

**EXPLANATORY MEMORANDUM TO
THE ASYLUM SUPPORT (PRESCRIBED PERIOD FOLLOWING APPEAL)
REGULATIONS 2007**

2007 No. 3102

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee of Statutory Instruments.

- 2. Description**

2.1 This instrument specifies the period during which an asylum seeker continues to be eligible to be treated as an asylum seeker for support purposes following the conclusion of an appeal. The period is 28 days where the appeal is allowed and 21 days in all other cases. These are the same periods as apply to asylum seekers whose application concludes at the initial decision stage.

- 3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 Section 17 comes into effect immediately on Royal Assent (so, pursuant to section 4 of the Interpretation Act 1978, at 00:01 on 30th October.) This instrument is made on 30th October and laid on 31st October and comes into force at 2pm on 31st October. The aim of this is to ensure that there is the smallest possible gap between section 17 coming into force and the Regulations under that section having effect. This is a breach of the 21 day rule, but it is necessary to ensure that the support system for those pursuing appeals operates in the same way as for those awaiting initial decisions, and that no asylum seeker currently in receipt of support is disadvantaged by possible gaps in provision which could arise without these regulations. Part of the existing system of asylum support is that it should continue for a specified period after the determination of the asylum claim and this instrument ensures that the same periods apply to all those receiving support regardless of whether the claim is determined by initial decision or following an appeal.

3.2 It was always intended that asylum seekers pursuing appeals should be supported through the asylum support system and the system has always operated on this basis. The legal position became unclear following the Court of Appeal judgment in *Slough v M (Roao)* 2006 and section 17 is intended to clarify the law. The Court of Appeal judgment has been stayed pending a hearing before the Judicial Committee of the House of Lords and in the interim asylum seekers in the appeals system have continued to receive support and to benefit from support during the specified periods after their appeal is concluded. Bringing this instrument into effect as soon as practically possible ensures that those already in the specified period after their appeal can continue to receive support and that

those whose appeal is determined in the immediate future will also benefit from that period. This ensures clarity and fairness.

4. Legislative Background

4.1 This instrument prescribes the period for the purposes of section 17 of the UK Borders Act 2007. During this prescribed period, a person will retain the status of asylum seeker for the purposes of Part VI of the Immigration and Asylum Act 1999, section 4 of that Act and Part II of the Nationality, Immigration and Asylum Act 2002. The prescribed period is 28 days where the applicant has received refugee status or leave to enter or remain and 21 days where the application is refused and is the same as that which applies for other asylum support purposes.

5. Extent

5.1 This instrument applied to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7 Policy Background

7.1 Under the provisions of Part VI of the Immigration and Asylum Act 1999, a destitute asylum seeker and his or her dependants is eligible for asylum support until the claim for asylum has been determined. Section 94(3) of that Act provides that the claim is determined at the end of a prescribed period following the notification of the Secretary of State's decision on the claim or the disposal of an appeal against the decision. Regulation 2 of the Asylum Support (Prescribed Period following Appeal) Regulations 2007 prescribes a period of 28 days where the asylum application results in the grant of status or leave and 21 days for other cases.

7.2 It was always the intention that asylum support would be available until the asylum seeker had no further opportunity to bring an in time appeal and the support system has always operated on the basis that this was the correct legal position. Following litigation which cast doubt on this interpretation, section 17 of the UK Borders Act, 2007 aims to clarify the position and provides that, for support purposes, a person is an asylum seeker during any period in which he can bring an in country appeal or whilst an in-country appeal is pending. The provision was introduced to preserve what had always been considered to be the situation.

7.3 In order to ensure that the support arrangements for those supported as a result of section 17 are the same as for other supported asylum seekers, and that

the status quo is fully preserved, Section 17(4) allows for a period to be prescribed during which the status of asylum seeker will continue after the appeal is concluded. This instrument provides that the prescribed period will be the same as already prescribed in the Asylum Support Regulations.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared because no material impact on the public, private or voluntary sector is foreseen.

9 Contact

9.1 Ann Robertson in the Asylum Support Policy Team on Tel. 020 8604 6854 or e-mail: ann.robertson@homeoffice.gsi.gov.uk can answer any queries regarding the instructions.