Eligibility for and provision of accommodation to a failed asylum-seeker

3.—(1) Subject to regulations 4 and 6, the criteria to be used in determining the matters referred to in paragraphs (a) and (b) of section 4(5) of the 1999 Act in respect of a person falling within section 4(2) or (3) of that Act are—

(a) that he appears to the Secretary of State to be destitute, and

(b) that one or more of the conditions set out in paragraph (2) are satisfied in relation to him.

(2) Those conditions are that—

(a) he is taking all reasonable steps to leave the United Kingdom or place himself in a position in which he is able to leave the United Kingdom, which may include complying with attempts to obtain a travel document to facilitate his departure;

(b) he is unable to leave the United Kingdom by reason of a physical impediment to travel or for some other medical reason;

(c) he is unable to leave the United Kingdom because in the opinion of the Secretary of State there is currently no viable route of return available;

(d) he has made an application for judicial review of a decision in relation to his asylum claim—

(i) in England and Wales, and has been granted permission to proceed pursuant to Part 54 of the Civil Procedure Rules 1998 (2),

(ii) in Scotland, pursuant to Chapter 58 of the Rules of the Court of Session 1994 (3) or

(iii) in Northern Ireland, and has been granted leave pursuant to Order 53 of the Rules of Supreme Court (Northern Ireland) 1980 (4); or

(e) the provision of accommodation is necessary for the purpose of avoiding a breach of a person’s Convention rights, within the meaning of the Human Rights Act 1998 (5).

(1) Section 4(2) and (3) were added by section 49(1) of the Nationality, Immigration and Asylum Act 2002.


(4) S.R. 1980 No.346. Order 53 has been amended but not in a way material to these Regulations.

(5) 1998 c. 42.