

2005 No. 930

IMMIGRATION AND ASYLUM

The Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005

Made - - - - *24th March 2005*

Coming into force *31st March 2005*

Whereas a draft of these Regulations has been laid before Parliament in accordance with section 166(5) of the Immigration and Asylum Act 1999 (a) and approved by a resolution of each House of Parliament:

Now, the Secretary of State, in exercise of the powers conferred upon him by sections 4(5) and 166(3) of the Immigration and Asylum Act 1999 (b) hereby makes the following Regulations:

Citation and commencement

1.—(1) These Regulations may be cited as the Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005 and shall come into force on 31st March 2005.

(2) These Regulations apply to a person who is receiving accommodation when these Regulations come into force to the same extent as they apply to a person provided with accommodation after these Regulations come into force.

Interpretation

2. In these Regulations—

“the 1999 Act” means the Immigration and Asylum Act 1999;

“destitute” is to be construed in accordance with section 95(3) of the 1999 Act (c); and

(a) 1999 c.33. Section 166(5) was amended by section 10(2) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c.19).

(b) Section 4(5) was added by section 10(1) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. The powers in section 4(5) are supplemented by subsections (6), (7) and (8) of section 4, also added by section 10(1) of the 2004 Act.

(c) Section 95(3) of the 1999 Act is substituted by section 95(2) and (3) of the 1999 Act, inserted by section 44(6) of the Nationality, Immigration and Asylum Act 2002 (c.41) which is not yet in force.

“reporting requirement” means a condition or restriction which requires a person to report to the police, an immigration officer or the Secretary of State, and is imposed under—

- (a) paragraph 21 of Schedule 2 to the Immigration Act 1971 (temporary admission or release from detention) (a),
- (b) paragraph 22 of that Schedule (b), or
- (c) paragraph 2 or 5 of Schedule 3 to that Act (pending deportation) (c).

Eligibility for and provision of accommodation to a failed asylum-seeker

3.—(1) Subject to regulations 4 and 6, the criteria to be used in determining the matters referred to in paragraphs (a) and (b) of section 4(5) of the 1999 Act in respect of a person falling within section 4(2) or (3) of that Act (d) are—

- (a) that he appears to the Secretary of State to be destitute, and
- (b) that one or more of the conditions set out in paragraph (2) are satisfied in relation to him.

(2) Those conditions are that—

- (a) he is taking all reasonable steps to leave the United Kingdom or place himself in a position in which he is able to leave the United Kingdom, which may include complying with attempts to obtain a travel document to facilitate his departure;
- (b) he is unable to leave the United Kingdom by reason of a physical impediment to travel or for some other medical reason;
- (c) he is unable to leave the United Kingdom because in the opinion of the Secretary of State there is currently no viable route of return available;
- (d) he has made an application for judicial review of a decision in relation to his asylum claim—
 - (i) in England and Wales, and has been granted permission to proceed pursuant to Part 54 of the Civil Procedure Rules 1998 (e),
 - (ii) in Scotland, pursuant to Chapter 58 of the Rules of the Court of Session 1994 (f) or
 - (iii) in Northern Ireland, and has been granted leave pursuant to Order 53 of the Rules of Supreme Court (Northern Ireland) 1980 (g); or
- (e) the provision of accommodation is necessary for the purpose of avoiding a breach of a person’s Convention rights, within the meaning of the Human Rights Act 1998 (h).

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- (a) 1971 c.77. Sub-paragraph (2) was amended by the Immigration Act 1988 (c. 14), section 10 and paragraphs 6 and 10 of the Schedule. Sub-paragraphs (3) and (4) were inserted by the Asylum and Immigration Act 1996 (c.49), section 12(1) and paragraph 10 of Schedule 2. Sub-paragraph 4(a) was amended by the Immigration and Asylum Act 1999, section 169(1) and (3), paragraphs 43, 62(1) and (4) of Schedule 14, and Schedule 16.
 - (b) Paragraph 22 was amended by the Asylum and Immigration Act 1996, section 12(1), paragraph 11(1) of Schedule 2 and the Immigration and Asylum Act 1999, section 169(1) and paragraphs 43 and 63 of Schedule 14. Paragraph 22 has been amended by the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, section 26(7) and paragraphs 1(1) and 2 of Part 1 of Schedule 2, but the amendment is not yet in force.
 - (c) Paragraph 2 was amended by the Criminal Justice Act 1982 (c.48), section 64 and Schedule 10; the Immigration Act 1988, section 10 and the Schedule; the Asylum and Immigration Act 1996, section 12(1) and paragraph 13 of Schedule 2; the Immigration and Asylum Act 1999, sections 54(1) and (4), 169(1) and paragraphs 43 and 68 of Schedule 14; the Nationality, Immigration and Asylum Act 2002, section 114(3) and paragraph 7 of Schedule 7 and the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, section 34(2). Paragraph 5 was inserted by the Criminal Justice Act 1982, section 64 and paragraph 2 of Schedule 10.
 - (d) Section 4(2) and (3) were added by section 49(1) of the Nationality, Immigration and Asylum Act 2002.
 - (e) S.I. 1998/3132. Part 54 was inserted by S.I. 2000/292 and amended by regulations 3,4 and 5 of the Civil Procedure (Amendment) Rules 2003 (S.I. 2003/364).
 - (f) The Rules of the Court of Session are set out in Schedule 2 to the Act of Sederunt (Rules of the Court of Session 1994) 1994, S.I. 1994/1443 (S.69). Chapter 58 was amended by paragraph 2 of the Act of Sederunt (Rules of the Court of Session Amendment No.5)(Public Interest Intervention in Judicial Review) 2000 (S.S.I. 2000/317) and by paragraph 2(13) of the Act of Sederunt (Rules of the Court of Session Amendment)(Miscellaneous) 2004 (S.S.I. 2004/52).
 - (g) S.R. 1980 No.346. Order 53 has been amended but not in a way material to these Regulations.
 - (h) 1998 c.42.

Community activities: general

4.—(1) Where the Secretary of State so determines, the continued provision of accommodation to a person falling within section 4(2) or (3) of the 1999 Act is to be conditional upon that person's performance of or participation in such community activity as is described in this regulation and is from time to time notified to the person in accordance with regulation 5.

(2) In making the determination referred to in paragraph (1), regard will be had to the following matters—

- (a) the length of time that he believes the person will continue to be eligible for accommodation,
- (b) the arrangements that have been made for the performance of or participation in community activities in the area in which the person is being provided with accommodation,
- (c) any relevant health and safety standards which are agreed between the Secretary of State and a person with whom he has made arrangements for the provision of community activities in the person's area,
- (d) whether the person is in the Secretary of State's belief unable to perform or participate in community activities because of a physical or mental impairment or for some other medical reason,
- (e) whether the person is in the Secretary of State's belief unable to perform or participate in community activities because of a responsibility for the care of a dependant child or of a dependant who because of a physical or mental impairment is unable to look after himself, and
- (f) any relevant information provided to the Secretary of State, regarding the person's suitability to perform or participate in particular tasks, activities or a range of tasks or activities.

(3) Paragraph (1) does not apply in relation to a person who is under the age of 18.

(4) No condition on the continued provision of accommodation will require a person to perform or participate in community activities for more than 35 hours in any week, including the weekend.

Community activities: Relevant information

5. A notice under regulation 4(1) falls within this regulation if it contains the following information—

- (a) the task, activity or range of tasks or activities in the area in which the person lives which are to be performed or participated in as community activities,
- (b) the geographical location at which the community activities will be performed or participated in,
- (c) the maximum number of hours per week that the person will be expected to perform or participate in community activities, where it is possible for the Secretary of State to so specify, and
- (d) the date upon which the task, activity or range of tasks or activities to be performed or participated in as community activities will commence and, where it is possible for the Secretary of State to so specify, the length of time such community activities will last.

Other conditions on continued provision of accommodation

6.—(1) The continued provision of accommodation to a person falling within section 4(2) or (3) of the 1999 Act is to be subject to such other conditions falling within paragraph (2) as—

- (a) the Secretary of State may from time to time determine, and
- (b) are set out in a notice to that person in writing.

(2) A condition falls within this paragraph to the extent that it relates to—

- (a) complying with specified standards of behaviour,
- (b) complying with a reporting requirement,
- (c) complying with a requirement—
 - (i) to reside at an authorised address, or
 - (ii) if he is absent from an authorised address without the permission of the Secretary of State, to ensure that that absence is for no more than seven consecutive days and nights or for no more than a total of fourteen days and nights in any six month period, or
- (d) complying with specified steps to facilitate his departure from the United Kingdom.

Home Office
24th March 2005

Des Browne
Minister of State

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out the framework for the provision of accommodation under section 4 of the Immigration and Asylum Act 1999 (“the 1999 Act”) to failed asylum-seekers and their dependants. They provide in particular for the continued provision of accommodation to be made conditional on the performance of, or participation in, community activities. Section 4 was amended by both section 49 of the Nationality, Immigration and Asylum Act 2002 and section 10 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (“the 2004 Act”).

Regulation 1, apart from providing for citation and commencement, also provides that that these Regulations may apply to persons receiving accommodation when they come into force in exactly the same way as they apply to persons who may receive accommodation after they come into force.

Regulation 2 provides relevant definitions for the purpose of these Regulations.

Regulation 3 sets out the criteria which the Secretary of State is to use in determining whether to provide or continue to provide accommodation to a failed asylum-seeker and any dependants under section 4 of the 1999 Act. Those criteria are that the person is destitute and that he satisfies at least one of the conditions set out in paragraph (2) of that regulation.

Regulation 4 provides that the continued provision of accommodation can be made conditional on that person’s performance of or participation in community activities. Community activities are defined in section 4(7)(a) of the 1999 Act (added by section 10(1) of the 2004 Act) as meaning activities that appear to the Secretary of State to be beneficial to the public or a section of the public. Provision is made for the matters to which the Secretary of State will have regard in determining whether to make this a condition of continued provision of support to a person. Provision is also made so that the community activities condition does not apply to a person who is under the age of 18. The regulation further provides that no such community activities condition will require a person to perform or participate in community activities for more than 35 hours in any week, including the weekend.

Regulation 5 sets out the relevant information which is to be included in a notice given to a person who the Secretary of State determines should perform or participate in community activities.

Regulation 6 provides that the continued provision of accommodation to a person under section 4 may be made subject to such other conditions (falling within paragraph (2)) as the Secretary of State may from time to time determine and which are set out in a notice to that person in writing. Paragraph (2) provides that a condition falls within that paragraph to the extent that it relates to compliance with specified standards of behaviour, compliance with a reporting requirement, compliance with a requirement to reside at an authorised address or compliance with specified steps to facilitate that person’s departure from the United Kingdom.

STATUTORY INSTRUMENTS

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£3.00

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Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.

E0698 4/2005 150698T 19585

ISBN 0-11-072719-3



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