



Immigration and Asylum Act 1999

1999 CHAPTER 33

PART VI U.K.

SUPPORT FOR ASYLUM-SEEKERS

Exclusions

115 Exclusion from benefits. U.K.

- (1) No person is entitled to income-based jobseeker's allowance under the ^{M1}Jobseekers Act 1995 [^{F1}or to state pension credit under the State Pension Credit Act 2002] or to—
- (a) attendance allowance,
 - (b) severe disablement allowance,
 - (c) [^{F2}carer's allowance],
 - (d) disability living allowance,
 - (e) income support,
 - ^{F3}(f)
 - ^{F3}(g)
 - (h) a social fund payment,
 - (i) child benefit,
 - (j) housing benefit, or
 - (k) council tax benefit,
- under the ^{M2}Social Security Contributions and Benefits Act 1992 while he is a person to whom this section applies.
- (2) No person in Northern Ireland is entitled to [^{F4}state pension credit under the State Pension Credit Act (Northern Ireland) 2002, or to]—
- (a) income-based jobseeker's allowance under the ^{M3}Jobseekers (Northern Ireland) Order 1995, or
 - (b) any of the benefits mentioned in paragraphs (a) to (j) of subsection (1),

Status: Point in time view as at 14/06/2007.

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- under the ^{M4}Social Security Contributions and Benefits (Northern Ireland) Act 1992 while he is a person to whom this section applies.
- (3) This section applies to a person subject to immigration control unless he falls within such category or description, or satisfies such conditions, as may be prescribed.
 - (4) Regulations under subsection (3) may provide for a person to be treated for prescribed purposes only as not being a person to whom this section applies.
 - (5) In relation to [^{F5}child benefit], “prescribed” means prescribed by regulations made by the Treasury.
 - (6) In relation to the matters mentioned in subsection (2) (except so far as it relates to [^{F5}child benefit]), “prescribed” means prescribed by regulations made by the Department.
 - (7) Section 175(3) to (5) of the Social Security Contributions and Benefits Act 1992 (supplemental powers in relation to regulations) applies to regulations made by the Secretary of State or the Treasury under subsection (3) as it applies to regulations made under that Act.
 - (8) Sections 133(2), 171(2) and 172(4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 apply to regulations made by the Department under subsection (3) as they apply to regulations made by the Department under that Act.
 - (9) “A person subject to immigration control” means a person who is not a national of an EEA State and who—
 - (a) requires leave to enter or remain in the United Kingdom but does not have it;
 - (b) has leave to enter or remain in the United Kingdom which is subject to a condition that he does not have recourse to public funds;
 - (c) has leave to enter or remain in the United Kingdom given as a result of a maintenance undertaking; or
 - (d) has leave to enter or remain in the United Kingdom only as a result of paragraph 17 of Schedule 4.
 - (10) “Maintenance undertaking”, in relation to any person, means a written undertaking given by another person in pursuance of the immigration rules to be responsible for that person’s maintenance and accommodation.

Textual Amendments

- F1** Words in s. 115(1) inserted (2.7.2002 for certain purposes, 6.10.2003 in so far as not already in force) by [State Pension Credit Act 2002 \(c. 16\)](#), **ss. 4(2)**, 22(3); S.I. 2002/1691, **art. 2(d)**; S.I. 2003/1766, **art. 2(a)**
- F2** Words in s. 115(1)(c) substituted (1.9.2002 for certain purposes, otherwise 1.4.2003) by [The Regulatory Reform \(Carer’s Allowance\) Order 2002 \(S.I. 2002/1457\)](#), **arts. 1(b)**, 2(2), **Sch. paras. 1**, 3(c)
- F3** S. 115(1)(f)(g) repealed (8.4.2003) by [Tax Credits Act 2002 \(c. 21\)](#), s. 61, **Sch. 6**; S.I. 2003/962, **art. 2(4)(e)**, **Sch. 2**
- F4** Words in s. 115(2) inserted (N.I.) (2.12.2002 for certain purposes, 6.10.2003 in so far as not already in force) by [State Pension Credit Act \(Northern Ireland\) 2002 \(c. 14 \(N.I.\)\)](#), **ss. 4(2)**, 21(2); S.R. 2002/366, **art. 2(1)(d)**; S.R. 2003/373, **art. 2**

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F5 Words in s. 115(5)(6) substituted (26.2.2003 for specified purposes, 1.4.2003 for specified purposes, 7.4.2003 in so far as not already in force) by [Tax Credits Act 2002 \(c. 21\), s. 61, Sch. 4 para. 21](#); [S.I. 2003/392, art. 2](#)

Modifications etc. (not altering text)

C1 S. 115 applied (with modifications) (N.I.) (1.4.2007) by [The Rate Relief \(Qualifying Age\) Regulations \(Northern Ireland\) 2007 \(S.R. 2007/203\), regs. 1\(1\), 12](#)

C2 S. 115 applied (with modifications) (N.I.) (1.4.2007) by [The Rate Relief \(General\) Regulations \(Northern Ireland\) 2007 \(S.R. 2007/204\), regs. 1\(1\), 12](#)

C3 S. 115(9) applied (E.W.S.) (8.7.2004) by [Age-Related Payments Act 2004 \(c. 10\), s. 4\(2\)\(c\)](#)

Commencement Information

II S. 115 wholly in force at 3.4.2000; s. 115 not in force at Royal Assent see s. 170(2)(4); s. 115 in force for certain purposes at 1.1.2000 by [S.I. 1999/3190, art. 2, Sch.](#); s. 115(1)(2) in force at 3.4.2000 by virtue of [S.I. 2000/704 \(see s. 170\(2\)\)](#); s. 115 in force at 3.4.2000 insofar as not already in force by [S.I. 2000/464, art. 2, Sch.](#)

Marginal Citations

M1 [1995 c. 18.](#)

M2 [1992 c. 4.](#)

M3 [S.I. 1995/2705 \(N.I. 15\).](#)

M4 [1992 c. 7.](#)

116 Amendment of section 21 of the National Assistance Act 1948. **U.K.**

In section 21 of the ^{M5}National Assistance Act 1948 (duty of local authorities to provide accommodation), after subsection (1), insert—

“(1A) A person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) applies may not be provided with residential accommodation under subsection (1)(a) if his need for care and attention has arisen solely—

- (a) because he is destitute; or
- (b) because of the physical effects, or anticipated physical effects, of his being destitute.

(1B) Subsections (3) and (5) to (8) of section 95 of the Immigration and Asylum Act 1999, and paragraph 2 of Schedule 8 to that Act, apply for the purposes of subsection (1A) as they apply for the purposes of that section, but for the references in subsections (5) and (7) of that section and in that paragraph to the Secretary of State substitute references to a local authority.”

Marginal Citations

M5 [1948 c. 29.](#)

117 Other restrictions on assistance: England and Wales. **U.K.**

(1) In section 45 of the ^{M6}Health Services and Public Health Act 1968 (promotion by local authorities of the welfare of old people), after subsection (4), insert—

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“(4A) No arrangements under this section may be given effect to in relation to a person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) applies solely—

- (a) because he is destitute; or
- (b) because of the physical effects, or anticipated physical effects, of his being destitute.

(4B) Subsections (3) and (5) to (8) of section 95 of the Immigration and Asylum Act 1999, and paragraph 2 of Schedule 8 to that Act, apply for the purposes of subsection (4A) as they apply for the purposes of that section, but for the references in subsections (5) and (7) of that section and in that paragraph to the Secretary of State substitute references to a local authority.”

^{F6}(2)

(3) [^{F7}In section 161 of the ^{M7}Housing Act 1996 (allocation of housing accommodation only to qualifying persons), after subsection (2), insert—

“(2A) Regulations may not be made under subsection (2) so as to include in a prescribed class any person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) applies.”]

(4) [^{F8}In section 185 of the 1996 Act (persons from abroad not eligible for housing assistance), after subsection (2), insert—

“(2A) Regulations may not be made under subsection (2) so as to include in a prescribed class any person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) applies.”]

(5) In the 1996 Act, omit section 186 (asylum-seekers and their dependants).

(6) In section 187(1) of the 1996 Act (provision of information by Secretary of State), in paragraph (a), for “or has become an asylum-seeker, or a dependant of an asylum-seeker” substitute “a person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) applies”.

Textual Amendments

- F6** S. 117(2) repealed (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), s. 8(2), [Sch. 4](#) (with [Sch. 2 Pt. 1](#), [Sch. 3 Pt. 1](#))
- F7** S. 117(3) repealed (E.W.) (31.7.2002 for E., 27.1.2003 for W.) by [Homelessness Act 2002 \(c. 7\)](#), s. 18, [Sch. 2](#) (with s. 20(4)); [S.I. 2002/1799](#), [art. 2](#); [S.I. 2002/1736](#), [art. 2\(2\)](#), [Sch. Pt. 2](#)
- F8** S. 117(4) repealed (E.W.) (31.7.2002 for E., 30.9.2002 for W.) by [Homelessness Act 2002 \(c. 7\)](#), s. 18, [Sch. 2](#) (with s. 20(4)); [S.I. 2002/1799](#), [art. 2](#); [S.I. 2002/1736](#), [art. 2\(1\)](#), [Sch. Pt. 1](#)

Commencement Information

- I2** S. 117 partly in force; s. 117 not in force at Royal Assent see s. 170(4); s. 117(1)(2) in force at 6.12.1999 by [S.I. 1999/3190](#), [art. 2](#), [Sch.](#); s. 117(1)-(4)(6) in force at 3.4.2000 insofar as not already in force by [S.I. 2000/464](#), [art. 2](#), [Sch.](#)

Marginal Citations

- M6** 1968 c. 46.
M7 1996 c. 52.

Status: Point in time view as at 14/06/2007.

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118 Housing authority accommodation. **U.K.**

- (1) Each housing authority must secure that, so far as practicable, a tenancy of, or licence to occupy, housing accommodation provided under the accommodation provisions is not granted to a person subject to immigration control unless—
 - (a) he is of a class specified in an order made by the Secretary of State; or
 - (b) the tenancy of, or licence to occupy, such accommodation is granted in accordance with arrangements made under section [F94, 95 or 98].
- (2) “Housing authority” means—
 - (a) in relation to England and Wales, a local housing authority within the meaning of the ^{M8}Housing Act 1985;
 - (b) in relation to Scotland, a local authority within the meaning of the ^{M9}Housing (Scotland) Act 1987; and
 - (c) in relation to Northern Ireland, the Executive.
- (3) “Accommodation provisions” means—
 - (a) in relation to England and Wales, Part II of the Housing Act 1985;
 - (b) in relation to Scotland, Part I of the Housing (Scotland) Act 1987;
 - (c) in relation to Northern Ireland, Part II of the ^{M10}Housing (Northern Ireland) Order 1981.
- (4) “Licence to occupy”, in relation to Scotland, means a permission or right to occupy.
- (5) “Tenancy”, in relation to England and Wales, has the same meaning as in the ^{M11}Housing Act 1985.
- (6) “Person subject to immigration control” means a person who under the 1971 Act requires leave to enter or remain in the United Kingdom (whether or not such leave has been given).
- (7) This section does not apply in relation to any allocation of housing to which Part VI of the ^{M12}Housing Act 1996 (allocation of housing accommodation) applies.

Textual Amendments

- F9** Words in s. 118(1)(b) substituted (16.6.2006) by [Immigration, Asylum and Nationality Act 2006](#) (c. 13), [ss. 43\(3\)](#), 62(1)(2); S.I. 2006/1497, [art. 3](#), [Sch.](#)

Commencement Information

- I3** S. 118 wholly in force at 1.3.2000; s. 118 not in force at Royal Assent see s. 170(4); s. 118 in force for certain purposes at 1.1.2000 by [S.I. 1999/3190](#), [art. 2](#), [Sch.](#); s. 118 in force at 1.3.2000 insofar as not already in force by [S.I. 2000/464](#), [art. 2](#), [Sch.](#)

Marginal Citations

- M8** 1985 c. 68.
M9 1987 c. 26.
M10 S.I. 1981/156 (N.I. 3).
M11 1985 c. 68.
M12 1996 c. 52.

Status: Point in time view as at 14/06/2007.

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119 Homelessness: Scotland and Northern Ireland. U.K.

- (1) A person subject to immigration control—
 - (a) is not eligible for accommodation or assistance under the homelessness provisions, and
 - (b) is to be disregarded in determining for the purposes of those provisions, whether another person—
 - (i) is homeless or is threatened with homelessness, or
 - (ii) has a priority need for accommodation,
 unless he is of a class specified in an order made by the Secretary of State.
- (2) An order under subsection (1) may not be made so as to include in a specified class any person to whom section 115 applies.
- (3) “The homelessness provisions” means—
 - (a) in relation to Scotland, Part II of the ^{M13}Housing (Scotland) Act 1987; and
 - (b) in relation to Northern Ireland, Part II of the ^{M14}Housing (Northern Ireland) Order 1988.
- (4) “Person subject to immigration control” has the same meaning as in section 118.

Commencement Information

I4 S. 119 wholly in force at 1.3.2000; s. 119 not in force at Royal Assent see s. 170(4); s. 119 in force for certain purposes at 1.1.2000 by S.I. 1999/3190, art. 2, Sch.; s. 119 in force at 1.3.2000 insofar as not already in force by S.I. 2000/464, art. 2, Sch.

Marginal Citations

M13 1987 c. 26.

M14 S.I. 1988/1990 (N.I. 13).

120 Other restrictions on assistance: Scotland. U.K.

- (1) In section 12 of the ^{M15}Social Work (Scotland) Act 1968 (general social welfare services of local authorities), after subsection (2) insert—

“(2A) A person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) applies is not to receive assistance under subsection (1) of this section (whether by way of residential accommodation or otherwise) if his need for assistance has arisen solely—

 - (a) because he is destitute; or
 - (b) because of the physical effects, or anticipated physical effects, of his being destitute.

(2B) Subsections (3) and (5) to (8) of section 95 of the Immigration and Asylum Act 1999, and paragraph 2 of Schedule 8 to that Act, apply for the purposes of subsection (2A) as they apply for the purposes of that section, but for the references in subsections (5) and (7) of that section and in that paragraph to the Secretary of State substitute references to a local authority.”
- (2) In section 13A of that Act (provision of residential accommodation with nursing), after subsection (3) insert—

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“(4) No arrangements under subsection (1) above may be given effect to in relation to a person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) applies solely—

- (a) because he is destitute; or
- (b) because of the physical effects, or anticipated physical effects, of his being destitute.

(5) Subsections (3) and (5) to (8) of section 95 of the Immigration and Asylum Act 1999, and paragraph 2 of Schedule 8 to that Act, apply for the purposes of subsection (4) above as they apply for the purposes of that section, but for the references in subsections (5) and (7) of that section and in that paragraph to the Secretary of State substitute references to a local authority.”

(3) In section 13B of that Act (provision of care and after-care), after subsection (2) insert—

“(3) No arrangements under subsection (1) above may be given effect to in relation to a person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) applies solely—

- (a) because he is destitute; or
- (b) because of the physical effects, or anticipated physical effects, of his being destitute.

(4) Subsections (3) and (5) to (8) of section 95 of the Immigration and Asylum Act 1999, and paragraph 2 of Schedule 8 to that Act, apply for the purposes of subsection (3) above as they apply for the purposes of that section, but for the references in subsections (5) and (7) of that section and in that paragraph to the Secretary of State substitute references to a local authority.”

^{F10}(4)

^{F10}(5)

(6) In the ^{M16}Asylum and Immigration Appeals Act 1993, omit sections 4 and 5 and Schedule 1 (provisions relating to housing of asylum-seekers).

Textual Amendments

F10 S. 120(4)(5) repealed (S.) (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), s. 333(2), [sch. 5 Pt. 1](#); S.S.I. 2005/161, art. 3 (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)

Commencement Information

I5 S. 120 wholly in force at 3.4.2000; s. 120 not in force at Royal Assent see s. 170(4); s. 120 in force for certain purposes at 1.3.2000 by [S.I. 2000/464](#), art. 2, [Sch.](#); s. 120 in force at 3.4.2000 insofar as not already in force by [S.I. 2000/464](#), art. 2, [Sch.](#)

Marginal Citations

M15 1968 c. 49.
M16 1993 c. 23.

Status: Point in time view as at 14/06/2007.

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121 Other restrictions on assistance: Northern Ireland. **U.K.**

(1) In Article 7 of the ^{M17}Health and Personal Social Services (Northern Ireland) Order 1972 (prevention of illness, care and after-care), after paragraph (2) insert—

“(3) No arrangements made under paragraph (1) may be given effect to in relation to a person to whom section 115 of the Immigration and Asylum Act 1999 applies solely—

- (a) because he is destitute; or
- (b) because of the physical effects, or anticipated physical effects, of his being destitute.

(3A) Subsections (3) and (5) to (8) of section 95 of the Immigration and Asylum Act 1999, and paragraph 2 of Schedule 8 to that Act, apply for the purposes of paragraph (3) as they apply for the purposes of that section, but for the references in subsections (5) and (7) of that section and in paragraph 2 of that Schedule to the Secretary of State substitute references to the Department.”

(2) In Article 15 of that Order (general social welfare), after paragraph (5) insert—

“(6) Assistance may not be provided under paragraph (1) in respect of any person to whom section 115 of the Immigration and Asylum Act 1999 applies if his need for assistance has arisen solely—

- (a) because he is destitute, or
- (b) because of the physical effects, or anticipated physical effects, of his being destitute.

(7) Subsections (3) to (8) of section 95 of the Immigration and Asylum Act 1999, and paragraph 2 of Schedule 8 to that Act, apply for the purposes of paragraph (6) as they apply for the purposes of that section, but for references to the Secretary of State in subsections (5) and (7) of that section and in paragraph 2 of that Schedule substitute references to the Department.”

(3) In the Asylum and Immigration Appeals Act 1993, omit sections 4 and 5 and Schedule 1 (provisions relating to housing of asylum-seekers).

Commencement Information

I6 [S. 121](#) wholly in force at 3.4.2000; [s. 121](#) not in force at Royal Assent see [s. 170\(4\)](#); [s. 121](#) in force for certain purposes at 1.3.2000 by [S.I. 2000/464, art. 2, Sch.](#); [s. 121](#) in force at 3.4.2000 insofar as not already in force by [S.I. 2000/464, art. 2, Sch.](#)

Marginal Citations

M17 [S.I. 1972/1265 \(N.I. 14\)](#).

122 Support for children. **U.K.**

(1) In this section “eligible person” means a person who appears to the Secretary of State to be a person for whom support may be provided under section 95.

(2) Subsections (3) and (4) apply if an application for support under section 95 has been made by an eligible person whose household includes a dependant under the age of 18 (“the child”).

Status: Point in time view as at 14/06/2007.

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- (3) If it appears to the Secretary of State that adequate accommodation is not being provided for the child, he must exercise his powers under section 95 by offering, and if his offer is accepted by providing or arranging for the provision of, adequate accommodation for the child as part of the eligible person's household.
- (4) If it appears to the Secretary of State that essential living needs of the child are not being met, he must exercise his powers under section 95 by offering, and if his offer is accepted by providing or arranging for the provision of, essential living needs for the child as part of the eligible person's household.
- (5) No local authority may provide assistance under any of the child welfare provisions in respect of a dependant under the age of 18, or any member of his family, at any time when—
 - (a) the Secretary of State is complying with this section in relation to him; or
 - (b) there are reasonable grounds for believing that—
 - (i) the person concerned is a person for whom support may be provided under section 95; and
 - (ii) the Secretary of State would be required to comply with this section if that person had made an application under section 95.
- (6) "Assistance" means the provision of accommodation or of any essential living needs.
- (7) "The child welfare provisions" means—
 - (a) section 17 of the ^{M18}Children Act 1989 (local authority support for children and their families);
 - (b) section 22 of the ^{M19}Children (Scotland) Act 1995 (equivalent provision for Scotland); and
 - (c) Article 18 of the ^{M20}Children (Northern Ireland) Order 1995 (equivalent provision for Northern Ireland).
- (8) Subsection (9) applies if accommodation provided in the discharge of the duty imposed by subsection (3) has been withdrawn.
- (9) Only the relevant authority may provide assistance under any of the child welfare provisions in respect of the child concerned.
- (10) "Relevant authority" means—
 - (a) in relation to Northern Ireland, the authority within whose area the withdrawn accommodation was provided;
 - (b) in any other case, the local authority within whose area the withdrawn accommodation was provided.
- (11) In such circumstances as may be prescribed, subsection (5) does not apply.

Commencement Information

17 S. 122 wholly in force at 3.4.2000; s. 122 not in force at Royal Assent see s. 170(4); s. 122 in force for certain purposes at 1.3.2000 by [S.I. 2000/464, art. 2, Sch.](#); s. 122 in force at 3.4.2000 insofar as not already in force by [S.I. 2000/464, art. 2, Sch.](#)

Marginal Citations

M18 1989 c. 41.

M19 1995 c. 36.

Status: Point in time view as at 14/06/2007.

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M20 S.I. 1995/775 (N.I. 2).

^{F11}**123** Back-dating of benefits where person recorded as refugee. **U.K.**

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Textual Amendments

F11 S. 123 repealed (14.6.2007) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 12(1), 48(3), **Sch. 4**; S.I. 2007/1602, art. 2(1)(2) (with art. 2(3)(4))

Status:

Point in time view as at 14/06/2007.

Changes to legislation:

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