
STATUTORY INSTRUMENTS

2005 No. 930

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

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 **(1)** 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 **(2)**,
 - (ii) in Scotland, pursuant to Chapter 58 of the Rules of the Court of Session 1994 **(3)** or
 - (iii) in Northern Ireland, and has been granted leave pursuant to Order 53 of the Rules of Supreme Court (Northern Ireland) 1980 **(4)**; 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 **(5)**.

(1) Section 4(2) and (3) were added by section 49(1) of the Nationality, Immigration and Asylum Act 2002.

(2) *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*).

(3) 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*).

(4) *S.R. 1980 No.346*. Order 53 has been amended but not in a way material to these Regulations.

(5) 1998 c. 42.