



# Asylum and Immigration (Treatment of Claimants, etc.) Act 2004

## 2004 CHAPTER 19

### *Treatment of claimants*

#### **8 Claimant's credibility**

- (1) In determining whether to believe a statement made by or on behalf of a person who makes an asylum claim or a human rights claim, a deciding authority shall take account, as damaging the claimant's credibility, of any behaviour to which this section applies.
- (2) This section applies to any behaviour by the claimant that the deciding authority thinks—
  - (a) is designed or likely to conceal information,
  - (b) is designed or likely to mislead, or
  - (c) is designed or likely to obstruct or delay the handling or resolution of the claim or the taking of a decision in relation to the claimant.
- (3) Without prejudice to the generality of subsection (2) the following kinds of behaviour shall be treated as designed or likely to conceal information or to mislead—
  - (a) failure without reasonable explanation to produce a passport on request to an immigration officer or to the Secretary of State,
  - (b) the production of a document which is not a valid passport as if it were,
  - (c) the destruction, alteration or disposal, in each case without reasonable explanation, of a passport,
  - (d) the destruction, alteration or disposal, in each case without reasonable explanation, of a ticket or other document connected with travel, and
  - (e) failure without reasonable explanation to answer a question asked by a deciding authority.
- (4) This section also applies to failure by the claimant to take advantage of a reasonable opportunity to make an asylum claim or human rights claim while in a safe country.

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*Status: This is the original version (as it was originally enacted).*

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- (5) This section also applies to failure by the claimant to make an asylum claim or human rights claim before being notified of an immigration decision, unless the claim relies wholly on matters arising after the notification.
- (6) This section also applies to failure by the claimant to make an asylum claim or human rights claim before being arrested under an immigration provision, unless—
- (a) he had no reasonable opportunity to make the claim before the arrest, or
  - (b) the claim relies wholly on matters arising after the arrest.
- (7) In this section—
- “asylum claim” has the meaning given by section 113(1) of the Nationality, Immigration and Asylum Act 2002 (c. 41) (subject to subsection (9) below),
- “deciding authority” means—
- (a) an immigration officer,
  - (b) the Secretary of State,
  - (c) the Asylum and Immigration Tribunal, or
  - (d) the Special Immigration Appeals Commission,
- “human rights claim” has the meaning given by section 113(1) of the Nationality, Immigration and Asylum Act 2002 (subject to subsection (9) below),
- “immigration decision” means—
- (a) refusal of leave to enter the United Kingdom,
  - (b) refusal to vary a person’s leave to enter or remain in the United Kingdom,
  - (c) grant of leave to enter or remain in the United Kingdom,
  - (d) a decision that a person is to be removed from the United Kingdom by way of directions under section 10(1)(a), (b), (ba) or (c) of the Immigration and Asylum Act 1999 (c. 33) (removal of persons unlawfully in United Kingdom),
  - (e) a decision that a person is to be removed from the United Kingdom by way of directions under paragraphs 8 to 12 of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry: removal),
  - (f) a decision to make a deportation order under section 5(1) of that Act, and
  - (g) a decision to take action in relation to a person in connection with extradition from the United Kingdom,
- “immigration provision” means—
- (a) sections 28A, 28AA, 28B, 28C and 28CA of the Immigration Act 1971 (immigration offences: enforcement),
  - (b) paragraph 17 of Schedule 2 to that Act (control of entry),
  - (c) section 14 of this Act, and
  - (d) a provision of the Extradition Act 1989 (c. 33) or 2003 (c. 41),
- “notified” means notified in such manner as may be specified by regulations made by the Secretary of State,
- “passport” includes a document which relates to a national of a country other than the United Kingdom and which is designed to serve the same purpose as a passport, and
- “safe country” means a country to which Part 2 of Schedule 3 applies.
- (8) A passport produced by or on behalf of a person is valid for the purposes of subsection (3)(b) if it—

- (a) relates to the person by whom or on whose behalf it is produced,
  - (b) has not been altered otherwise than by or with the permission of the authority who issued it, and
  - (c) was not obtained by deception.
- (9) In subsection (4) a reference to an asylum claim or human rights claim shall be treated as including a reference to a claim of entitlement to remain in a country other than the United Kingdom made by reference to the rights that a person invokes in making an asylum claim or a human rights claim in the United Kingdom.
- (10) Regulations under subsection (7) specifying a manner of notification may, in particular—
- (a) apply or refer to regulations under section 105 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (notice of immigration decisions);
  - (b) make provision similar to provision that is or could be made by regulations under that section;
  - (c) modify a provision of regulations under that section in its effect for the purpose of regulations under this section;
  - (d) provide for notice to be treated as received at a specified time if sent to a specified class of place in a specified manner.
- (11) Regulations under subsection (7) specifying a manner of notification—
- (a) may make incidental, consequential or transitional provision,
  - (b) shall be made by statutory instrument, and
  - (c) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (12) This section shall not prevent a deciding authority from determining not to believe a statement on the grounds of behaviour to which this section does not apply.
- (13) Before the coming into force of section 26 a reference in this section to the Asylum and Immigration Tribunal shall be treated as a reference to—
- (a) an adjudicator appointed, or treated as if appointed, under section 81 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (appeals), and
  - (b) the Immigration Appeal Tribunal.

## 9 Failed asylum seekers: withdrawal of support

- (1) In Schedule 3 to the Nationality, Immigration and Asylum Act 2002 (withholding and withdrawal of support) after paragraph 7 insert—

*“Fifth class of ineligible person: failed asylum-seeker with family*

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),

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- (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,
  - (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).”
- (2) In paragraph 14(1) and (2) of Schedule 3 to the Nationality, Immigration and Asylum Act 2002 (local authority to notify Secretary of State) for “paragraph 6 or 7” substitute “paragraph 6, 7 or 7A”.
- (3) No appeal may be brought under section 103 of the Immigration and Asylum Act 1999 (asylum support appeal) against a decision—
  - (a) that by virtue of a provision of Schedule 3 to the Nationality, Immigration and Asylum Act 2002 (c. 41) other than paragraph 7A a person is not qualified to receive support, or
  - (b) on the grounds of the application of a provision of that Schedule other than paragraph 7A, to stop providing support to a person.
- (4) On an appeal under section 103 of the Immigration and Asylum Act 1999 (c. 33) against a decision made by virtue of paragraph 7A of Schedule 3 to the Nationality, Immigration and Asylum Act 2002 the adjudicator may, in particular—
  - (a) annul a certificate of the Secretary of State issued for the purposes of that paragraph;
  - (b) require the Secretary of State to reconsider the matters certified.
- (5) An order under section 48 providing for this section to come into force may, in particular, provide for this section to have effect with specified modifications before the coming into force of a provision of the Nationality, Immigration and Asylum Act 2002.

## **10 Failed asylum seekers: accommodation**

- (1) At the end of section 4 of the Immigration and Asylum Act 1999 (provision of accommodation for failed asylum seekers, &c.) add—
  - “(5) The Secretary of State may make regulations specifying criteria to be used in determining—
    - (a) whether or not to provide accommodation, or arrange for the provision of accommodation, for a person under this section;

- (b) whether or not to continue to provide accommodation, or arrange for the provision of accommodation, for a person under this section.
  - (6) The regulations may, in particular—
    - (a) provide for the continuation of the provision of accommodation for a person to be conditional upon his performance of or participation in community activities in accordance with arrangements made by the Secretary of State;
    - (b) provide for the continuation of the provision of accommodation to be subject to other conditions;
    - (c) provide for the provision of accommodation (or the continuation of the provision of accommodation) to be a matter for the Secretary of State’s discretion to a specified extent or in a specified class of case.
  - (7) For the purposes of subsection (6)(a)—
    - (a) “community activities” means activities that appear to the Secretary of State to be beneficial to the public or a section of the public, and
    - (b) the Secretary of State may, in particular—
      - (i) appoint one person to supervise or manage the performance of or participation in activities by another person;
      - (ii) enter into a contract (with a local authority or any other person) for the provision of services by way of making arrangements for community activities in accordance with this section;
      - (iii) pay, or arrange for the payment of, allowances to a person performing or participating in community activities in accordance with arrangements under this section.
  - (8) Regulations by virtue of subsection (6)(a) may, in particular, provide for a condition requiring the performance of or participation in community activities to apply to a person only if the Secretary of State has made arrangements for community activities in an area that includes the place where accommodation is provided for the person.
  - (9) A local authority or other person may undertake to manage or participate in arrangements for community activities in accordance with this section.”
- (2) In section 166(5) of that Act (regulations: affirmative instrument) before paragraph (a) insert—
- “(za) section 4(5),”.
- (3) In section 103 of the Immigration and Asylum Act 1999 (c. 33) (support for asylum-seekers: appeal) as it has effect before the commencement of section 53 of the Nationality, Immigration and Asylum Act 2002 (c. 41)—
- (a) after subsection (2) insert—
    - “(2A) If the Secretary of State decides not to provide accommodation for a person under section 4, or not to continue to provide accommodation for a person under section 4, the person may appeal to an adjudicator.”, and
  - (b) in subsections (6) and (7) for “section 95” substitute “section 4 or 95”.

- (4) In section 103 of the Immigration and Asylum Act 1999 (support for asylum-seekers: appeal) as it has effect after the commencement of section 53 of the Nationality, Immigration and Asylum Act 2002—
- (a) for subsection (1) substitute—
- “(1) This section applies where a person has applied for support under all or any of the following provisions—
- (a) section 4,
- (b) section 95, and
- (c) section 17 of the Nationality, Immigration and Asylum Act 2002.”,
- (b) in subsection (4)(a) for “the other provision” substitute “another of those provisions”, and
- (c) in subsection (7) for “subsection (1)(a) or (b)” substitute “subsection (1)”.
- (5) In section 103A of the Immigration and Asylum Act 1999 (appeal about location of support) in subsection (1) (and in the heading) for “section 95” substitute “section 4 or 95”.
- (6) In an amendment made by this section a reference to providing accommodation includes a reference to arranging for the provision of accommodation.
- (7) Regulations under section 4(5)(b) of the Immigration and Asylum Act 1999 (c. 33) (as inserted by subsection (1) above) may apply to persons receiving support under section 4 when the regulations come into force.

## 11 Accommodation for asylum seekers: local connection

- (1) At the end of section 199 of the Housing Act 1996 (c. 52) (local connection) add—
- “(6) A person has a local connection with the district of a local housing authority if he was (at any time) provided with accommodation in that district under section 95 of the Immigration and Asylum Act 1999 (support for asylum seekers).
- (7) But subsection (6) does not apply—
- (a) to the provision of accommodation for a person in a district of a local housing authority if he was subsequently provided with accommodation in the district of another local housing authority under section 95 of that Act, or
- (b) to the provision of accommodation in an accommodation centre by virtue of section 22 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (use of accommodation centres for section 95 support).”
- (2) Subsection (3) applies where—
- (a) a local housing authority would (but for subsection (3)) be obliged to secure that accommodation is available for occupation by a person under section 193 of the Housing Act 1996 (homeless persons),
- (b) the person was (at any time) provided with accommodation in a place in Scotland under section 95 of the Immigration and Asylum Act 1999 (support for asylum seekers),

- (c) the accommodation was not provided in an accommodation centre by virtue of section 22 of the Nationality, Immigration and Asylum Act 2002 (use of accommodation centres for section 95 support), and
  - (d) the person has neither—
    - (i) a local connection with the district of a local housing authority (in England or Wales) within the meaning of section 199 of the Housing Act 1996 as amended by subsection (1) above, nor
    - (ii) a local connection with a district (in Scotland) within the meaning of section 27 of the Housing (Scotland) Act 1987 (c. 26).
- (3) Where this subsection applies—
- (a) the duty of the local housing authority under section 193 of the Housing Act 1996 in relation to the person shall not apply, but
  - (b) the local housing authority—
    - (i) may secure that accommodation is available for occupation by the person for a period giving him a reasonable opportunity of securing accommodation for his occupation, and
    - (ii) may provide the person (or secure that he is provided with) advice and assistance in any attempts he may make to secure that accommodation becomes available for his occupation.

## 12 Refugee: back-dating of benefits

- (1) Section 123 of the Immigration and Asylum Act 1999 (c. 33) (back-dating of benefits for refugees) shall cease to have effect.
- (2) Accordingly (and without prejudice to any other implied repeal, revocation or amendment) the following (each of which concerns the treatment of refugees) lapse—
- (a) in the Income Support (General) Regulations 1987 (S.I. 1987/1967)—
    - (i) regulation 21ZB,
    - (ii) paragraph 18A of Schedule 1B, and
    - (iii) paragraph 57 of Schedule 9,
  - (b) in the Income Support (General) Regulations (Northern Ireland) 1987 (S.R. 1987 No. 459)—
    - (i) regulation 21A,
    - (ii) paragraph 18A of Schedule 1B, and
    - (iii) paragraph 57 of Schedule 9,
  - (c) in the Social Security (Claims and Payments) Regulations 1987 (S.I. 1987/1968)—
    - (i) regulation 4(3C),
    - (ii) regulation 6(4D), and
    - (iii) regulation 19(8),
  - (d) in the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987 (S.R. 1987 No. 465)—
    - (i) regulation 4(3C),
    - (ii) regulation 6(4D), and
    - (iii) regulation 19(8),
  - (e) in the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971)—
    - (i) regulation 7B,

- (ii) Schedule A1,
    - (iii) paragraphs 61 and 62 of Schedule 4, and
    - (iv) paragraphs 50 and 51 of Schedule 5,
  - (f) in the Housing Benefit (General) Regulations (Northern Ireland) 1987 ([S.R. 1987 No. 461](#))—
    - (i) regulation 7B,
    - (ii) Schedule A1,
    - (iii) paragraphs 62 and 63 of Schedule 4, and
    - (iv) paragraphs 48 and 49 of Schedule 5, and
  - (g) in the Council Tax Benefit (General) Regulations 1992 ([S.I. 1992/ 1814](#))—
    - (i) regulation 4D,
    - (ii) Schedule A1,
    - (iii) paragraphs 60 and 61 of Schedule 4, and
    - (iv) paragraphs 50 and 51 of Schedule 5.
- (3) Regulation 12(1) and (2) of the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 ([S.I. 2000/636](#)) (which save for transitional purposes the effect of provision made for back-payment of benefits for refugees under section 11(2) of the Asylum and Immigration Act 1996 (c. 49)) shall cease to have effect.
- (4) Regulation 11(1) and (2) of the Social Security (Immigration and Asylum) Consequential Amendments Regulations (Northern Ireland) 2000 ([S.R. 2000 No. 71](#)) (which make similar transitional savings) shall cease to have effect.
- (5) An order under section 48 bringing this section into force may, in particular, provide for this section to have effect in relation to persons recorded as refugees after a specified date (irrespective of when the process resulting in the record was begun).

### 13 Integration loan for refugees

- (1) The Secretary of State may make regulations enabling him to make loans to refugees.
- (2) A person is a refugee for the purpose of subsection (1) if the Secretary of State has—
- (a) recorded him as a refugee within the meaning of the Convention relating to the Status of Refugees done at Geneva on 28 July 1951, and
  - (b) granted him indefinite leave to enter or remain in the United Kingdom (within the meaning of section 33(1) of the Immigration Act 1971 (c. 77)).
- (3) Regulations under subsection (1)—
- (a) shall specify matters which the Secretary of State shall, in addition to other matters appearing to him to be relevant, take into account in determining whether or not to make a loan (and those matters may, in particular, relate to—
    - (i) a person's income or assets,
    - (ii) a person's likely ability to repay a loan, or
    - (iii) the length of time since a person was recorded as a refugee),
  - (b) shall enable the Secretary of State to specify (and vary from time to time) a minimum and a maximum amount of a loan,
  - (c) shall prevent a person from receiving a loan if—
    - (i) he is under the age of 18,



- (ii) he is insolvent, within a meaning given by the regulations, or
    - (iii) he has received a loan under the regulations,
  - (d) shall make provision about repayment of a loan (and may, in particular, make provision—
    - (i) about interest;
    - (ii) for repayment by deduction from a social security benefit or similar payment due to the person to whom the loan is made),
  - (e) shall enable the Secretary of State to attach conditions to a loan (which may include conditions about the use of the loan),
  - (f) shall make provision about—
    - (i) the making of an application for a loan, and
    - (ii) the information, which may include information about the intended use of a loan, to be provided in or with an application,
  - (g) may make provision about steps to be taken by the Secretary of State in establishing an applicant's likely ability to repay a loan,
  - (h) may make provision for a loan to be made jointly to more than one refugee, and
  - (i) may confer a discretion on the Secretary of State.
- (4) Regulations under this section—
- (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.