



# Immigration and Asylum Act 1999

## 1999 CHAPTER 33

### PART VI

#### SUPPORT FOR ASYLUM-SEEKERS

##### *Interpretation*

#### 94 Interpretation of Part VI

(1) In this Part—

“adjudicator” has the meaning given in section 102(2);

“asylum-seeker” means a person who is not under 18 and has made a claim for asylum which has been recorded by the Secretary of State but which has not been determined;

“claim for asylum” means a claim that it would be contrary to the United Kingdom’s obligations under the Refugee Convention, or under Article 3 of the Human Rights Convention, for the claimant to be removed from, or required to leave, the United Kingdom;

“the Department” means the Department of Health and Social Services for Northern Ireland;

“dependant”, in relation to an asylum-seeker or a supported person, means a person in the United Kingdom who—

(a) is his spouse;

(b) is a child of his, or of his spouse, who is under 18 and dependent on him; or

(c) falls within such additional category, if any, as may be prescribed;

“the Executive” means the Northern Ireland Housing Executive;

“housing accommodation” includes flats, lodging houses and hostels;

“local authority” means—

(a) in England and Wales, a county council, a county borough council, a district council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly;

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- (b) in Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;  
“supported person” means—
    - (a) an asylum-seeker, or
    - (b) a dependant of an asylum-seeker,
who has applied for support and for whom support is provided under section 95.
- (2) References in this Part to support provided under section 95 include references to support which is provided under arrangements made by the Secretary of State under that section.
  - (3) For the purposes of this Part, a claim for asylum is determined at the end of such period beginning—
    - (a) on the day on which the Secretary of State notifies the claimant of his decision on the claim, or
    - (b) if the claimant has appealed against the Secretary of State’s decision, on the day on which the appeal is disposed of,
as may be prescribed.
  - (4) An appeal is disposed of when it is no longer pending for the purposes of the Immigration Acts or the Special Immigration Appeals Commission Act 1997.
  - (5) If an asylum-seeker’s household includes a child who is under 18 and a dependant of his, he is to be treated (for the purposes of this Part) as continuing to be an asylum-seeker while—
    - (a) the child is under 18; and
    - (b) he and the child remain in the United Kingdom.
  - (6) Subsection (5) does not apply if, on or after the determination of his claim for asylum, the asylum-seeker is granted leave to enter or remain in the United Kingdom (whether or not as a result of that claim).
  - (7) For the purposes of this Part, the Secretary of State may inquire into, and decide, the age of any person.
  - (8) A notice under subsection (3) must be given in writing.
  - (9) If such a notice is sent by the Secretary of State by first class post, addressed—
    - (a) to the asylum-seeker’s representative, or
    - (b) to the asylum-seeker’s last known address,
it is to be taken to have been received by the asylum-seeker on the second day after the day on which it was posted.

### *Provision of support*

## **95 Persons for whom support may be provided**

- (1) The Secretary of State may provide, or arrange for the provision of, support for—
  - (a) asylum-seekers, or
  - (b) dependants of asylum-seekers,

who appear to the Secretary of State to be destitute or to be likely to become destitute within such period as may be prescribed.

- (2) In prescribed circumstances, a person who would otherwise fall within subsection (1) is excluded.
- (3) For the purposes of this section, a person is destitute if—
  - (a) he does not have adequate accommodation or any means of obtaining it (whether or not his other essential living needs are met); or
  - (b) he has adequate accommodation or the means of obtaining it, but cannot meet his other essential living needs.
- (4) If a person has dependants, subsection (3) is to be read as if the references to him were references to him and his dependants taken together.
- (5) In determining, for the purposes of this section, whether a person's accommodation is adequate, the Secretary of State—
  - (a) must have regard to such matters as may be prescribed for the purposes of this paragraph; but
  - (b) may not have regard to such matters as may be prescribed for the purposes of this paragraph or to any of the matters mentioned in subsection (6).
- (6) Those matters are—
  - (a) the fact that the person concerned has no enforceable right to occupy the accommodation;
  - (b) the fact that he shares the accommodation, or any part of the accommodation, with one or more other persons;
  - (c) the fact that the accommodation is temporary;
  - (d) the location of the accommodation.
- (7) In determining, for the purposes of this section, whether a person's other essential living needs are met, the Secretary of State—
  - (a) must have regard to such matters as may be prescribed for the purposes of this paragraph; but
  - (b) may not have regard to such matters as may be prescribed for the purposes of this paragraph.
- (8) The Secretary of State may by regulations provide that items or expenses of such a description as may be prescribed are, or are not, to be treated as being an essential living need of a person for the purposes of this Part.
- (9) Support may be provided subject to conditions.
- (10) The conditions must be set out in writing.
- (11) A copy of the conditions must be given to the supported person.
- (12) Schedule 8 gives the Secretary of State power to make regulations supplementing this section.
- (13) Schedule 9 makes temporary provision for support in the period before the coming into force of this section.

## 96 Ways in which support may be provided

- (1) Support may be provided under section 95—
  - (a) by providing accommodation appearing to the Secretary of State to be adequate for the needs of the supported person and his dependants (if any);
  - (b) by providing what appear to the Secretary of State to be essential living needs of the supported person and his dependants (if any);
  - (c) to enable the supported person (if he is the asylum-seeker) to meet what appear to the Secretary of State to be expenses (other than legal expenses or other expenses of a prescribed description) incurred in connection with his claim for asylum;
  - (d) to enable the asylum-seeker and his dependants to attend bail proceedings in connection with his detention under any provision of the Immigration Acts; or
  - (e) to enable the asylum-seeker and his dependants to attend bail proceedings in connection with the detention of a dependant of his under any such provision.
- (2) If the Secretary of State considers that the circumstances of a particular case are exceptional, he may provide support under section 95 in such other ways as he considers necessary to enable the supported person and his dependants (if any) to be supported.
- (3) Unless the circumstances of a particular case are exceptional, support provided by the Secretary of State under subsection (1)(a) or (b) or (2) must not be wholly or mainly by way of payments made (by whatever means) to the supported person or to his dependants (if any).
- (4) But the Secretary of State may by order provide for subsection (3) not to apply—
  - (a) in all cases, for such period as may be specified;
  - (b) in such circumstances as may be specified;
  - (c) in relation to specified categories of person; or
  - (d) in relation to persons whose accommodation is in a specified locality.
- (5) The Secretary of State may by order repeal subsection (3).
- (6) “Specified” means specified in an order made under subsection (4).

## 97 Supplemental

- (1) When exercising his power under section 95 to provide accommodation, the Secretary of State must have regard to—
  - (a) the fact that the accommodation is to be temporary pending determination of the asylum-seeker’s claim;
  - (b) the desirability, in general, of providing accommodation in areas in which there is a ready supply of accommodation; and
  - (c) such other matters (if any) as may be prescribed.
- (2) But he may not have regard to—
  - (a) any preference that the supported person or his dependants (if any) may have as to the locality in which the accommodation is to be provided; or
  - (b) such other matters (if any) as may be prescribed.
- (3) The Secretary of State may by order repeal all or any of the following—
  - (a) subsection (1)(a);

- (b) subsection (1)(b);
  - (c) subsection (2)(a).
- (4) When exercising his power under section 95 to provide essential living needs, the Secretary of State—
- (a) must have regard to such matters as may be prescribed for the purposes of this paragraph; but
  - (b) may not have regard to such other matters as may be prescribed for the purposes of this paragraph.
- (5) In addition, when exercising his power under section 95 to provide essential living needs, the Secretary of State may limit the overall amount of the expenditure which he incurs in connection with a particular supported person—
- (a) to such portion of the income support applicable amount provided under section 124 of the Social Security Contributions and Benefits Act 1992, or
  - (b) to such portion of any components of that amount,
- as he considers appropriate having regard to the temporary nature of the support that he is providing.
- (6) For the purposes of subsection (5), any support of a kind falling within section 96(1)(c) is to be treated as if it were the provision of essential living needs.
- (7) In determining how to provide, or arrange for the provision of, support under section 95, the Secretary of State may disregard any preference which the supported person or his dependants (if any) may have as to the way in which the support is to be given.

## **98 Temporary support**

- (1) The Secretary of State may provide, or arrange for the provision of, support for—
- (a) asylum-seekers, or
  - (b) dependants of asylum-seekers,
- who it appears to the Secretary of State may be destitute.
- (2) Support may be provided under this section only until the Secretary of State is able to determine whether support may be provided under section 95.
- (3) Subsections (2) to (11) of section 95 apply for the purposes of this section as they apply for the purposes of that section.

*Support and assistance by local authorities etc.*

## **99 Provision of support by local authorities**

- (1) A local authority may provide support for asylum-seekers and their dependants (if any) in accordance with arrangements made by the Secretary of State under section 95.
- (2) Such support may be provided by the local authority—
- (a) in one or more of the ways mentioned in section 96(1) and (2);
  - (b) whether the arrangements in question are made with the authority or with another person.

- (3) The Executive may provide support by way of accommodation for asylum-seekers and their dependants (if any) in accordance with arrangements made by the Secretary of State under section 95, whether the arrangements in question are made with the Executive or with another person.
- (4) A local authority may incur reasonable expenditure in connection with the preparation of proposals for entering into arrangements under section 95.
- (5) The powers conferred on a local authority by this section include power to—
  - (a) provide services outside their area;
  - (b) provide services jointly with one or more bodies who are not local authorities;
  - (c) form a company for the purpose of providing services;
  - (d) tender for contracts (whether alone or with any other person).

#### **100 Local authority and other assistance for Secretary of State**

- (1) This section applies if the Secretary of State asks—
  - (a) a local authority,
  - (b) a registered social landlord,
  - (c) a registered housing association in Scotland or Northern Ireland, or
  - (d) the Executive,
 to assist him to exercise his power under section 95 to provide accommodation.
- (2) The person to whom the request is made must co-operate in giving the Secretary of State such assistance in the exercise of that power as is reasonable in the circumstances.
- (3) Subsection (2) does not require a registered social landlord to act beyond its powers.
- (4) A local authority must supply to the Secretary of State such information about their housing accommodation (whether or not occupied) as he may from time to time request.
- (5) The information must be provided in such form and manner as the Secretary of State may direct.
- (6) “Registered social landlord” has the same meaning as in Part I of the Housing Act 1996.
- (7) “Registered housing association” has the same meaning—
  - (a) in relation to Scotland, as in the Housing Associations Act 1985; and
  - (b) in relation to Northern Ireland, as in Part II of the Housing (Northern Ireland) Order 1992.

#### **101 Reception zones**

- (1) The Secretary of State may by order designate as reception zones—
  - (a) areas in England and Wales consisting of the areas of one or more local authorities;
  - (b) areas in Scotland consisting of the areas of one or more local authorities;
  - (c) Northern Ireland.
- (2) Subsection (3) applies if the Secretary of State considers that—

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- (a) a local authority whose area is within a reception zone has suitable housing accommodation within that zone; or
  - (b) the Executive has suitable housing accommodation.
- (3) The Secretary of State may direct the local authority or the Executive to make available such of the accommodation as may be specified in the direction for a period so specified—
  - (a) to him for the purpose of providing support under section 95; or
  - (b) to a person with whom the Secretary of State has made arrangements under section 95.
- (4) A period specified in a direction under subsection (3)—
  - (a) begins on a date so specified; and
  - (b) must not exceed five years.
- (5) A direction under subsection (3) is enforceable, on an application made on behalf of the Secretary of State, by injunction or in Scotland an order under section 45(b) of the Court of Session Act 1988.
- (6) The Secretary of State's power to give a direction under subsection (3) in respect of a particular reception zone must be exercised by reference to criteria specified for the purposes of this subsection in the order designating that zone.
- (7) The Secretary of State may not give a direction under subsection (3) in respect of a local authority in Scotland unless the Scottish Ministers have confirmed to him that the criteria specified in the designation order concerned are in their opinion met in relation to that authority.
- (8) Housing accommodation is suitable for the purposes of subsection (2) if it—
  - (a) is unoccupied;
  - (b) would be likely to remain unoccupied for the foreseeable future if not made available; and
  - (c) is appropriate for the accommodation of persons supported under this Part or capable of being made so with minor work.
- (9) If housing accommodation for which a direction under this section is, for the time being, in force—
  - (a) is not appropriate for the accommodation of persons supported under this Part, but
  - (b) is capable of being made so with minor work,the direction may require the body to whom it is given to secure that that work is done without delay.
- (10) The Secretary of State must make regulations with respect to the general management of any housing accommodation for which a direction under subsection (3) is, for the time being, in force.
- (11) Regulations under subsection (10) must include provision—
  - (a) as to the method to be used in determining the amount of rent or other charges to be payable in relation to the accommodation;
  - (b) as to the times at which payments of rent or other charges are to be made;
  - (c) as to the responsibility for maintenance of, and repairs to, the accommodation;

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- (d) enabling the accommodation to be inspected, in such circumstances as may be prescribed, by the body to which the direction was given;
  - (e) with respect to the condition in which the accommodation is to be returned when the direction ceases to have effect.
- (12) Regulations under subsection (10) may, in particular, include provision—
- (a) for the cost, or part of the cost, of minor work required by a direction under this section to be met by the Secretary of State in prescribed circumstances;
  - (b) as to the maximum amount of expenditure which a body may be required to incur as a result of a direction under this section.
- (13) The Secretary of State must by regulations make provision (“the dispute resolution procedure”) for resolving disputes arising in connection with the operation of any regulations made under subsection (10).
- (14) Regulations under subsection (13) must include provision—
- (a) requiring a dispute to be resolved in accordance with the dispute resolution procedure;
  - (b) requiring the parties to a dispute to comply with obligations imposed on them by the procedure; and
  - (c) for the decision of the person resolving a dispute in accordance with the procedure to be final and binding on the parties.
- (15) Before—
- (a) designating a reception zone in Great Britain,
  - (b) determining the criteria to be included in the order designating the zone, or
  - (c) making regulations under subsection (13),
- the Secretary of State must consult such local authorities, local authority associations and other persons as he thinks appropriate.
- (16) Before—
- (a) designating Northern Ireland as a reception zone, or
  - (b) determining the criteria to be included in the order designating Northern Ireland,
- the Secretary of State must consult the Executive and such other persons as he thinks appropriate.
- (17) Before making regulations under subsection (10) which extend only to Northern Ireland, the Secretary of State must consult the Executive and such other persons as he thinks appropriate.
- (18) Before making any other regulations under subsection (10), the Secretary of State must consult—
- (a) such local authorities, local authority associations and other persons as he thinks appropriate; and
  - (b) if the regulations extend to Northern Ireland, the Executive.

### *Appeals*

## **102 Asylum Support Adjudicators**

- (1) There are to be adjudicators to hear appeals under this Part.



- (2) A person appointed as an adjudicator under this Part is to be known as an Asylum Support Adjudicator (but is referred to in this Part as “an adjudicator”).
- (3) Schedule 10 makes further provision with respect to adjudicators.

### **103 Appeals**

- (1) If, on an application for support under section 95, the Secretary of State decides that the applicant does not qualify for support under that section, the applicant may appeal to an adjudicator.
- (2) If the Secretary of State decides to stop providing support for a person under section 95 before that support would otherwise have come to an end, that person may appeal to an adjudicator.
- (3) On an appeal under this section, the adjudicator may—
  - (a) require the Secretary of State to reconsider the matter;
  - (b) substitute his decision for the decision appealed against; or
  - (c) dismiss the appeal.
- (4) The adjudicator must give his reasons in writing.
- (5) The decision of the adjudicator is final.
- (6) If an appeal is dismissed, no further application by the appellant for support under section 95 is to be entertained unless the Secretary of State is satisfied that there has been a material change in the circumstances.
- (7) The Secretary of State may by regulations provide for decisions as to where support provided under section 95 is to be provided to be appealable to an adjudicator under this Part.
- (8) Regulations under subsection (7) may provide for any provision of this section to have effect, in relation to an appeal brought by virtue of the regulations, subject to such modifications as may be prescribed.
- (9) The Secretary of State may pay any reasonable travelling expenses incurred by an appellant in connection with attendance at any place for the purposes of an appeal under this section.

### **104 Secretary of State’s rules**

- (1) The Secretary of State may make rules regulating—
  - (a) the bringing of appeals under this Part; and
  - (b) the practice and procedure of the adjudicators.
- (2) The rules may, in particular, make provision—
  - (a) for the period within which an appeal must be brought;
  - (b) as to the burden of proof on an appeal;
  - (c) as to the giving and admissibility of evidence;
  - (d) for summoning witnesses;
  - (e) for an appeal to be heard in the absence of the appellant;
  - (f) for determining an appeal without a hearing;

- (g) requiring reports of decisions of adjudicators to be published;
  - (h) conferring such ancillary powers on adjudicators as the Secretary of State considers necessary for the proper discharge of their functions.
- (3) In making the rules, the Secretary of State must have regard to the desirability of securing, so far as is reasonably practicable, that appeals are brought and disposed of with the minimum of delay.

### *Offences*

#### **105 False representations**

- (1) A person is guilty of an offence if, with a view to obtaining support for himself or any other person under any provision made by or under this Part, he—
- (a) makes a statement or representation which he knows is false in a material particular;
  - (b) produces or gives to a person exercising functions under this Part, or knowingly causes or allows to be produced or given to such a person, any document or information which he knows is false in a material particular;
  - (c) fails, without reasonable excuse, to notify a change of circumstances when required to do so in accordance with any provision made by or under this Part; or
  - (d) without reasonable excuse, knowingly causes another person to fail to notify a change of circumstances which that other person was required to notify in accordance with any provision made by or under this Part.
- (2) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale, or to both.

#### **106 Dishonest representations**

- (1) A person is guilty of an offence if, with a view to obtaining any benefit or other payment or advantage under this Part for himself or any other person, he dishonestly—
- (a) makes a statement or representation which is false in a material particular;
  - (b) produces or gives to a person exercising functions under this Part, or causes or allows to be produced or given to such a person, any document or information which is false in a material particular;
  - (c) fails to notify a change of circumstances when required to do so in accordance with any provision made by or under this Part; or
  - (d) causes another person to fail to notify a change of circumstances which that other person was required to notify in accordance with any provision made by or under this Part.
- (2) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both; or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine, or to both.

- (3) In the application of this section to Scotland, in subsection (1) for “dishonestly” substitute “knowingly”.

#### **107 Delay or obstruction**

- (1) A person is guilty of an offence if, without reasonable excuse, he—
- (a) intentionally delays or obstructs a person exercising functions conferred by or under this Part; or
  - (b) refuses or neglects to answer a question, give any information or produce a document when required to do so in accordance with any provision made by or under this Part.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **108 Failure of sponsor to maintain**

- (1) A person is guilty of an offence if, during any period in respect of which he has given a written undertaking in pursuance of the immigration rules to be responsible for the maintenance and accommodation of another person—
- (a) he persistently refuses or neglects, without reasonable excuse, to maintain that person in accordance with the undertaking; and
  - (b) in consequence of his refusal or neglect, support under any provision made by or under this Part is provided for or in respect of that person.
- (2) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding level 4 on the standard scale, or to both.
- (3) For the purposes of this section, a person is not to be taken to have refused or neglected to maintain another person by reason only of anything done or omitted in furtherance of a trade dispute.

#### **109 Supplemental**

- (1) If an offence under section 105, 106, 107 or 108 committed by a body corporate is proved—
- (a) to have been committed with the consent or connivance of an officer, or
  - (b) to be attributable to neglect on his part,
- the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) “Officer”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in such a capacity.
- (3) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (4) If an offence under section 105, 106, 107 or 108 committed by a partnership in Scotland is proved—
- (a) to have been committed with the consent or connivance of a partner, or

(b) to be attributable to neglect on his part, the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(5) “Partner” includes a person purporting to act as a partner.

### *Expenditure*

## **110 Payments to local authorities**

(1) The Secretary of State may from time to time pay to any local authority or Northern Ireland authority such sums as he considers appropriate in respect of expenditure incurred, or to be incurred, by the authority in connection with—

- (a) persons who are, or have been, asylum-seekers; and
- (b) their dependants.

(2) The Secretary of State may from time to time pay to any—

- (a) local authority,
- (b) local authority association, or
- (c) Northern Ireland authority,

such sums as he considers appropriate in respect of services provided by the authority or association in connection with the discharge of functions under this Part.

(3) The Secretary of State may make payments to any local authority towards the discharge of any liability of supported persons or their dependants in respect of council tax payable to that authority.

(4) The Secretary of State must pay to a body to which a direction under section 101(3) is given such sums as he considers represent the reasonable costs to that body of complying with the direction.

(5) The Secretary of State must pay to a directed body sums determined to be payable in relation to accommodation made available by that body under section 101(3)(a).

(6) The Secretary of State may pay to a directed body sums determined to be payable in relation to accommodation made available by that body under section 101(3)(b).

(7) In subsections (5) and (6)—

“determined” means determined in accordance with regulations made by virtue of subsection (11)(a) of section 101, and

“directed body” means a body to which a direction under subsection (3) of section 101 is given.

(8) Payments under subsection (1), (2) or (3) may be made on such terms, and subject to such conditions, as the Secretary of State may determine.

(9) “Northern Ireland authority” means—

- (a) the Executive; or
- (b) a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972.

### **111 Grants to voluntary organisations**

- (1) The Secretary of State may make grants of such amounts as he thinks appropriate to voluntary organisations in connection with—
  - (a) the provision by them of support (of whatever nature) to persons who are, or have been, asylum-seekers and to their dependants; and
  - (b) connected matters.
- (2) Grants may be made on such terms, and subject to such conditions, as the Secretary of State may determine.

### **112 Recovery of expenditure on support: misrepresentation etc**

- (1) This section applies if, on an application made by the Secretary of State, the court determines that—
  - (a) a person (“A”) has misrepresented or failed to disclose a material fact (whether fraudulently or otherwise); and
  - (b) as a consequence of the misrepresentation or failure, support has been provided under section 95 or 98 (whether or not to A).
- (2) If the support was provided by the Secretary of State, the court may order A to pay to the Secretary of State an amount representing the monetary value of the support which would not have been provided but for A’s misrepresentation or failure.
- (3) If the support was provided by another person (“B”) in accordance with arrangements made with the Secretary of State under section 95 or 98, the court may order A to pay to the Secretary of State an amount representing the payment to B which would not have been made but for A’s misrepresentation or failure.
- (4) “Court” means a county court or, in Scotland, the sheriff.

### **113 Recovery of expenditure on support from sponsor**

- (1) This section applies if—
  - (a) a person (“the sponsor”) has given a written undertaking in pursuance of the immigration rules to be responsible for the maintenance and accommodation of another person; and
  - (b) during any period in relation to which the undertaking applies, support under section 95 is provided to or in respect of that other person.
- (2) The Secretary of State may make a complaint against the sponsor to a magistrates' court for an order under this section.
- (3) The court—
  - (a) must have regard to all the circumstances (and in particular to the sponsor’s income); and
  - (b) may order him to pay to the Secretary of State such sum (weekly or otherwise) as it considers appropriate.
- (4) But such a sum is not to include any amount attributable otherwise than to support provided under section 95.
- (5) In determining—

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- (a) whether to order any payments to be made in respect of support provided under section 95 for any period before the complaint was made, or
  - (b) the amount of any such payments,
- the court must disregard any amount by which the sponsor's current income exceeds his income during that period.
- (6) An order under this section is enforceable as a magistrates' court maintenance order within the meaning of section 150(1) of the Magistrates' Courts Act 1980.
  - (7) In the application of this section to Scotland—
    - (a) omit subsection (6);
    - (b) for references to a complaint substitute references to an application; and
    - (c) for references to a magistrates' court substitute references to the sheriff.
  - (8) In the application of this section to Northern Ireland, for references to a magistrates' court substitute references to a court of summary jurisdiction and for subsection (6) substitute—
    - “(6) An order under this section is an order to which Article 98(11) of the Magistrates' Courts (Northern Ireland) Order 1981 applies.”

#### **114 Overpayments**

- (1) Subsection (2) applies if, as a result of an error on the part of the Secretary of State, support has been provided to a person under section 95 or 98.
- (2) The Secretary of State may recover from a person who is, or has been, a supported person an amount representing the monetary value of support provided to him as a result of the error.
- (3) An amount recoverable under subsection (2) may be recovered as if it were a debt due to the Secretary of State.
- (4) The Secretary of State may by regulations make provision for other methods of recovery, including deductions from support provided under section 95.

#### *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

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- (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.
- (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—
- he is of a class specified in an order made by the Secretary of State; or
  - the tenancy of, or licence to occupy, such accommodation is granted in accordance with arrangements made under section 95.
- (2) “Housing authority” means—
- in relation to England and Wales, a local housing authority within the meaning of the Housing Act 1985;
  - in relation to Scotland, a local authority within the meaning of the Housing (Scotland) Act 1987; and
  - in relation to Northern Ireland, the Executive.
- (3) “Accommodation provisions” means—
- in relation to England and Wales, Part II of the Housing Act 1985;
  - in relation to Scotland, Part I of the Housing (Scotland) Act 1987;
  - 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—
- is not eligible for accommodation or assistance under the homelessness provisions, and

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- (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—

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- “(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.”
- (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—

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“(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).

## **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

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- (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.

*Miscellaneous***124 Secretary of State to be corporation sole for purposes of Part VI**

- (1) For the purpose of exercising his functions under this Part, the Secretary of State is a corporation sole.
- (2) Any instrument in connection with the acquisition, management or disposal of property, real or personal, heritable or moveable, by the Secretary of State under this Part may be executed on his behalf by a person authorised by him for that purpose.
- (3) Any instrument purporting to have been so executed on behalf of the Secretary of State is to be treated, until the contrary is proved, to have been so executed on his behalf.

**125 Entry of premises**

- (1) This section applies in relation to premises in which accommodation has been provided under section 95 or 98 for a supported person.
- (2) If, on an application made by a person authorised in writing by the Secretary of State, a justice of the peace is satisfied that there is reason to believe that—
  - (a) the supported person or any dependants of his for whom the accommodation is provided is not resident in it,

- (b) the accommodation is being used for any purpose other than the accommodation of the asylum-seeker or any dependant of his, or
- (c) any person other than the supported person and his dependants (if any) is residing in the accommodation,

he may grant a warrant to enter the premises to the person making the application.

- (3) A warrant granted under subsection (2) may be executed—
  - (a) at any reasonable time;
  - (b) using reasonable force.
- (4) In the application of subsection (2) to Scotland, read the reference to a justice of the peace as a reference to the sheriff or a justice of the peace.

## **126 Information from property owners**

- (1) The power conferred by this section is to be exercised with a view to obtaining information about premises in which accommodation is or has been provided for supported persons.
- (2) The Secretary of State may require any person appearing to him—
  - (a) to have any interest in, or
  - (b) to be involved in any way in the management or control of,such premises, or any building which includes such premises, to provide him with such information with respect to the premises and the persons occupying them as he may specify.
- (3) A person who is required to provide information under this section must do so in accordance with such requirements as may be prescribed.
- (4) Information provided to the Secretary of State under this section may be used by him only in the exercise of his functions under this Part.

## **127 Requirement to supply information about redirection of post**

- (1) The Secretary of State may require any person conveying postal packets to supply redirection information to the Secretary of State—
  - (a) for use in the prevention, detection, investigation or prosecution of criminal offences under this Part;
  - (b) for use in checking the accuracy of information relating to support provided under this Part; or
  - (c) for any other purpose relating to the provision of support to asylum-seekers.
- (2) The information must be supplied in such manner and form, and in accordance with such requirements, as may be prescribed.
- (3) The Secretary of State must make payments of such amount as he considers reasonable in respect of the supply of information under this section.
- (4) “Postal packet” has the same meaning as in the Post Office Act 1953.
- (5) “Redirection information” means information relating to arrangements made with any person conveying postal packets for the delivery of postal packets to addresses other than those indicated by senders on the packets.