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SCHEDULES

PROSPECTIVE

SCHEDULE 12

AVAILABILITY OF LOCAL AUTHORITY SUPPORT

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) ^{F1}... 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- (a) the person has made an application for leave to enter or remain in the United Kingdom and has not withdrawn the application,
- (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—

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- (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) ^{F1}..., 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.
- (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—

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- (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
- (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”)—

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- (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.”

Textual Amendments

- F1** 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\(c\)](#)

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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](#)