length of time a failed asylum-seeker will continue to be eligible for accommodation. Some failed asylum-seekers may receive section 4 support for a significant length of time (for instance, where there is no immediate prospect of a safe route of return). Other failed asylum-seekers may receive section 4 support for only a few days (for example, while they arrange travel documentation). The drafting of this part of the Regulation is intended to be flexible enough to cover all possibilities.
- arrangements that have been made for the performance of community activities in a particular area. The new condition under regulation 4 will initially be introduced in one area of the country. It will then be rolled out following an assessment of the delivery mechanisms in the initial area. This particular provision gives the flexibility to introduce new arrangements in one area of the country while keeping existing arrangements in other area of the country.
- any relevant health and safety standards agreed between the Secretary of State and a person with whom he has made arrangements for the provision of community activities.
- whether the failed asylum seeker is unable to perform community activities because of a physical or mental impairment or for some other medical reason.
- whether the failed asylum seeker is unable to perform community activities due to responsibility for the care of a dependant child or of a dependant who because of a physical or mental impairment is unable to look after himself.
- any relevant information provided regarding the failed asylum-seeker's suitability to perform particular tasks or activities. This will allow a failed asylum-seeker to indicate, subject to availability, particular community activities that would be of benefit or interest to him.

7.7 Regulation 4 also makes clear that the condition to perform community activities will not apply to failed asylum-seekers under the age of 18. It sets out a maximum limit for performing community activities of 35 hours per week. It provides that community activities may be performed at any time during the week, including weekends.

7.8 Regulation 5 sets out the information that a notice of the condition to perform community activities can contain.

Consultation

7.9 A draft of these Regulations was issued for consultation on 17 December 2004. 16 responses were received by the closing date of 14 January 2005.

8. Impact

- 8.1 The Regulations will have minimal impact on business, charities or voluntary bodies. Although such bodies co-ordinate and arrange programmes of community activities, the Regulations do not require them to do so. They will have to apply to do so, and the Home Office will provide funding to meet costs.
- 8.2 The impact on the public sector is minimal. The main impact will be changes to NASS procedures for administering section 4 support.

9. Contact

Nick Poyntz at the Social Policy Unit at the Home Office can answer any queries regarding the instrument.

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