

*Status: This version of this schedule contains provisions that are prospective.*

**Changes to legislation:** Immigration Act 2016, SCHEDULE 12 is up to date with all changes known to be in force on or before 15 July 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

## SCHEDULES

PROSPECTIVE

### SCHEDULE 12

Section 68

#### AVAILABILITY OF LOCAL AUTHORITY SUPPORT

- 1 Schedule 3 to the Nationality, Immigration and Asylum Act 2002 (withholding and withdrawal of support) is amended as follows.
- 2 (1) Paragraph 1 (ineligibility for support) is amended as follows.
  - (2) In sub-paragraph (1) (excluded support or assistance) after paragraph (g) insert—

“(ga) in relation only to a person in England to whom this paragraph applies by virtue of paragraph 4<sup>F1</sup>... or 7B—

    - (i) section 23CZA of that Act (arrangements for certain former relevant children to continue to live with former foster parents), or
    - (ii) regulations under section 23D of that Act (personal advisers),”.
  - (3) In that sub-paragraph, in paragraph (h) for “or 36” substitute “ , 35A or 35B ”.
  - (4) After sub-paragraph (2) insert—

“(2A) In the case of the provisions referred to in sub-paragraph (1)(ga), sub-paragraph (2) applies only in relation to a person in England to whom this paragraph applies by virtue of paragraph 4<sup>F2</sup>... or 7B.”

#### Textual Amendments

- F1** Word in [Sch. 12 para. 2\(2\)](#) omitted (31.12.2020) by virtue of [The Immigration and Social Security Co-ordination \(EU Withdrawal\) Act 2020 \(Consequential, Saving, Transitional and Transitory Provisions\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1309\)](#), reg. 1(2), [Sch. 1 para. 3\(a\)](#)
- F2** Word in [Sch. 12 para. 2\(4\)](#) omitted (31.12.2020) by virtue of [The Immigration and Social Security Co-ordination \(EU Withdrawal\) Act 2020 \(Consequential, Saving, Transitional and Transitory Provisions\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1309\)](#), reg. 1(2), [Sch. 1 para. 3\(b\)](#)

- 3 After paragraph 1 insert—
  - “1A (1) A person to whom this paragraph applies is not eligible for assistance under section 23C(4)(b), 23CA(4) or 24B(2)(b) of the Children Act 1989 (grants to meet expenses connected with education or training) which consists of a grant to enable the person to meet all or part of the person's tuition fees.
  - (2) The duty in section 23C(4)(b) or 23CA(4) of that Act and the power in section 24B(2)(b) of that Act may not be exercised or performed in respect

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of a person to whom this paragraph applies so as to make a grant to enable the person to meet all or part of the person's tuition fees.

(3) This paragraph applies to a person in England who is aged 18 or over and who—

- (a) has leave to enter or remain in the United Kingdom which has been granted for a limited period,
- (b) is an asylum-seeker, or
- (c) has made an application for leave to enter or remain in the United Kingdom which has not been withdrawn or determined.

(4) In this paragraph “tuition fees” means fees payable for a course of a description mentioned in Schedule 6 to the Education Reform Act 1988.”

4 (1) Paragraph 2(1) (exceptions) is amended as follows.

(2) In paragraph (c) for “or 10” substitute “, 10, 10A or 10B”.

(3) After the “or” at the end of paragraph (c) insert—

“(ca) under section 95A or 98A of the Immigration and Asylum Act 1999 (support for failed asylum-seekers etc), or”.

5 After paragraph 2 insert—

“2A (1) Paragraph 1(1)(g) or (ga) does not prevent the provision of support or assistance under a relevant provision to a person to whom paragraph 1 would otherwise apply by virtue of paragraph 7B if—

- (a) conditions A and B are satisfied in relation to that person, and
- (b) condition C, D or E is satisfied in relation to that person.

(2) In sub-paragraph (1) “relevant provision” means—

- (a) section 23C, 23CZA or 23CA of the Children Act 1989,
- (b) regulations under section 23D of that Act, or
- (c) section 24A or 24B of that Act.

(3) Condition A is that—

- (a) the person has made an application for leave to enter or remain in the United Kingdom, and
- (b) where regulations made by the Secretary of State require that the application must be of a kind specified in the regulations for this condition to be satisfied, the application is of that kind.

(4) Condition B is that—

- (a) the application is the first application for leave to enter or remain in the United Kingdom that the person has made, or
- (b) where regulations under sub-paragraph (3)(b) require that the application must be of a kind specified in the regulations for condition A to be satisfied, the application is the first application of that kind that the person has made.

(5) Condition C is that the application has not been determined or withdrawn.

(6) Condition D is that—

- (a) the application has been refused,

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- (b) the person could bring an appeal under section 82(1) against the refusal (ignoring any possibility of an appeal out of time with permission), and
    - (c) if the person brought such an appeal, it would not be one that, by virtue of section 92(6), would have to be continued from outside the United Kingdom.
  - (7) Condition E is that—
    - (a) the application has been refused,
    - (b) the person has appealed under section 82(1) against the refusal,
    - (c) the appeal is not one that, by virtue of section 92(6), must be continued from outside the United Kingdom, and
    - (d) the appeal is pending within the meaning of section 104.
  - (8) For the purposes of sub-paragraph (3) the Secretary of State may by regulations provide for circumstances in which—
    - (a) a person is to be treated as having made an application for leave to enter or remain in the United Kingdom (despite not having made one), or
    - (b) a person is to be treated as not having made such an application where the Secretary of State is satisfied that the application made is vexatious or wholly without merit.”
- 6 After paragraph 3 insert—
- “3A Notwithstanding paragraph 3, paragraph 1(1)(g) prevents a local authority in England from providing support or assistance under section 17 of the Children Act 1989 to a person in respect of a child if —
- (a) the support or assistance is of a type that could be provided to the person by virtue of paragraph 10A (see paragraph 10A(11)), and
  - (b) support is being provided to the person by virtue of paragraph 10A or there are reasonable grounds for believing that support will be provided to the person by virtue of that paragraph.
- 3B Notwithstanding paragraph 3, paragraph 1(1)(g) prevents a local authority in England from providing support or assistance under section 23C, 23CA, 24A or 24B of the Children Act 1989 to a person if—
- (a) support is being provided to the person by virtue of paragraph 10B or section 95A of the Immigration and Asylum Act 1999, or
  - (b) there are reasonable grounds for believing that support will be provided to the person by virtue of that paragraph or section.
- 3C Notwithstanding paragraph 3, paragraph 1(1)(ga) prevents a local authority in England from providing support or assistance under a provision mentioned in paragraph (ga) to a person if—
- (a) support is being provided to the person by virtue of paragraph 10B or section 95A of the Immigration and Asylum Act 1999, or
  - (b) there are reasonable grounds for believing that support will be provided to the person by virtue of that paragraph or section.”
- 7 In paragraph 6 (third class of ineligible person: failed asylum-seeker), in sub-paragraph (1), in the words before sub-paragraph (a), after “person” insert “ in Wales, Scotland or Northern Ireland ”.

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8 In paragraph 7 (fourth class of ineligible person: person unlawfully in United Kingdom), in the words before sub-paragraph (a), after “person” insert “in Wales, Scotland or Northern Ireland”.

9 Before paragraph 8 insert—

*“Sixth class of ineligible person: person in England without leave to enter or remain*

7B (1) Paragraph 1 applies to a person in England if—

- (a) under the Immigration Act 1971, he requires leave to enter or remain in the United Kingdom but does not have it, and
- (b) he is not an asylum-seeker.

(2) Paragraph 1 also applies to a dependant of a person to whom that paragraph applies by virtue of sub-paragraph (1).

F3 ...

F3 ..... ”

#### Textual Amendments

**F3** Words in [Sch. 12 para. 9](#) omitted (31.12.2020) by virtue of [The Immigration and Social Security Co-ordination \(EU Withdrawal\) Act 2020 \(Consequential, Saving, Transitional and Transitory Provisions\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1309\)](#), regs. 1(2), **23(2)**

10 After paragraph 10 insert—

*“Accommodation and subsistence etc: England*

10A(1) The Secretary of State may make regulations providing for arrangements to be made for support to be provided to a person to whom paragraph 1 applies by virtue of paragraph 7B(1) <sup>F4</sup>... and—

- (a) who is destitute,
- (b) who has with him a dependent child,
- (c) who is not a relevant failed asylum seeker, and
- (d) in relation to whom condition A, B, C, D or E is satisfied.

(2) A person is a “relevant failed asylum seeker” for the purposes of sub-paragraph (1)(c) if the person is a failed asylum seeker within the meaning of Part 6 of the Immigration and Asylum Act 1999 and—

- (a) the person is receiving support under section 95A of that Act,
- (b) the person has made an application for such support which has not been refused, or
- (c) there are reasonable grounds for believing such support would be provided to the person if an application by the person for such support were made.

(3) Condition A is that—

- (a) the person has made an application for leave to enter or remain in the United Kingdom and has not withdrawn the application,

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- (b) where regulations under this paragraph require that the application must be of a kind specified in the regulations for this condition to be satisfied, the application is of that kind, and
  - (c) the application has not been determined.
- (4) Condition B is that—
  - (a) the person could bring an appeal under section 82(1) (ignoring any possibility of an appeal out of time with permission), and
  - (b) if the person brought such an appeal, it would not be one that, by virtue of section 92(6), would have to be continued from outside the United Kingdom.
- (5) Condition C is that—
  - (a) the person has appealed under section 82(1),
  - (b) the appeal is not one that, by virtue of section 92(6), must be continued from outside the United Kingdom, and
  - (c) the appeal is pending within the meaning of section 104.
- (6) Condition D is that—
  - (a) the person's appeal rights are exhausted, and
  - (b) he has not failed to cooperate with arrangements that would enable him to leave the United Kingdom.
- (7) Condition E is that a person specified in regulations under this paragraph is satisfied that the provision of support is necessary to safeguard and promote the welfare of a dependent child.
- (8) Regulations under this paragraph may specify—
  - (a) factors which a person specified by virtue of sub-paragraph (7) may or must take into account in making a determination under that sub-paragraph;
  - (b) factors which such a person must not take into account in making such a determination.
- (9) The Secretary of State may make regulations providing for arrangements to be made for support to be provided to a person (“P”)—
  - (a) to whom paragraph 1 applies by virtue of paragraph 7B(1) <sup>F4</sup>..., and
  - (b) who it appears to a person specified in the regulations may be destitute,until a person by whom support may be provided under arrangements by virtue of sub-paragraph (1) is able to determine whether such support should be provided to P.
- (10) Arrangements for a person by virtue of this paragraph may include arrangements for a dependant.
- (11) The support that may be provided under arrangements by virtue of this paragraph may take the form of—
  - (a) accommodation;
  - (b) subsistence in kind, or cash or vouchers to pay for subsistence.

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- (12) Subsections (3) to (8) of section 95 of the Immigration and Asylum Act 1999 (meaning of “destitute”) apply for the purposes of this paragraph as they apply for the purposes of that section.
- (13) For the purposes of sub-paragraph (3) regulations under this paragraph may provide for circumstances in which—
  - (a) a person is to be treated as having made an application for leave to enter or remain in the United Kingdom (despite not having made one);
  - (b) a person is to be treated as not having made such an application where the Secretary of State is satisfied that the application made is vexatious or wholly without merit.
- (14) For the purposes of sub-paragraph (6) a person's appeal rights are exhausted at the time when—
  - (a) he could not bring an appeal under section 82 (ignoring any possibility of an appeal out of time with permission), and
  - (b) no appeal brought by him is pending within the meaning of section 104.
- 10B (1) The Secretary of State may make regulations providing for arrangements to be made for support to be provided to a person to whom paragraph 1 applies by virtue of paragraph 7B(1) and—
  - (a) who would otherwise be eligible for support or assistance under section 23C, 23CZA or 23CA of the Children Act 1989, under regulations under section 23D of that Act or under section 24A or 24B of that Act, and
  - (b) in relation to whom condition A, B, C or D is satisfied.
- (2) Condition A is that—
  - (a) the person is destitute,
  - (b) the person has made an application for leave to enter or remain in the United Kingdom and has not withdrawn the application,
  - (c) where regulations under this paragraph require that the application must be of a kind specified in the regulations for this condition to be satisfied, the application is of that kind, and
  - (d) the application has not been determined.
- (3) Condition B is that—
  - (a) the person is destitute,
  - (b) the person could bring an appeal under section 82(1) (ignoring any possibility of an appeal out of time with permission), and
  - (c) if the person brought an appeal under section 82(1), it would not be one that, by virtue of section 92(6), would have to be continued from outside the United Kingdom.
- (4) Condition C is that—
  - (a) the person is destitute,
  - (b) the person has appealed under section 82(1),
  - (c) the appeal is not one that, by virtue of section 92(6), must be continued from outside the United Kingdom, and



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- (d) the appeal is pending within the meaning of section 104.
- (5) Condition D is that—
  - (a) the person's appeal rights are exhausted, and
  - (b) a person specified in regulations under this paragraph is satisfied that support needs to be provided to the person.
- (6) Regulations under this paragraph may specify—
  - (a) factors which a person specified by virtue of paragraph (b) of sub-paragraph (5) may or must take into account in making a determination under that paragraph;
  - (b) factors which such a person must not take into account in making such a determination.
- (7) The Secretary of State may make regulations providing for arrangements to be made for support to be provided to a person (“P”)—
  - (a) to whom paragraph 1 applies by virtue of paragraph 7B(1), and
  - (b) who it appears to a person specified in the regulations may be destitute,until a person by whom support may be provided under arrangements by virtue of sub-paragraph (1) is able to determine whether such support should be provided to P.
- (8) The support that may be provided under arrangements by virtue of this paragraph may, in particular, take the form of—
  - (a) accommodation;
  - (b) subsistence in kind, or cash or vouchers to pay for subsistence.
- (9) Subsections (3) to (8) of section 95 of the Immigration and Asylum Act 1999 (meaning of “destitute”) apply for the purposes of this paragraph as they apply for the purposes of that section.
- (10) For the purposes of sub-paragraph (2) regulations under this paragraph may provide for circumstances in which—
  - (a) a person is to be treated as having made an application for leave to enter or remain in the United Kingdom (despite not having made one);
  - (b) a person is to be treated as not having made such an application where the Secretary of State is satisfied that the application made is vexatious or wholly without merit.
- (11) For the purposes of sub-paragraph (5) a person's appeal rights are exhausted at the time when—
  - (a) he could not bring an appeal under section 82 (ignoring any possibility of an appeal out of time with permission), and
  - (b) no appeal brought by him is pending within the meaning of section 104.”

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#### Textual Amendments

**F4** Words in Sch. 12 para. 10 omitted (31.12.2020) by virtue of [The Immigration and Social Security Co-ordination \(EU Withdrawal\) Act 2020 \(Consequential, Saving, Transitional and Transitory Provisions\)](#) (EU Exit) Regulations 2020 (S.I. 2020/1309), reg. 1(2), [Sch. 1 para. 3\(c\)](#)

- 11 In paragraph 11 (assistance and accommodation: general), in the words before sub-paragraph (a), for “or 10” substitute “ , 10, 10A or 10B ”.
- 12 In paragraph 13 (offences), in sub-paragraphs (1)(b) and (2)(a), for “or 10” substitute “ , 10, 10A or 10B ”.
- 13 In paragraph 14 (information), in sub-paragraphs (1) and (2), for “or 7” (as substituted by paragraph 26(8)(b) of Schedule 11) substitute “ , 7 [<sup>F5</sup>or 7B]”.

#### Textual Amendments

**F5** Words in Sch. 12 para. 13 substituted (31.12.2020) by virtue of [The Immigration and Social Security Co-ordination \(EU Withdrawal\) Act 2020 \(Consequential, Saving, Transitional and Transitory Provisions\)](#) (EU Exit) Regulations 2020 (S.I. 2020/1309), reg. 1(2), [Sch. 1 para. 3\(d\)](#)

- 14 (1) Paragraph 15 (power to amend Schedule 3) is amended as follows.
  - (2) After paragraph (a) insert—
    - “(aa) to modify any of the classes of person to whom paragraph 1 applies;”.
  - (3) In paragraph (c) after “remove” insert “ , or modify the application of, ”.
  - (4) After paragraph (c) insert—
    - “(d) to enable regulations to be made by the Secretary of State providing for arrangements to be made for support to be provided to a class of person to whom paragraph 1 applies;
    - (e) to apply paragraph 1A in relation to Wales;
    - (f) to make provision which has a similar effect to paragraph 1A and which applies in relation to Scotland or Northern Ireland.”
- 15 (1) Paragraph 16 (orders and regulations) is amended as follows.
  - (2) In sub-paragraph (2)(d) after “amending” insert “ , repealing or revoking ”.
  - (3) In sub-paragraph (3) after “2(1)(d) or (e)” insert “ , 2A(3)(b), 10A or 10B ”.
- 16 In Schedule 3 to the Immigration Act 2014 (excluded residential tenancy agreements) after paragraph 8 insert—
  - “8A An agreement under which accommodation is provided to a person under arrangements made by virtue of paragraph 10A or 10B of Schedule 3 to the Nationality, Immigration and Asylum Act 2002 (support for certain persons who are otherwise ineligible for support by virtue of that Schedule).”



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**Changes and effects yet to be applied to :**

- specified provision(s) amendment to earlier commencing S.I. 2017/1241, Sch. by [S.I. 2018/31 reg. 2](#)