



Immigration and Asylum Act 1999

1999 CHAPTER 33

PART VI

SUPPORT FOR ASYLUM-SEEKERS

Exclusions

115 Exclusion from benefits

(1) No person is entitled to income-based jobseeker's allowance under the Jobseekers Act 1995 or to—

- (a) attendance allowance,
- (b) severe disablement allowance,
- (c) invalid care allowance,
- (d) disability living allowance,
- (e) income support,
- (f) working families' tax credit,
- (g) disabled person's tax credit,
- (h) a social fund payment,
- (i) child benefit,
- (j) housing benefit, or
- (k) council tax benefit,

under the 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—

- (a) income-based jobseeker's allowance under the Jobseekers (Northern Ireland) Order 1995, or
- (b) any of the benefits mentioned in paragraphs (a) to (j) of subsection (1),

under the Social Security Contributions and Benefits (Northern Ireland) Act 1992 while he is a person to whom this section applies.

Status: This is the original version (as it was originally enacted).

- (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 the benefits mentioned in subsection (1)(f) or (g), “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 the benefits mentioned in subsection (1)(f) or (g)), “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.

116 Amendment of section 21 of the National Assistance Act 1948

In section 21 of the 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.”

117 Other restrictions on assistance: England and Wales

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

“(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.”

- (2) In paragraph 2 of Schedule 8 to the National Health Service Act 1977 (arrangements by local authorities for the prevention of illness and for care and after-care), after subparagraph (2), insert—

“(2A) No arrangements under this paragraph 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.

(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 social services authority.”

- (3) In section 161 of the 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) 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”.

118 Housing authority accommodation

- (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 95.
- (2) “Housing authority” means—
 - (a) in relation to England and Wales, a local housing authority within the meaning of the Housing Act 1985;
 - (b) in relation to Scotland, a local authority within the meaning of the 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 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 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 Housing Act 1996 (allocation of housing accommodation) applies.

119 Homelessness: Scotland and Northern Ireland

- (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 Housing (Scotland) Act 1987; and
 - (b) in relation to Northern Ireland, Part II of the Housing (Northern Ireland) Order 1988.

- (4) “Person subject to immigration control” has the same meaning as in section 118.

120 Other restrictions on assistance: Scotland

- (1) In section 12 of the 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—

“(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.”

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

(4) In section 7 of the Mental Health (Scotland) Act 1984 (functions of local authorities), after subsection (2) insert—

“(3) No arrangements under paragraph (a) or (c) of 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 subsection (5) and (7) of that section and in that paragraph to the Secretary of State substitute references to a local authority.”

(5) In section 8 of that Act (provision of after-care services), after subsection (3) insert—

“(4) After care services may not be provided under subsection (1) above in respect of any 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 subsection (5) and (7) of that section and in that paragraph to the Secretary of State substitute references to a local authority.”

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

121 Other restrictions on assistance: Northern Ireland

(1) In Article 7 of the 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—

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

“(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).

122 Support for children

- (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”).
- (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 Children Act 1989 (local authority support for children and their families);
 - (b) section 22 of the Children (Scotland) Act 1995 (equivalent provision for Scotland); and

- (c) Article 18 of the 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.

123 Back-dating of benefits where person recorded as refugee

- (1) This section applies if—
 - (a) a person is recorded by the Secretary of State as a refugee within the meaning of the Refugee Convention; and
 - (b) before the refugee was so recorded, he or his dependant was a person to whom section 115 applied.
- (2) Regulations may provide that a person mentioned in subsection (1)(b) may, within a prescribed period, claim the whole, or any prescribed proportion, of any benefit to which he would have been entitled had the refugee been so recorded when he made his claim for asylum.
- (3) Subsections (5) and (6) apply if the refugee has resided in the areas of two or more local authorities and he or his dependant makes a claim under the regulations in relation to housing benefit.
- (4) Subsections (5) and (6) also apply if the refugee has resided in the areas of two or more local authorities in Great Britain and he or his dependant makes a claim under the regulations in relation to council tax benefit.
- (5) The claim must be investigated and determined, and any benefit awarded must be paid or allowed, by such one of those authorities as may be prescribed by the regulations (“the prescribed authority”).
- (6) The regulations may make provision requiring a local authority who are not the prescribed authority to supply that authority with such information as they may reasonably require in connection with the exercise of their functions under the regulations.
- (7) The regulations may make provision in relation to a person who has received support under this Part or who is a dependant of such a person—
 - (a) for the determination, or for criteria for the calculation, of the value of that support; and
 - (b) for the sum which he would be entitled to claim under the regulations to be reduced by the whole, or any prescribed proportion, of that valuation.

- (8) The reductions permitted by subsection (7) must not exceed the amount of the valuation.
- (9) “Regulations” means—
- (a) in relation to jobseeker’s allowance under the Jobseekers Act 1995, regulations made by the Secretary of State under that Act or the Social Security Administration Act 1992;
 - (b) in relation to jobseeker’s allowance under the Jobseekers (Northern Ireland) Order 1995, regulations made by the Department under that Order or the Social Security Administration (Northern Ireland) Act 1992;
 - (c) in relation to a benefit under the Social Security Contributions and Benefits Act 1992, regulations made by the Secretary of State under that Act or the Social Security Administration Act 1992;
 - (d) in relation to a benefit under the Social Security Contributions and Benefits (Northern Ireland) Act 1992, regulations made by the Department under that Act or the Social Security Administration (Northern Ireland) Act 1992.