

**Status:** Point in time view as at 12/07/2016. This version of this cross heading contains provisions that are prospective.  
**Changes to legislation:** Immigration Act 2016, Cross Heading: Power to support failed asylum-seekers is up to date with all changes known to be in force on or before 18 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

## SCHEDULES

VALID FROM 15/01/2018

### SCHEDULE 11

#### SUPPORT FOR CERTAIN CATEGORIES OF MIGRANT

#### PART 1

#### AMENDMENTS OF THE IMMIGRATION ACTS

PROSPECTIVE

#### *Power to support failed asylum-seekers*

5 Part 6 of the Immigration and Asylum Act 1999 (support for asylum-seekers) is amended as follows.

6 The heading of the Part becomes “ SUPPORT FOR ASYLUM-SEEKERS, ETC ”.

7 (1) Section 94 (interpretation of Part 6) is amended as follows.

(2) In subsection (1)—

(a) in the definition of “dependant”, after “asylum-seeker” insert “ , a failed asylum-seeker ”;

(b) after the definition of “the Executive” insert—

““failed asylum-seeker” has the meaning given by subsection (2D);”;

(c) for the definition of “supported person” substitute—

““supported person” means—

(a) in relation to support under section 95, an asylum-seeker, or a dependant of an asylum-seeker, who has applied for support and for whom support is provided under that section, and

(b) in relation to support under section 95A, a failed asylum-seeker, or a dependant of a failed asylum-seeker, who has applied for support and for whom support is provided under that section.”

(3) In subsection (2), after “section 95” insert “ or 95A ”.

(4) After subsection (2C) (inserted by paragraph 3(3) above) insert—

“(2D) A person is a failed asylum-seeker for the purposes of this Part if—

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- (a) the person is at least 18 years old,
- (b) the person—
  - (i) was an asylum-seeker, or
  - (ii) would have been an asylum-seeker at any time if the person had been at least 18 years old at that time,
- (c) the person's protection claim has been rejected, and
- (d) the person is not an asylum-seeker.”

(5) Omit subsections (5) and (6).

8 In section 95 (persons for whom support may be provided), the heading becomes “ **Support for asylum-seekers, etc** ”.

9 After section 95 insert—

**“95A Support for failed asylum-seekers, etc who are unable to leave UK**

- (1) The Secretary of State may provide, or arrange for the provision of, support for a person, for such period or periods as may be prescribed, if—
  - (a) the person is a failed asylum-seeker, or a dependant of a failed asylum-seeker,
  - (b) an application for support under this section is made in respect of the person which meets such requirements as may be prescribed,
  - (c) it appears to the Secretary of State that the person is destitute, or is likely to become destitute within such period as may be prescribed, and
  - (d) the person faces a genuine obstacle to leaving the United Kingdom.
- (2) Subsections (3) to (8) of section 95 (meaning of “destitute”) apply for the purposes of this section as they apply for the purposes of that section.
- (3) Regulations made by the Secretary of State may make provision for determining what is, or is not, to be regarded as a genuine obstacle to leaving the United Kingdom for the purposes of this section.
- (4) The Secretary of State may make regulations prescribing other criteria to be used in determining—
  - (a) whether or not to provide support, or arrange for the provision of support, for a person under this section;
  - (b) whether or not to continue to provide support, or arrange for the provision of support, for a person under this section.
- (5) Regulations under subsection (4) may, in particular—
  - (a) provide for the provision of support (or the continuation of the provision of support) to be subject to conditions;
  - (b) provide for the provision of support (or the continuation of the provision of support) to be a matter for the Secretary of State's discretion to a prescribed extent or in cases of a prescribed description.

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- (6) A condition imposed by regulations under subsection (5)(a) may, in particular, relate to any of the following—
- (a) any matter relating to the use of the support provided;
  - (b) compliance with a condition imposed under Schedule 10 to the Immigration Act 2016 (immigration bail);
  - (c) the person's performance of, or participation in, community activities in accordance with arrangements made by the Secretary of State.
- (7) A copy of any conditions imposed by regulations under subsection (5) (a) must be given to the supported person.
- (8) For the purposes of subsection (6)(c)—
- (a) “community activities” means activities that appear to the Secretary of State to be beneficial to the public or a section of the public, and
  - (b) the Secretary of State may, in particular—
    - (i) appoint one person to supervise or manage the performance of, or participation in, activities by another person;
    - (ii) enter into a contract (with a local authority or any other person) for the provision of services by way of making arrangements for community activities in accordance with this section;
    - (iii) pay, or arrange for the payment of, allowances to a person performing or participating in community activities in accordance with arrangements under this section.
- (9) Regulations by virtue of subsection (6)(c) may, in particular, provide for a condition requiring the performance of, or participation in, community activities to apply to a person only if—
- (a) accommodation is to be, or is being, provided for the person under this section, and
  - (b) the Secretary of State has made arrangements for community activities in an area that includes the place where the accommodation is to be, or is being, provided.
- (10) A local authority or other person may undertake to manage or participate in arrangements for community activities in accordance with this section.
- (11) The powers conferred by Schedule 8 (supplementary regulation-making powers) are exercisable with respect to the powers conferred by this section as they are exercisable with respect to the powers conferred by section 95, but with the modification in subsection (12).
- (12) Paragraph 9 of Schedule 8 (notice to quit) has effect with respect to the powers conferred by this section as if sub-paragraph (2)(b) were omitted.”

10 (1) Section 96 (ways in which support may be provided) is amended as follows.

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- (2) In subsection (1)—
- (a) after “section 95” insert “ or 95A ”;
  - (b) in paragraph (c), for “the asylum-seeker” substitute “ an asylum-seeker ”;
  - (c) in paragraph (d)—
    - (i) for “the asylum-seeker” substitute “ an asylum-seeker ”, and
    - (ii) after “dependants” insert “ , or a failed asylum-seeker and his dependants, ”;
  - (d) in paragraph (e)—
    - (i) for “the asylum-seeker” substitute “ an asylum-seeker ”, and
    - (ii) after “dependants” insert “ , or a failed asylum-seeker and his dependants, ”.
- (3) After subsection (1) insert—
- “(1A) Support under section 95A may, in particular, be provided in the form of vouchers which may be exchanged for goods or services (as well as in the form of cash).”
- (4) In subsection (2), after “section 95” insert “ or 95A ”.
- 11 (1) Section 97 (supplemental) is amended as follows.
- (2) In subsection (1)—
- (a) after “section 95” insert “ or 95A ”;
  - (b) after “regard to” insert “ the following ”;
  - (c) in paragraph (a), at the beginning insert “ in the case of the provision of accommodation under section 95, ”.
- (3) In subsections (4), (5) and (7), after “section 95” insert “ or 95A ”.
- (4) After subsection (7) insert—
- “(8) A tenancy is not a Scottish secure tenancy (within the meaning of the Housing (Scotland) Act 2001 (asp 10)) if it is granted in order to provide accommodation under section 95A.
- (9) A tenancy which would be a Scottish secure tenancy but for subsection (8) becomes a Scottish secure tenancy if the landlord notifies the tenant that it is to be regarded as such.”
- 12 In section 98, the heading becomes “ **Temporary support for asylum-seekers, etc** ”.
- 13 After section 98 insert—
- “98A Temporary support for failed asylum-seekers, etc**
- (1) The Secretary of State may provide, or arrange for the provision of, support for persons within subsection (2) who it appears to the Secretary of State—
    - (a) may be destitute, and
    - (b) may face a genuine obstacle to leaving the United Kingdom.
  - (2) The persons referred to in subsection (1) are—

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- (a) failed asylum-seekers, and
    - (b) dependants of failed asylum-seekers.
  - (3) Support may be provided under this section only until the Secretary of State is able to determine whether support may be provided under section 95A.
  - (4) Subsections (3) to (12) of section 95A apply for the purposes of this section as they apply for the purposes of that section.”
- 14 (1) Section 99 (provision of support by local authorities) is amended as follows.
- (2) In subsection (1), for “or 98” substitute “ 95A, 98 or 98A ”.
  - (3) In subsection (3)—
    - (a) after “section 95” insert “ or 95A ”;
    - (b) for “section 96(1) and (2)” substitute “ section 96(1) to (2) ”.
  - (4) In subsection (4), for “or 98” substitute “ 95A, 98 or 98A ”.
- 15 In section 100 (local authority and other assistance for Secretary of State), in subsection (1), after “section 95” insert “ or 95A ”.
- 16 In section 101 (reception zones), in subsection (3), after “section 95” (in both places where it occurs) insert “ or 95A ”.
- 17 In section 112 (recovery of expenditure on support: misrepresentation etc), in subsections (1)(b) and (3), for “section 95 or 98” substitute “ section 95, 95A, 98 or 98A ”.
- 18 In section 113 (recovery of expenditure on support from sponsor), in subsections (1)(b), (4) and (5)(a), after “section 95” insert “ or 95A ”.
- 19 (1) Section 114 (overpayments) is amended as follows.
- (2) In subsection (1), for “section 95 or 98” substitute “ section 95, 95A, 98 or 98A ”.
  - (3) In subsection (4), for “section 95” substitute “ section 95, 95A or 98A ”.
- 20 In section 118 (housing authority accommodation), in subsection (1)(b), for “or 98” substitute “ 95A, 98 or 98A ”.
- 21 (1) Section 122 (support for children) is amended as follows.
- (2) In subsection (1), after “section 95” insert “ or 95A ”.
  - (3) In subsection (2), after “section 95” insert “ or (as the case may be) 95A ”.
  - (4) In subsections (3) and (4), after “section 95” insert “ or 95A ”.
  - (5) In subsection (5)—
    - (a) in paragraph (b)(i), after “section 95” insert “ or 95A ”, and
    - (b) in paragraph (b)(ii), after “section 95” insert “ or (as the case may be) 95A ”.
- 22 (1) Section 125 (entry of premises) is amended as follows.
- (2) In subsection (1), for “section 95 or 98” substitute “ section 95, 95A, 98 or 98A ”.
  - (3) In subsection (2)—

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- (a) in paragraph (b), at the beginning insert “ in the case of accommodation provided under section 95 or 98, ”;
- (b) after that paragraph insert—
- “(ba) in the case of accommodation provided under section 95A or 98A, the accommodation is being used for any purpose other than the accommodation of the failed asylum-seeker or any dependant of his.”.
- 23 In section 127 (requirement to supply information about redirection of post), in subsection (1)(c), after “asylum-seekers” insert “ or failed asylum-seekers ”.
- 24 (1) Section 166 (regulations and orders) is amended as follows.
- (2) In subsection (5) (regulations subject to the affirmative procedure) for the “or” at the end of paragraph (c) substitute—
- “(ca) section 95A, or”.
- (3) After subsection (5) insert—
- “(5A) No regulations under paragraph 1 of Schedule 8 which make provision with respect to the powers conferred by section 95A are to be made unless a draft of the regulations has been laid before Parliament and approved by a resolution of each House.
- (5B) Subsection (5A) does not apply to regulations under paragraph 1 of that Schedule which make provision of the kind mentioned in paragraph 3(a) of that Schedule.”
- (4) In subsection (6) (regulations subject to the negative procedure) for the “or” at the end of paragraph (a) substitute—
- “(aa) under the provision mentioned in subsection (5A) and containing regulations to which that subsection applies, or”.
- 25 In section 26A of the Immigration Act 1971 (registration card), in subsection (1)(b), after sub-paragraph (i) insert—
- “(ia) a claim for support under section 95A of the Immigration and Asylum Act 1999 (whether or not made by that person).”
- 26 (1) The Nationality, Immigration and Asylum Act 2002 is amended as follows.
- (2) In section 18 (definition of asylum-seeker for purposes of Part 2), omit subsection (2).
- (3) In section 26 (withdrawal of support), in subsection (3)—
- (a) for “95 or 98” substitute “ 95, 95A, 98 or 98A ”;
- (b) omit “(asylum-seeker)”.
- (4) In section 35—
- (a) in subsection (2), for “section 95 or 98” substitute “ section 95, 95A, 98 or 98A ”;
- (b) in subsection (3), after “section 95” insert “ or 95A ”.
- (5) In section 43—
- (a) in subsection (1), for “asylum-seeker” substitute “ asylum-seekers and failed asylum-seekers, etc ”;

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- (b) the heading of that section becomes “ **Form of support under Part 6 of the Immigration and Asylum Act 1999** ”.
- (6) In section 51 (choice of form of support), in subsection (2), omit the “and” after paragraph (b) and after paragraph (c) insert “, and
- (d) sections 95A and 98A of that Act (support for destitute failed asylum-seekers).”
- (7) In section 55 (late claim for asylum: refusal of support), in subsection (2), after paragraph (a) insert—
- “(aa) sections 95A and 98A of that Act (support for failed asylum-seeker, &c),”.
- (8) In Schedule 3 (withholding and withdrawal of support)—
- (a) omit paragraph 7A;
- (b) in paragraph 14(1) and (2), for “, 7 or 7A” substitute “ or 7 ”.
- 27 In section 9 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (failed asylum-seekers: withdrawal of support)—
- (a) omit subsections (1) and (4);
- (b) in subsection (3)(a) and (b), omit “other than paragraph 7A”.
- 28 In the Immigration, Asylum and Nationality Act 2006, omit section 44 (power to repeal paragraph 7A of Schedule 3 to the Nationality, Immigration and Asylum Act 2002).
- 29 In section 40 of the UK Borders Act 2007 (supply of Revenue and Customs information), in subsection (1)(f), for “asylum-seekers and their dependants” substitute “ persons ”.
- 30 In Schedule 3 to the Immigration Act 2014 (excluded residential tenancy agreements), in paragraph 8 (accommodation provided by virtue of immigration provisions)—
- (a) in paragraph (b) after “95” insert “ or 95A ”, and
- (b) in paragraph (c) after “98” insert “ or 98A ”.

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