

Status: Point in time view as at 01/12/2004.

Changes to legislation: Nationality, Immigration and Asylum Act 2002, SCHEDULE 3 is up to date with all changes known to be in force on or before 13 June 2024. 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)

SCHEDULES

SCHEDULE 3

Section 54

WITHHOLDING AND WITHDRAWAL OF SUPPORT

Ineligibility for support

- 1 (1) A person to whom this paragraph applies shall not be eligible for support or assistance under—
- (a) section 21 or 29 of the National Assistance Act 1948 (c. 29) (local authority: accommodation and welfare),
 - (b) section 45 of the Health Services and Public Health Act 1968 (c. 46) (local authority: welfare of elderly),
 - (c) section 12 or 13A of the Social Work (Scotland) Act 1968 (c. 49) (social welfare services),
 - (d) Article 7 or 15 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)) (prevention of illness, social welfare, &c.),
 - (e) section 21 of and Schedule 8 to the National Health Service Act 1977 (c. 49) (social services),
 - (f) section 29(1)(b) of the Housing (Scotland) Act 1987 (c. 26) (interim duty to accommodate in case of apparent priority need where review of a local authority decision has been requested),
 - (g) section 17, 23C, 24A or 24B of the Children Act 1989 (c. 41) (welfare and other powers which can be exercised in relation to adults),
 - (h) Article 18, 35 or 36 of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)) (welfare and other powers which can be exercised in relation to adults),
 - (i) sections 22, 29 and 30 of the Children (Scotland) Act 1995 (c. 36) (provisions analogous to those mentioned in paragraph (g)),
 - (j) section 188(3) or 204(4) of the Housing Act 1996 (c. 52) (accommodation pending review or appeal),
 - (k) section 2 of the Local Government Act 2000 (c. 22) (promotion of well-being),
 - (l) a provision of the Immigration and Asylum Act 1999 (c. 33), or
 - (m) a provision of this Act.
- (2) A power or duty under a provision referred to in sub-paragraph (1) may not be exercised or performed in respect of a person to whom this paragraph applies (whether or not the person has previously been in receipt of support or assistance under the provision).
- (3) An approval or directions given under or in relation to a provision referred to in sub-paragraph (1) shall be taken to be subject to sub-paragraph (2).

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Exceptions

- 2 (1) Paragraph 1 does not prevent the provision of support or assistance—
- (a) to a British citizen, or
 - (b) to a child, or
 - (c) under or by virtue of regulations made under paragraph 8, 9 or 10 below, or
 - (d) in a case in respect of which, and to the extent to which, regulations made by the Secretary of State disapply paragraph 1, or
 - (e) in circumstances in respect of which, and to the extent to which, regulations made by the Secretary of State disapply paragraph 1.
- (2) Regulations under sub-paragraph (1)(d) may confer a discretion on the Secretary of State.
- (3) Regulations under sub-paragraph (1)(e) may, in particular, disapply paragraph 1 to the provision of support or assistance by a local authority to a person where the authority—
- (a) has taken steps in accordance with guidance issued by the Secretary of State to determine whether paragraph 1 would (but for the regulations) apply to the person, and
 - (b) has concluded on the basis of those steps that there is no reason to believe that paragraph 1 would apply.
- (4) Regulations under sub-paragraph (1)(d) or (e) may confer a discretion on an authority.
- (5) A local authority which is considering whether to give support or assistance to a person under a provision listed in paragraph 1(1) shall act in accordance with any relevant guidance issued by the Secretary of State under sub-paragraph (3)(a).
- (6) A reference in this Schedule to a person to whom paragraph 1 applies includes a reference to a person in respect of whom that paragraph is disapplied to a limited extent by regulations under sub-paragraph (1)(d) or (e), except in a case for which the regulations provide otherwise.

Commencement Information

- II** [Sch. 3 para. 2](#) wholly in force at 8.1.2003; [Sch. 3 para. 2](#) not in force at Royal Assent see [s. 162\(2\)](#); [Sch. 3 para. 2](#) in force at 8.12.2002 for certain purposes and at 8.1.2003 so far as not already in force by [S.I. 2002/2811](#), [art. 2](#), [Sch.](#)

- 3 Paragraph 1 does not prevent the exercise of a power or the performance of a duty if, and to the extent that, its exercise or performance is necessary for the purpose of avoiding a breach of—
- (a) a person's Convention rights, or
 - (b) a person's rights under the Community Treaties.

First class of ineligible person: refugee status abroad

- 4 (1) Paragraph 1 applies to a person if he—
- (a) has refugee status abroad, or
 - (b) is the dependant of a person who is in the United Kingdom and who has refugee status abroad.

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- (2) For the purposes of this paragraph a person has refugee status abroad if—
- (a) he does not have the nationality of an EEA State, and
 - (b) the government of an EEA State other than the United Kingdom has determined that he is entitled to protection as a refugee under the Refugee Convention.

Second class of ineligible person: citizen of other EEA State

- 5 Paragraph 1 applies to a person if he—
- (a) has the nationality of an EEA State other than the United Kingdom, or
 - (b) is the dependant of a person who has the nationality of an EEA State other than the United Kingdom.

Third class of ineligible person: failed asylum-seeker

- 6 (1) Paragraph 1 applies to a person if—
- (a) he was (but is no longer) an asylum-seeker, and
 - (b) he fails to cooperate with removal directions issued in respect of him.
- (2) Paragraph 1 also applies to a dependant of a person to whom that paragraph applies by virtue of sub-paragraph (1).

Fourth class of ineligible person: person unlawfully in United Kingdom

- 7 Paragraph 1 applies to a person if—
- (a) he is in the United Kingdom in breach of the immigration laws within the meaning of section 11, and
 - (b) he is not an asylum-seeker.

^{F1}Fifth class of ineligible person: failed asylum-seeker with family

Textual Amendments

- F1** Sch. 3 para. 7A and preceding cross-heading inserted (1.12.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), **ss. 9(1), 48(1)-(3)**; S.I. 2004/2999, **art. 2**, Sch. (with transitional provisions in [art. 4](#))

- 7A (1) Paragraph 1 applies to a person if—
- (a) he—
 - (i) is treated as an asylum-seeker for the purposes of Part VI of the Immigration and Asylum Act 1999 (c. 33) (support) by virtue only of section 94(3A) (failed asylum-seeker with dependent child), or
 - (ii) is treated as an asylum-seeker for the purposes of Part 2 of this Act by virtue only of section 18(2),
 - (b) the Secretary of State has certified that in his opinion the person has failed without reasonable excuse to take reasonable steps—
 - (i) to leave the United Kingdom voluntarily, or
 - (ii) to place himself in a position in which he is able to leave the United Kingdom voluntarily,

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- (c) the person has received a copy of the Secretary of State’s certificate, and
 - (d) the period of 14 days, beginning with the date on which the person receives the copy of the certificate, has elapsed.
- (2) Paragraph 1 also applies to a dependant of a person to whom that paragraph applies by virtue of sub-paragraph (1).
- (3) For the purpose of sub-paragraph (1)(d) if the Secretary of State sends a copy of a certificate by first class post to a person’s last known address, the person shall be treated as receiving the copy on the second day after the day on which it was posted.
- (4) The Secretary of State may by regulations vary the period specified in sub-paragraph (1)(d).]

Modifications etc. (not altering text)

- C1** Sch. 3 para. 7A: power to repeal conferred (prosp.) by [Immigration, Asylum and Nationality Act 2006](#) (c. 13), [ss. 44, 62](#)

Travel assistance

- 8 The Secretary of State may make regulations providing for arrangements to be made enabling a person to whom paragraph 1 applies by virtue of paragraph 4 or 5 to leave the United Kingdom.

Commencement Information

- I2** Sch. 3 para. 8 wholly in force at 8.1.2003; Sch. 3 para. 8 not in force at Royal Assent see [s. 162\(2\)](#); Sch. 3 para. 8 in force at 8.12.2002 for certain purposes and at 8.1.2003 so far as not already in force by [S.I. 2002/2811](#), [art. 2](#), [Sch.](#)

Temporary accommodation

- 9 (1) The Secretary of State may make regulations providing for arrangements to be made for the accommodation of a person to whom paragraph 1 applies pending the implementation of arrangements made by virtue of paragraph 8.
- (2) Arrangements for a person by virtue of this paragraph—
- (a) may be made only if the person has with him a dependent child, and
 - (b) may include arrangements for a dependent child.

Commencement Information

- I3** Sch. 3 para. 9 wholly in force at 8.1.2003; Sch. 3 para. 9 not in force at Royal Assent see [s. 162\(2\)](#); Sch. 3 para. 9 in force at 8.12.2002 for certain purposes and at 8.1.2003 so far as not already in force by [S.I. 2002/2811](#), [art. 2](#), [Sch.](#)

- 10 (1) The Secretary of State may make regulations providing for arrangements to be made for the accommodation of a person if—
- (a) paragraph 1 applies to him by virtue of paragraph 7, and

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- (b) he has not failed to cooperate with removal directions issued in respect of him.
- (2) Arrangements for a person by virtue of this paragraph—
- (a) may be made only if the person has with him a dependent child, and
 - (b) may include arrangements for a dependent child.

Commencement Information

- I4** Sch. 3 para. 10 wholly in force at 8.1.2003; Sch. 3 para. 10 not in force at Royal Assent see s. 162(2); Sch. 3 para. 10 in force at 8.12.2002 for certain purposes and at 8.1.2003 so far as not already in force by S.I. 2002/2811, art. 2, Sch.

Assistance and accommodation: general

- 11 Regulations under paragraph 8, 9 or 10 may—
- (a) provide for the making of arrangements under a provision referred to in paragraph 1(1) or otherwise;
 - (b) confer a function (which may include the exercise of a discretion) on the Secretary of State, a local authority or another person;
 - (c) provide that arrangements must be made in a specified manner or in accordance with specified principles;
 - (d) provide that arrangements may not be made in a specified manner;
 - (e) require a local authority or another person to have regard to guidance issued by the Secretary of State in making arrangements;
 - (f) require a local authority or another person to comply with a direction of the Secretary of State in making arrangements.

Commencement Information

- I5** Sch. 3 para. 11 wholly in force at 8.1.2003; Sch. 3 para. 11 not in force at Royal Assent see s. 162(2); Sch. 3 para. 11 in force at 8.12.2002 for certain purposes and at 8.1.2003 so far as not already in force by S.I. 2002/2811, art. 2, Sch.

- 12 (1) Regulations may, in particular, provide that if a person refuses an offer of arrangements under paragraph 8 or fails to implement or cooperate with arrangements made for him under that paragraph—
- (a) new arrangements may be made for him under paragraph 8, but
 - (b) new arrangements may not be made for him under paragraph 9.
- (2) Regulations by virtue of this paragraph may include exceptions in the case of a person who—
- (a) has a reason of a kind specified in the regulations for failing to implement or cooperate with arrangements made under paragraph 8, and
 - (b) satisfies any requirements of the regulations for proof of the reason.

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- I6** Sch. 3 para. 12 wholly in force at 8.1.2003; Sch. 3 para. 12 not in force at Royal Assent see s. 162(2); Sch. 3 para. 12 in force at 8.12.2002 for certain purposes and at 8.1.2003 so far as not already in force by S.I. 2002/2811, art. 2, Sch.

Offences

- 13 (1) A person who leaves the United Kingdom in accordance with arrangements made under paragraph 8 commits an offence if he—
- returns to the United Kingdom, and
 - requests that arrangements be made for him by virtue of paragraph 8, 9 or 10.
- (2) A person commits an offence if he—
- requests that arrangements be made for him by virtue of paragraph 8, 9 or 10, and
 - fails to mention a previous request by him for the making of arrangements under any of those paragraphs.
- (3) A person who is guilty of an offence under this paragraph shall be liable on summary conviction to imprisonment for a term not exceeding six months.

Information

- 14 (1) If it appears to a local authority that paragraph 1 applies or may apply to a person in the authority's area by virtue of [F2paragraph 6, 7 or 7A] , the authority must inform the Secretary of State.
- (2) A local authority shall act in accordance with any relevant guidance issued by the Secretary of State for the purpose of determining whether paragraph 1 applies or may apply to a person in the authority's area by virtue of [F2paragraph 6, 7 or 7A] .

Textual Amendments

- F2** Words in Sch. 3 para. 14(1)(2) substituted (1.12.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 9(2), 48(1)-(3); S.I. 2004/2999, art. 2, Sch. (with transitional provisions in art. 4)

Power to amend Schedule

- 15 The Secretary of State may by order amend this Schedule so as—
- to provide for paragraph 1 to apply or not to apply to a class of person;
 - to add or remove a provision to or from the list in paragraph 1(1);
 - to add, amend or remove a limitation of or exception to paragraph 1.

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- 17** Sch. 3 para. 15 wholly in force at 8.1.2003; Sch. 3 para. 15 not in force at Royal Assent see s. 162(2); Sch. 3 para. 15 in force at 8.12.2002 for certain purposes and at 8.1.2003 so far as not already in force by S.I. 2002/2811, art. 2, Sch.

Orders and regulations

- 16 (1) An order or regulations under this Schedule must be made by statutory instrument.
- (2) An order or regulations under this Schedule may—
- (a) make provision which applies generally or only in specified cases or circumstances or only for specified purposes;
 - (b) make different provision for different cases, circumstances or purposes;
 - (c) make transitional provision;
 - (d) make consequential provision (which may include provision amending a provision made by or under this or another Act).
- (3) An order under this Schedule, regulations under paragraph 2(1)(d) or (e) or other regulations which include consequential provision amending an enactment shall not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (4) Regulations under this Schedule to which sub-paragraph (3) does not apply shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Commencement Information

- 18** Sch. 3 para. 16 wholly in force at 8.1.2003; Sch. 3 para. 16 not in force at Royal Assent see s. 162(2); Sch. 3 para. 16 in force at 8.12.2002 for certain purposes and at 8.1.2003 so far as not already in force by S.I. 2002/2811, art. 2, Sch.

Interpretation

- 17 (1) In this Schedule—
- “asylum-seeker” means a person—
 - (a) who is at least 18 years old,
 - (b) who has made a claim for asylum (within the meaning of section 18(3)), and
 - (c) whose claim has been recorded by the Secretary of State but not determined,
 - “Convention rights” has the same meaning as in the Human Rights Act 1998 (c. 42),
 - “child” means a person under the age of eighteen,
 - “dependant” and “dependent” shall have such meanings as may be prescribed by regulations made by the Secretary of State,
 - “EEA State” means a State which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (as it has effect from time to time),
 - “local authority”—

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- (a) in relation to England and Wales, has the same meaning as in section 129(3),
 - (b) in relation to Scotland, has the same meaning as in section 129(4), and
 - (c) in relation to Northern Ireland, means a health service body within the meaning of section 133(4)(d) and the Northern Ireland Housing Executive (for which purpose a reference to the authority’s area shall be taken as a reference to Northern Ireland),
- “the Refugee Convention” means the Convention relating to the status of Refugees done at Geneva on 28th July 1951 and its Protocol, and
- “removal directions” means directions under Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry, &c.), under Schedule 3 to that Act (deportation) or under section 10 of the Immigration and Asylum Act 1999 (c. 33) (removal of person unlawfully in United Kingdom).
- (2) For the purpose of the definition of “asylum-seeker” in sub-paragraph (1) a claim is determined if—
 - (a) the Secretary of State has notified the claimant of his decision,
 - (b) no appeal against the decision can be brought (disregarding the possibility of an appeal out of time with permission), and
 - (c) any appeal which has already been brought has been disposed of.
 - (3) For the purpose of sub-paragraph (2)(c) an appeal is disposed of when it is no longer pending for the purpose of—
 - (a) Part 5 of this Act, or
 - (b) the Special Immigration Appeals Commission Act 1997 (c. 68).
 - (4) The giving of directions in respect of a person under a provision of the Immigration Acts is not the provision of assistance to him for the purposes of this Schedule.

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